

complaint

Mr C has complained about the way AXA Insurance UK Plc has dealt with his claim under his home contents policy following a fire at his property in June 2010.

background

I issued a provisional decision in this case in December 2013. That provisional decision stated the following:-

background

Mr C's property suffered a fire. He reported a claim to AXA with whom he held buildings and contents cover. His complaint covers a number of issues which arose over the months spent dealing with his claim. Mr C also held buildings cover with another provider. It is my understanding that he notified this other provider about the fire damage and submitted a claim to it prior to making a claim for contents with AXA. The buildings claim was already underway before AXA was notified of the contents claim. Thus AXA dealt solely with Mr C's claim for damage to his contents. For ease of reference I will deal with each issue arising out of his contents claim separately:

1. alternative accommodation

While AXA was undertaking investigations in order to determine whether or not to accept liability for the claim, Mr C was left without alternative accommodation and spent a number of nights sleeping at houses of friends and family and in his car. After approximately five weeks without permanent temporary accommodation, AXA placed him into temporary accommodation in a hotel on a without prejudice basis.

AXA apologised to Mr C for this period of homelessness and offered him the sum of £875 to compensate him which equates to £25 per day for five weeks.

Our adjudicator looked at this aspect of Mr C's complaint and concluded that the sum offered did not represent the fair value of hotel accommodation in central London. He recommended that AXA should double this amount to £50 per night which would bring the total compensation for alternative accommodation to £1750. He acknowledged that AXA was entitled to investigate whether it was liable under the policy, however, because liability was ultimately accepted he felt that Mr C should be compensated for the amount of time he was left homeless.

AXA disagreed with our adjudicator's conclusion. It explained that it was not dealing with Mr C's buildings insurance claim and that it was usually the responsibility of the buildings insurer or underwriter to meet any claim for alternative accommodation. It had only done so on a without prejudice basis. AXA was not willing to pay an additional £875 so as to bring the total figure paid for this aspect of the complaint to £1750.

2. disturbance allowance

Whilst in alternative accommodation, Mr C disputed the allowance given to him by AXA for food. He maintained that he was initially promised £15 per day, but that this was reduced to £10 per day. The amount ultimately paid out by AXA was £2,320 (£10 per day for 232 days).

Our adjudicator concluded that £10 per day did not cover the cost of meals in central London. He was of the view that a further £5 per day should be added to the sum already paid (£5 per day for 232 days) equating to a further £1160. He acknowledged that AXA would wish to control costs, and that daily meals over such a long period could have been a lot cheaper had Mr C been placed in accommodation with cooking facilities, however, as AXA did not send Mr C to a property where he could cook his own meals, it should accept the actual price of eating in a hotel. Mr C only asked for £15 per day, and given the price of eating in London, our adjudicator concluded that this was a very reasonable figure for someone without access to a kitchen.

AXA explained in response that £10 per day was the usual figure applied by insurers in these circumstances and that it had to be fair to its other policy holders too. Notwithstanding this, it agreed to pay the additional sum of £1160 to Mr C on this occasion.

3. underinsurance

Mr C had his contents insured for a sum assured of £50,000. Upon assessing the claim the loss adjuster discovered that Mr C was underinsured by about 47%. AXA, as the underwriter paying the claim, invoked the average clause in the policy terms and conditions and thus Mr C's final settlement was reduced to £30,726.01. Mr C was unhappy that his claim had been reduced in this manner.

Our adjudicator considered this part of Mr C's complaint and explained to AXA that this service accepts that an insurer may offer a reduced settlement when the policyholder is underinsured providing there is a term in the policy permitting it to do so. He also explained that there were other factors that he had to take into account before agreeing that a business has acted reasonably in applying the policy's average clause.

Our adjudicator explained that he needed to see evidence that the questions asked at the inception of the policy regarding the contents sum assured were asked clearly and answered incorrectly. Only then would he accept that the average clause had been correctly applied. He concluded that AXA had not shown any information about how the contents sum insured was set at inception. Without this information he was unable to conclude that applying the average clause was reasonable. He also noted that £50,000 appears to be quite a standard level of cover, and so AXA would need to provide some convincing evidence to show that this sum was specifically mentioned by Mr C as representing the total value of his contents if he was to be persuaded that the average clause had been correctly applied.

Our adjudicator concluded that AXA had not shown this and thus should reconsider Mr C's claim without applying an average clause and use the contents sum insured as the applicable limit of its liability instead. He went on to recommend that any sums paid to Mr C over the £30,726.01 already paid should have interest added at eight per cent simple calculated from the date of loss to the date of settlement.

