



complaint

This complaint concerns the amount AXA Insurance UK Plc has offered to settle Mr L's claim under his commercial buildings insurance policy. Mr L is also unhappy with the time taken to settle the claim and legal costs he has had to pay in pursuit of it.

Mr L is a one of four partners in the business. The other partners have consented to him bringing the complaint.

background

In early 2007 a fire occurred at the premises of a business partly owned by Mr L. When he attended the property several weeks later he discovered that a theft had also occurred. After sometime, Mr L's insurer, AXA, was notified of both claims and it began investigating matters. However, the claims did not proceed as smoothly as might have been expected and it was not until January 2009 that an offer of settlement was finally made to Mr L. The settlement was made in respect of the fire claim alone and AXA declined to make any offer in respect of the theft claim. AXA said it was entitled to decline the theft claim because the peril of theft was subject to an endorsement which said an alarm had to be in use at the property. In his submissions to AXA Mr L had said that the alarm was not functioning properly even before the fire. Mr L rejected this offer though and asked for a "positive, pragmatic and realistic response" to "bring this matter finally to a close".

In March 2011; following no response to his rejection, Mr L instructed a solicitor to pursue the matter for him. Following this a long delay occurred before a revised offer was made by the loss adjuster. Subsequently, this offer was withdrawn as it had been found that the property had been substantially under insured. In 2012 a final offer was made to Mr L of just over £12,000. Mr L felt this offer to be insufficient, particularly as it did not include any allowance for his legal costs and made a complaint to this service.

Our adjudicator upheld the complaint in part. The adjudicator was satisfied that AXA was entitled to reject a claim for theft. It was also felt that AXA was allowed to apply an 'average' to the claim for fire damage due to underinsurance, however the 'sum insured' should be increased by £500 to take account of Mr L's electronic equipment insured under the policy.

Furthermore, our adjudicator also felt that AXA was solely responsible for a number of delays in handling the claim and recommended £200 compensation to reflect this. In respect of court costs, our adjudicator pointed out that these are not normally paid by this service and he saw no reason why they should be here.

AXA said it would agree to our adjudicator's suggestions in the main. However, AXA was not persuaded that it would be fair to apply interest to the whole amount. It said that Mr L could have accepted the lower (and incorrect) offer in part and continued to complain but he did not. Therefore, it should only have to pay interest on the difference and only from the date its lower offer was made.

This response was received before Mr L had had chance to reply and so he was notified of its content. Mr L responded saying he was minded to accept our adjudicator's findings but he did not agree with AXA's attempt to limit the amount of interest it would have to pay.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having done so I am satisfied that AXA was entitled to decline the claim for theft. Theft cover on the policy was subject to an endorsement that required an alarm to be used at the premises. Mr L knew that the alarm in place was not in full working order, even before the fire and afterwards it had become entirely inoperable. Therefore, it had not been activated at the time of the robbery. However, Mr L had not told AXA about the problems he had been having with the alarm, either before or after the fire until after the robbery had occurred. Therefore, I am satisfied that AXA's decline of Mr L's claim for theft on the basis of a breach of the alarm endorsement was fair and reasonable.

AXA agreed to settle the fire claim but found that the property was largely under insured and so said it would settle the claim proportionately. It also suggested that it was not happy to settle for certain items. However, I agree with our adjudicator that AXA effectively accepted the values claimed for by Mr L in its offer of May 2012. Within that offer it sought to decline cover for various items claimed for as, it said, they did not form part of its descriptions of cover. I further agree with our adjudicator that the policy was not entirely clear on this and that some of the items did fall within that description anyway. Therefore I am satisfied that AXA's basis for its proportional settlement was incorrect and so, therefore, was the amount it offered. This then needs to be amended.

I note from the file that when the original offer was made no explanation was given for the figure in question and neither was any option to accept the value in part. I note that Mr L rejected this offer and requested over double that price be paid. There is then no contact between the parties for approximately two years. I am unsure why matters were not pursued in the interim but as Mr L communicated his rejection of the offer, in my mind, the onus was now on the loss adjuster to reply.

AXA knows this service awards interest where we uphold a complaint and that this interest is given because a policy of indemnity should provide full cover straight away. Interest, therefore, is given (by the courts as well as this service) to account for monies that should have been received at the point of loss. Given the situation here I see no good reason to depart from that stance and I will be awarding interest from the point of loss.

In respect of compensation; UKI admitted to a serious and unnecessary delay following contact by Mr L's solicitor and I agree it should have acted quicker. However, I have also noticed that other delays have occurred in the settlement of this claim. I have considered then whether £200 would be a fair and reasonable award in this situation. On balance though, I am satisfied that the only upset that AXA can be reasonably held liable for is that stemming from its delay in responding to Mr L's solicitor. Therefore, I am satisfied that £200 is fair and reasonable compensation for the distress and inconvenience this failure has caused.

I have considered Mr L's claim for legal costs but this service does not normally make awards in this respect. This is because we are an informal service and we usually hold that it is unnecessary for a complainant to involve a solicitor when making a complaint. Here, while I note that Mr L was having some difficulty dealing with AXA's loss adjuster, I do not believe the involvement of a solicitor was a necessity. I also considered whether, even if I was not minded to award all of Mr L's costs, it might have been appropriate to make AXA liable for

any that related to the court case Mr L recently made against it in order to protect his position. Having looked at the evidence though, I am satisfied such would not be reasonable. I say again, AXA should have responded to Mr L's rejection letter, however, Mr L must also do everything in his power to mitigate his own circumstances. Allowing matters to lie in abeyance for two years does not, in my mind, equate to effective mitigation. Had Mr L pursued matters earlier, this complaint could have been brought earlier and this decision issued well within the limitation period, thus negating the need for any court action or legal fees. Therefore, I find that AXA is not liable for any legal costs faced by Mr L.

my final decision

My final decision is that I uphold this complaint in part as I am satisfied that AXA Insurance UK Plc's final offer of settlement fell somewhat short of being a fair and reasonable response to the claim. As such it must now settle at an increased amount. Furthermore, as no payment of its offer was ever made or any indication given to Mr L that he could accept this offer in part and still complain, I find interest must be paid on the whole amount owed and from the point of loss. Also, AXA did unreasonably delay this claim and so I am satisfied that compensation is due to Mr L for the distress and inconvenience this caused him.

Therefore, I order AXA to;

- Make a settlement to Mr L based on his 'sum insured' being £15,500;
- Apply interest on the total settlement now due to Mr L. Interest must be calculated at 8% simple per annum (less tax if properly deductible) and applied from the date of loss until the date of settlement; and
- Pay £200 compensation to Mr L for the distress and inconvenience caused.

I make no other award against AXA.

Fiona Robinson
ombudsman