

The complaint

D, a limited company, complains that AXA Insurance UK Plc has unfairly declined a claim under their business protection insurance policy.

Where I refer to AXA, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

- In August 2024, D made a claim under their business protection insurance policy for theft of a hired digger. They said it was left on site overnight and in the morning, it was gone.
- AXA declined the claim. It said D hadn't complied with a policy endorsement which stipulated how property should be stored outside of working hours. Specifically, it needed to be kept in a building or a fully enclosed yard / compound.
- D didn't agree. It said an option under the policy was for property to be under constant surveillance. And as the site benefited from CCTV cameras, they felt they'd complied with the policy terms. They raised a complaint, which they brought to our Service.
- Our Investigator was satisfied AXA had declined the claim in accordance with the policy terms and hadn't treated D unfairly. She said the policy didn't list "constant surveillance" as a standalone option. Rather, the building or enclosed yard / compound had to either be locked or under constant surveillance. As the digger wasn't in either, the policy terms hadn't been complied with.

As D didn't agree with our Investigator, the complaint has been passed to me to decide.

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've reached the same outcome as our Investigator, and for broadly the same reasons. Before I explain why, I wish to acknowledge the parties' submissions in respect of this complaint. Whilst I've read them all, I won't comment in detail on every single point that has been made. Instead, I'll focus on the key points that are relevant to the outcome I've reached. That's in line with our remit, which is to resolve complaints promptly and with minimal formality.

D's business protection insurance policy covers them for "hired in plant". The policy schedule sets out the endorsements applicable to cover. The relevant endorsement says:

“CAR10 – Unattended Theft

The Insurance provided by this Policy shall not apply to theft of or malicious damage to Contractors Plant or Hired-in Plant between 1800 and 0600 hours and during weekends unless such property is in a building or sited in a fully enclosed yard or compound which is securely closed and locked or under constant surveillance.

If the property is in a vehicle(s) and/or trailer(s) and/or container(s) it/they must be sited within a fully enclosed yard or compound which is securely closed and locked or under constant surveillance and additionally have all doors, windows, boots and other openings closed and securely locked and all additional protective devices put into full and proper operation, and has all keys removed so far as local fire regulations permit.

For the purposes of this Endorsement a fully enclosed yard or compound is an enclosure comprising of perimeter fencing, gate and lock defined as:

Perimeter Fencing

At a minimum height of no less than 2 metres, comprised of close board hoarding, chain link metal mesh palisade fencing on hardwood concrete or steel uprights set in concrete at no more than three metre spacing or anti-climb demountable fencing with panels held together by at least two security devices.

Gate

Single or double leaf gates with anti-lift hinges and fitted with a Lock

Lock

A centrally positioned security close shackle padlock and matching padlock bar to at least CEN grade 5 standard fitted in accordance with the manufacturer's instructions.”

The digger wasn't stored in a building. Instead, it was left on site overnight. And the site in question wasn't a fully enclosed yard or compound with perimeter fencing, gate, and lock as defined by the policy.

D says the site has automatic locked iron gates to the entrance. And the boundary perimeter contains a chained mail fence, post and rail, and a hedge. From the photos I've seen of the perimeter, I'm not persuaded these meet the requirements of the policy. I say this because the fence isn't chain link metal mesh palisade fencing, and it doesn't surround the whole site. Rather, in places there just appears to be hedge – which the policy doesn't list as an acceptable enclosure.

D argues that the digger didn't need to be in either a building or an enclosed yard / compound. They say one of the options is for the site to be under constant surveillance. But I don't agree. As our Investigator has explained, this isn't a standalone option. The policy requires the digger to be in a building, enclosed yard or compound *and* for it to be locked or under constant surveillance. To read the policy in the way D wishes it to be interpreted, this would mean that the digger could be left anywhere (on the side of the road for example) as long as there was constant surveillance on it. I'm not persuaded this was AXA's intention of the policy terms nor do I think that's a reasonable interpretation of it.

In any event, even if I interpreted the policy this way, I still wouldn't be persuaded that D had complied with the requirements. I say this because, despite the five CCTV cameras on site, it doesn't appear that any were pointing specifically at the digger or the way it exited. I say

this because, according to the lost adjuster's report, *"the machine was tracked carefully off site to avoid detection by the CCTV cameras on site"*. So the surveillance wasn't adequate, and it was the lack of appropriate security that allowed the digger to be removed from the site.

Overall, I'm not persuaded D has complied with the policy terms and conditions, so it follows that I'm satisfied AXA reached a fair and reasonable decision when declining the claim.

My final decision

For the reasons I've explained, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 21 October 2025.

Sheryl Sibley
Ombudsman