AXA responded to our adjudicator's assessment to say it disagreed with the view he had taken. It explained that it was the underwriter of the policy and was solely concerned with dealing with the settlement of the claim. It pointed out that Mr C's policy had been arranged and sold by a broker with whom the responsibility rested for making sure the correct cover was in place. It was of the view that the matter of any underinsurance was a sales issue and any complaint about how the policy was sold and what questions were asked at that point would be better directed towards the broker that arranged the policy. Finally it said that the only aspect of the underinsurance complaint for this service to consider in relation to it was

whether the term and condition in the policy relating to average was sufficient to allow average to be applied.

4. disposal of effects by AXA's appointed agent

Contents were taken away from Mr C's property by AXA's appointed damage restoration specialists. They were to be placed into storage while the flat was renovated. Some of these contents were beyond economic repair ("BER") and some were undamaged. AXA's agent has produced a list of items which it states were BER. These were mostly disposed of, though AXA has said some have been returned to Mr C as irreparable. AXA's agent failed to obtain Mr C's signature on the BER. Mr C complained that AXA's agent disposed of the damaged, and some undamaged items also removed from the property, without his consent.

AXA's agent wrote to Mr C to apologise for not obtaining his signature and for not complying with his request to return the damaged items to him; it offered £500 as compensation for the oversight and for disposing of some of the property in error.

Our adjudicator concluded that this was a breach of AXA's agent's duty to take reasonable care, and that Mr C must be properly indemnified for losses. He stated that Mr C should be indemnified for the loss of the undamaged items that fell outside of the claim in line with the list he had produced. He was of the view that the sum of £500 was not adequate indemnification of Mr C's losses.

AXA considered the list but declined to indemnify Mr C for any of the items on it due to a lack of proof of ownership. It went on to explain that it had indemnified Mr C for the damaged items (and applied average) that its agent removed. It stated that all undamaged items its agent had taken had now been returned to Mr C along with many damaged items. Even if some damaged items had not been returned, ownership of those items had passed to AXA upon indemnification. It was of the view that our adjudicator had misunderstood the nature of the offer by its agent to pay Mr C £500. The offer of that sum was for the error of disposing of the items without obtaining a signature from Mr C first. AXA itself had indemnified Mr C for the damaged items already and the £500 was not intended to form part of that indemnification.

5. theft

While his house was being renovated, Mr C has stated that a number of items were stolen from it. He would like to hold AXA liable for this. Mr C has complained that his property was not sufficiently secured while the repairs were being undertaken, and because of this, some items of value were taken – such as an antique Roman helmet. Mr C has produced a list of the items he says were stolen – their value totals over £33,000.

Mr C has provided a letter to our adjudicator which shows that the police gave this theft a crime reference number.

AXA considered this claim and declined it on the basis of a lack of proof of ownership. None of the items on the list have any proof of ownership attached to them. Mr C has argued that this it is unreasonable to expect him to come up with any such proof when AXA's agent disposed of boxes which contained his documents.

Our adjudicator was of the view that AXA's agent likely incorrectly disposed of some of Mr C's items thereby prejudicing his position with regard to proof of ownership. Our adjudicator was not of the view that this amounted to a valid reason to decline Mr C's claim. He recommended that AXA reconsider it.

AXA responded by stating that Mr C had submitted no evidence to demonstrate his paperwork/ documents had been thrown away. Whilst its agents have agreed that they disposed of the BER items, they would have no reason to remove paperwork or documents from the property that had survived the fire. In addition, the photographs produced by their agents were of those items they removed which were damaged during the fire; they had no documents relating to any other items that had survived the fire nor had any such undamaged items been removed - hence Mr C's claim they were stolen.

AXA went on to state that it was concerned by Mr C continually alleging that its agent removed the substantiation he possessed for the stolen items after it admitted to incorrectly having disposed BER items without first gaining his consent. It went on to submit that because Mr C was aware its agents disposed of some items it would not be possible for AXA to demonstrate it had not disposed of paperwork. It explained that it is not standard practice for any paperwork or documents to be removed from a property; only contents items the subject of the claim are removed. The policy provides no cover for paperwork or documents so they are not removed.

AXA maintained that it could not consider the theft claim, in view of the significant value of the items claimed, without any evidence of the items having been owned by Mr C.

