DRN-5360241

The complaint

A charity, which I will refer to as E, complains about the decline of its commercial property insurance claim by AXA XL Insurance Company UK Limited.

What happened

The following is intended only as a brief summary of events. Additionally, even though other parties have been involved in the claim and complaint process, for the sake of simplicity, I have just referred to E and AXA.

E operates a museum, and had an industry specific commercial insurance policy underwritten by AXA. The policy provided a number of areas of cover, including an "Exhibits and Entrustments" section. The policy schedule noted that this was subject to endorsements listed on the endorsements schedule. And this set out two endorsements:

> "Safe Clause
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> In the event of breach of this term, the Insurers shall have no liability under this Policy, unless the Insured shows that non-compliance with this term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred. In respect of loss or damage by theft, all jewellery, gold, gemstones, and watches are to be kept in a locked safe and/or strong-room (with the keys removed) or specialised storage facility at night and at all other times when not being transported or shown.
>
> Showcase clause
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> In the event of breach of this term, the Insurers shall have no liability under this Policy, unless the Insured shows that non-compliance with this term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred. In respect of loss by theft, all consignments comprising jewellery, watches, precious metals, or stones shall be kept in locked showcases with the keys removed therefrom at all times unless a member of staff is with and serving a prospective purchaser during viewing, in which case cover is extended to include three items only out of the locked showcase at a time per member of staff and under direct supervision of a manager, supervisor or senior member of staff."

In 2024, E suffered a burglary during the night in which two valuable, gold items were stolen. E claimed for this loss on the policy, but the claim for these items was declined. (There was the possibility for other associated losses to be covered, but this does not form part of the current complaint.) AXA said that the items had been left in a display case overnight, and that this was non-compliance with the Safe Clause above.

E complained, saying that the Safe Clause was ambiguous, particularly when read in conjunction with the Showcase clause. E also said that having a clause that required it to remove all valuable items each night was not a reasonable expectation of a museum.

E brought its complaint to the Ombudsman Service. However, our Investigator did not recommend it be upheld. He thought it was fair and reasonable for AXA to conclude that

leaving the gold items in the display case overnight was a breach of the Safe Clause and that this had increased the risk of loss. He also didn't think the policy wording was unclear.

E remained unsatisfied, so its complaint has been passed to me for a decision.

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.

Having done so, I am not upholding this complaint. I'll explain why.

Both parties have made detailed submissions, and E has raised a number of points. I have considered all of these, but I am not going to comment on each of them. This is not intended as a discourtesy, but rather reflects the informal nature of the Ombudsman Service. Instead, I am going to focus on what I consider to be the key issues. In doing so, I have borne in mind – amongst other things – the relevant law and regulations, including the Consumer Duty to which E has referred.

It is not disputed that the stolen items were left in the display case, nor that the theft happened during the night. Largely speaking, this complaint comes down to a single issue, the interpretation of the Safe Clause. The issue is whether the clause itself can fairly and reasonably be interpreted as requiring E to have removed them to a "place of safety" (a term I use intentionally although it does not appear in the policy) at the time of the theft.

There are a number of aspects to this, and I have set out my considerations of some of these below.

<u>"At night and at all other times when not being transported or shown"</u>

E has suggested that the end of the Safe Clause clause, "at night and at all other times when not being transported or shown", does not make it clear that the intention of the clause – as stated by AXA in responding to the claim – is that the items are removed both at night and also at times when not being shown. E seems to consider that a reasonable interpretation of the clause is to place the emphasis in clause on the "not being transported or shown" wording. The items were not being transported, but E has said that the items were part of a live display, so even though the museum was closed at the time they were still being shown.

However, I don't agree that this is the interpretation a reasonable person would have when considering the clause at the time the policy was taken out. Whilst there is no comma after "at night", I think a reasonable person would consider there to be, effectively, two occasions when the clause applied; either at night or when the items were not being shown.

I don't consider E's interpretation here would make sense. There would be no need to distinguish between the periods "at night" and "at all other times" if both periods only applied when the items were "not being shown". It would be enough to say, "at all times when not being shown". And I consider the use of the different periods demonstrates there are two distinct periods – either "at night" or "at all other times when not being shown". As the theft happened at night, this was at a time the items ought to have been removed.

Even if I did not consider this to be the case though, and E could be said to be correct in that the term ought to be interpreted as requiring removed "at night when the items are not being shown", I also think a reasonable person would not consider the items to be "being shown" at times the museum was closed. Whilst I agree that they would still be part of a display,

without the ability of the public to access that display, I do not consider it could reasonably be said that they were being shown. So again, the items ought to have been removed.

Specialised storage facility

E has raised arguments over the appropriate interpretation of what a "specialised storage facility" is. Essentially, it has said that without a policy definition, this should be interpreted as including the locked display case the items were left in.

I note that the display case was apparently approved by the British Museum. However, I would not consider that a reasonable person would interpret the policy to mean that such a display case was a specialised storage facility. The term does not refer to a *display* case/facility.

And I agree with AXA that a reasonable person, of the type the industry specific policy was intended for, would consider this term to refer to somewhere "which would, ordinarily, be located off site in a facility which specialises in storing valuable items". I consider that an industry specific reader would be aware of the use of such storage options, which provide security, a temperature-controlled environment, etc.

E has said that the inclusion of both the Safe Clause and the Showcase clause causes confusion. And that the wording of the Showcase clause allows for items to be left in locked showcases at all times when not being overseen by a member of staff. E's argument is effectively that this means the locked showcase ought to be considered a specialised storage facility.

The Showcase clause relates to items on consignment. The stolen items were not on consignment, so I do not agree this term can be said to mean E should be covered for their loss on the basis they were left in a locked showcase.

I do appreciate E's argument that if the Showcase clause could be read to allow for, certain, items to be left in a display/showcase at all times – including at night and at all other times when not being shown – then this might mean a display case could qualify as "a locked safe and/or strong-room (with the keys removed) or specialised storage facility". However, I do not consider this would be a reasonable person's interpretation when reading both clauses, and the rest of the policy, together.

The Showcase clause, to my mind, relates to situations where items that are open to purchase by third parties will be viewed for that purpose, as well as being displayed for the general public. As such, there is a need to set out the requirements for how those items are handled during these periods. The Safe Clause on the other hand, refers to situations applying to all items when they are not accessible for viewing. As they are not accessible for viewing, they will also not be being overseen or monitored by staff, and so require additional security. And I consider this is what a reasonable person, of the type the policy is intended for, with all of the relevant background knowledge would understand the wording to mean.

I would also add that if E considers that a contradiction exists that means it would not be possible to comply with both the Safe Clause and the Showcase clause, this would only relate to situations where the items were on consignment. And this does not apply to the current complaint.

I have noted E's representative's comments about whether these clauses are workable in practice for a museum of E's size, and that items should be moved as little as possible, etc. But if E considers that its policy was unsuitable, then it will need to raise a complaint about the sale of that policy with the party responsible for having arranged it. Ultimately, the policy

that E agreed to, included these requirements. And E was, or ought to have been, aware of these.

AXA provided this wording to E. I consider the wording is clear, fair and not misleading. And I consider this would have enabled E to understand how the policy would work.

As E was in breach of the requirements of the Safe Clause, I consider AXA acted fairly and reasonably when applying this to and declining E's claim. It follows that I am unable to ask AXA to do more in the circumstances of this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 17 April 2025.

Sam Thomas
Ombudsman