

The complaint

Mr and Mrs C complain about the way AXIS Specialty Europe SE trading as AXIS Specialty London (AXIS) handled a claim they made under their holiday home contents insurance policy.

Reference to AXIS includes those agents acting on its behalf.

What happened

Mr and Mrs C own a property abroad and they had a home contents insurance policy for that property with AXIS. Mr and Mrs C visited the property in February 2020 but were then prevented from doing so again for several months due to the pandemic. They planned to sell the property and they appointed an agent to market and sell it. In early October 2020 they told the agent they planned to visit in a few days' time. The agent went to the property shortly before their arrival and found it had been burgled. The agent sent photos of the damage to Mr and Mrs C. When Mr and Mrs C arrived at the property two days later they noted further damage and believed there had been a second burglary. The local police visited on both occasions and provided two separate reports.

Mr and Mrs C made a claim with AXIS and provided a list of items they said had been stolen. They gave a valuation of between about £33,000 and £41,000. AXIS appointed a loss adjuster to manage the claim. They visited the property in October 2021 and interviewed Mr and Mrs C in January 2022. In November 2022 AXIS told them there were no signs of forcible or violent entry or exit from the property during the first incident and so that claim wasn't covered under the terms of their policy. As there was damage to the patio doors following the second incident, it accepted liability for that claim. It said jewellery wasn't covered by their policy if the property was left unoccupied for more than 48 hours, so they wouldn't pay for those items. AXIS said it would pay 50% of the remaining cost, using the lower end of the valuation range Mr and Mrs C had provided. This amounted to about £9,200, including a deduction for the policy excess of £250.

Mr and Mrs C weren't happy and complained. In August 2023 AXIS reviewed the claim and decided to use the midpoint of the valuation they'd provided. This increased the settlement offer to about £11,100, including the £250 deduction for the excess. But overall, AXIS was satisfied its settlement was fair and reasonable. It noted the time taken to reach a settlement but didn't think it was responsible for the majority of that delay.

Mr and Mrs C remained unhappy and so referred their complaint to this service. Our investigator didn't think AXIS had acted unfairly when it declined the first burglary claim and thought the offer to settle the second claim on a 50/50 basis was fair. As Mr and Mrs C disagreed, their complaint was passed to me to make a final decision.

I reached a different outcome to that reached by our investigator and so I issued a provisional decision, which I shared with both parties. I've set out the main part of my findings below:

"Mr and Mrs C raised a number of points in their complaint. I won't set out every

detail they've mentioned but I'd like to reassure them that I've read through all the information we have on file. AXIS accepted the claim for the second burglary and I see no need to consider the circumstances of that second break in. The settlement it made seems fair in all the circumstances. Mr and Mrs C also complained about the sale of their insurance policy but they bought the policy through a broker – and my role here is to look at the actions of AXIS. So, the only issue remaining seems to be whether AXIS acted fairly and reasonably in declining Mr and Mrs C's claim following the first break-in. And from the evidence I've seen, I don't think it did. Let me explain.

AXIS declined the claim for the first burglary because there were no signs of forcible or violent entry or exit from the property. This refers to Mr and Mrs C's policy which says AXIS will not pay for any loss or damage following theft while the property is vacant - unless it involves forcible or violent entry to, or exit from, the property.

AXIS reached its decision following the loss adjuster's visit to the property about a year after the claim. They raised questions about the burglary. They noted that entry had allegedly been made via a small window to the upstairs bathroom, which was fitted with exterior metal bars embedded into the walls. They noted that one of the metal bars had been cut, leaving a space of no more than 30cm, which they said was too small for a grown person to pass through. They said the cut to the metal bar was too clean and not typical of a burglar's actions. They inspected the window and said there were no visible marks on the exterior of the window or signs of damage around the window frame. They said the interior locks were also not broken or recently repaired. So they suspected the window had been left open.

The police report written after the first burglary was written in the local language. Translated into English it reads along the following lines: - "Entry into the house was via a window leading to the bathroom, with the burglar removing the iron bars outside the window, thus gaining access to the interior of the property."

The police report makes no mention of the condition of the window and whether or not it was open or closed on arrival. It's clear from a photograph taken at the time that one of the metal bars outside the bathroom window has been cut and the bars bent, presumably to allow easier access. There's no apparent damage to the window behind the iron bars.

It's well established that a person pursuing an insurance claim has the burden of proving there has been a loss of an insured item and that it was caused by an insured event. If a policyholder can do that, the insurer then becomes liable to pay the claim unless it can establish, on the balance of probabilities, that some policy term or condition applies which means it's not liable.

AXIS had doubts about the circumstances surrounding the first burglary. But I don't think it's done enough to demonstrate that a burglary didn't take place at this time. The weight of evidence would indicate that Mr and Mrs C's property was burgled before the agent arrived in October 2020. So, if it wants to decline the claim, AXIS needs to demonstrate that an exclusion applies. And, in this case, it argued there was no force or violence used to access Mr and Mrs C's property.

The courts have considered the question of what is meant by force and violence in a number of cases. We generally follow a similar approach to the courts in these cases. We usually interpret force as being some form of action or energy being applied to something. So, something as simple as turning a handle or opening a door would constitute force. If a thief uses a picklock or some other instrument to unlock a door or window we will consider this violent even if this results in no physical damage

to the property. This is because the person has had to use a level of force over and above what would usually be necessary.

Mr and Mrs C's policy included a security endorsement which specified what security was necessary to protect the property when it was left unattended or unoccupied. When referring to the windows, it said all windows needed to be fitted with lever operated window locks or catches or shutters or metal grilles embedded into the wall.

A number of windows in Mr and Mrs C's property, including the one used by the burglars to access the property, had metal grilles embedded into the wall. The purpose of that endorsement was to show that the property was secure. The addition of an 'or' in the endorsement would indicate that the property was sufficiently secure by having a metal grille embedded into the wall even where the windows weren't fitted with lever operated window locks, catches or shutters.

One of the bars on the metal grille over the bathroom window had been cut and the remaining bars bent. AXIS raised doubts about why that was done but I don't think they've shown on the balance of probabilities that it had not been done by a burglar. Access would have been tight but not too tight to make it impossible or even improbable.

I'm satisfied that cutting this metal grille was a forcible and violent way of gaining entry to Mr and Mrs C's property. There doesn't appear to be any damage to the window beyond and it's possible that this window was already open as AXIS suspected. But, by that point, the burglars had already used forceful and violent means to gain entry. In any event, as I've said above, entry can be considered forceful and violent even if it results in no physical damage. So, even if the window had been locked at the time of entry, the lack of any physical damage doesn't necessarily mean there's been no forceful or violent entry.

Taking all of this together, I'm satisfied Mr and Mrs C had taken all reasonable steps to protect their property. And I'm satisfied from the evidence that the property's security measures have been overcome by unnatural means. So, I don't think it was fair or reasonable for AXIS to rely on the absence of forcible or violent access when declining their claim.

Putting things right

Mr and Mrs C haven't disputed AXIS's decision not to settle their claim for jewellery. But, for completeness, I think that decision was fair and in line with the terms of their policy. I also think it was fair for AXIS to use the mid-point of the valuations provided by Mr and Mrs C to settle the second claim. But I don't think it acted fairly when applying the exclusion to their first claim and so AXIS should now settle that claim using the mid-point of the valuations provided. It should also add interest to that payment.

I've thought about whether AXIS should add interest from the date Mr and Mrs C made their claim, or soon after. But I don't think that would be fair. Although it took a long time for AXIS to make a decision on Mr and Mrs C's claim, the majority of the delays were due to factors outside of its control. And I accept that some of the decisions they made involved fine judgement calls. So, I think it would be fairer to ask AXIS to add interest on the additional amount it pays from the date it made the payment on the second claim to the date it settles this first claim.

My provisional decision

For the reasons set out above, I intend to uphold this complaint and ask AXIS Specialty Europe SE trading as AXIS Specialty London to settle the claim in accordance with the policy terms and conditions.

Interest should be added to any claim settlement, from the date it settled the second claim to the date it settles this first claim.”

Comments on my provisional decision

AXIS said it was willing to accept my provisional decision. Mr and Mrs C said they were pleased overall with the decision but made several comments. They said AXIS hadn't yet paid them anything to settle their claim as they hadn't agreed to the amount offered in full and final settlement of their claim. They also noted that the values for the lost items were based on 2020 prices and, if inflation was taken into account, the mid-point of the valuations, less the cost of the jewellery, was significantly higher.

Mr and Mrs C thought interest should be chargeable from the date they made their claim, rather than the date AXIS made the payment on the second claim, particularly as that payment wasn't made at that time. And finally, Mr and Mrs C thought AXIS should pay a 'damages' award for the stress and inconvenience they have both suffered throughout the claims process and, subsequently, the complaints process. They outlined the impact on them, referring to the dark cloud over their lives caused by AXIS's poor handling of this claim, which they said could have been avoided if it had settled the claim in early 2021.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As an insurer, AXIS's responsibility in this situation is to indemnify Mr and Mrs C for their loss. That is, they should aim to put them back in the position they were in just before the loss. A reasonable settlement to cover the lost items would put them in a broadly similar position. It follows that this settlement should be based on a valuation of the stolen items at the time of loss, not on a valuation that takes account of inflation at some later time.

That said, I do think AXIS should pay 8% simple interest per year for the loss of use of the money Mr and Mrs C should have received earlier. I recognise Mr and Mrs C's strength of feeling about the time taken to resolve this matter. I would expect an insurer to settle claims in a reasonable time period and we are now over four years on from when they made their claim, without it being settled. But I think it was reasonable for AXIS to investigate the circumstances of this claim. There were a number of issues raised by the loss adjuster and I think AXIS was justified in exploring those further. Its investigation took a long time to conclude but much of those delays were outside of AXIS's control.

AXIS concluded its investigation and made the decision to part settle the claim in November 2022 and so I think it should pay interest from that date up until the date of settlement. As AXIS has yet to pay anything on the claim, it should pay interest on the total amount of the settlement, which should be based on the mid-point of the valuations provided, less the cost of the jewellery.

I've also thought about whether it would be fair for AXIS to pay Mr and Mrs C an amount for the distress and inconvenience its caused. They've said this matter has taken a large toll on both of them. They said they've spent hundreds of hours on this matter and it's caused them a significant amount of stress and inconvenience. They thought AXIS should pay them about £10,000 by way of damages for the impact it's caused.

Our approach to such payments is to consider the impact a mistake or poor service has had on the policy holder(s). We'd need to see that the impact was more than someone would expect to experience as part of everyday life. And we wouldn't seek compensation for the impact of events that were outside of the business's control. Claims handling, by its very nature, can be upsetting and inconvenient even when things go smoothly.

So, it would only be fair to ask AXIS to pay an amount for distress and inconvenience if that had been caused by mistakes, poor service or unnecessary delays. As I've said, I think AXIS were justified in investigating the circumstances of this case and much of the delays were outside of its control. But once it made its decision, I don't think AXIS reached the right conclusion. They were arguable points but, ultimately, Mr and Mrs C should have had their claim settled much earlier than they did. And that had an impact.

So, I think it's right that AXIS recognise the significant impact it's had. And I think a payment of £500 would be fair and reasonable in all the circumstances.

My final decision

For the reasons set out above, I uphold this complaint and require AXIS Specialty Europe SE trading as AXIS Specialty London to settle the claim in accordance with the policy terms and conditions.

Interest should be added to the claim settlement, from November 2022 to the date it settles this claim¹.

It should also pay Mr and Mrs C £500 for the distress and inconvenience it's caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 1 January 2025.

Richard Walker
Ombudsman

¹ If AXIS Specialty Europe SE trading as AXIS Specialty London consider it's required by HM Revenue and Customs to take off income tax from that interest, it should tell Mr and Mrs C how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.