6. general distress and inconvenience

AXA offered to pay Mr C the sum of £200 in respect of his dissatisfaction with AXA's appointed loss adjuster. Our adjudicator agreed that this was a reasonable figure in the circumstances. This sum is in addition to the £500 offered by AXA's agents in respect of the disposal of Mr C's property.

Because AXA disagreed with most of our adjudicator's proposals for settlement it asked that this complaint be reviewed by an ombudsman.

my provisional findings

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

For ease of reference I will deal with each of the heads of complaint in the order that they appear above.

alternative accommodation

Whilst AXA did underwrite Mr C's building insurance it did not do so alone. I understand Mr C held a buildings insurance policy with another insurer that was underwritten by another underwriter. It was to this insurer that he submitted his claim for fire damage to his buildings prior to making a claim for contents damage to AXA. Thus whilst Mr C was dual insured for buildings cover, AXA was not handling this aspect of the fire claim. AXA has stated that arranging alternative accommodation is the domain of the buildings insurer or underwriter. Thus any alternative accommodation that it arranged and paid for was on a without prejudice

basis only. Its offer to pay him £25 per day for each day of the five week period he was without alternative accommodation is, in my view, entirely reasonable. I am unable to recommend that this allowance be doubled as I do not think that it would be fair to AXA if I were to do so, particularly as it was not handling the fire claim for the buildings damage. Given AXA's lack of liability for alternative accommodation it is my view that AXA's offer is most reasonable and I recommend Mr C accept it.

disturbance allowance

This service usually recommends a disturbance allowance of £10 per day per adult and £5 per day per child. AXA has agreed to Mr C request, put forward by our adjudicator, that he receive £15 per day meaning it will pay him a further sum of £1160. It is my view that this is an entirely reasonable offer and I recommend that Mr C accept it.

underinsurance

AXA did not sell Mr C his policy or advise him on what his contents sum assured should be. It is the underwriter of the policy only. Thus any complaint about the level of cover Mr C had or the sales process at all must be directed towards the broker that sold him the policy.

In respect of AXA's actions upon discovering that Mr C was underinsured, my sole concern is whether the policy terms and conditions contained an average clause and, if they did, whether that clause has been applied correctly. I have seen a copy of the policy terms and conditions and I am content that they do contain an average clause which AXA is permitted to apply and that it has applied it correctly to Mr C's claim.

I appreciate that it will come as a disappointment to Mr C that AXA has acted reasonably in applying the average clause, however, it would not be fair of me to conclude that AXA should be responsible for advice given, or not, at the time the policy was sold.

disposal of effects by AXA's appointed agent

AXA accepted Mr C's claim for damaged contents and paid him more than £30,000 in respect of items damaged in the fire. It appointed a damage restoration specialist to assist it in dealing with the contents in the property. It is not in dispute that that specialist, or agent, removed from the property items damaged in the fire and items that were not. It drew up a list of items that were 'beyond economic repair' (BER). AXA based its settlement of the claim on this list. Once AXA settled the claim the ownership for the items passed from Mr C to AXA.

If the agent had followed the correct procedure it would have asked Mr C to sign the BER and consent to the disposal of the damaged items. I understand Mr C in fact asked that some of the damaged items be returned to him. Due to an oversight, the agent never obtained Mr C's signature and consent, nor did it return the damaged items to him as he had asked.

The agent was under no obligation to return the damaged items to Mr C. He had been indemnified for them and ownership had passed to AXA. I cannot concur that Mr C has suffered any material loss as a consequence of the agent's oversight in not returning the damaged items to him. It did fail to get his consent to dispose of the items however, and for this oversight it has offered him the sum of £500. I am satisfied that this sum is offered solely

in respect of failing to get Mr C's signature and consent and in no way represents a contribution or substitution for damaged items. AXA has paid Mr C for the damaged items.

I am content that the sum of £500 offered by AXA's agent for its oversights is in line with, if not more than, this service would normally offer in similar circumstances therefore I recommend that Mr C accept it.

Turning now to the undamaged items, AXA has stated that all of them were returned to Mr C. Mr C has said they have not been returned and has produced a list of the items removed. AXA has not produced any documentation that can support its contention that its agent returned all or any of the undamaged items. I would expect to see an inventory which Mr C had signed to state he had taken repossession of the items.

AXA has said that Mr C has not produced any proof of ownership for these undamaged items. It is worth noting that the first item on the unsigned BER list is 'Personal paperwork to be returned to the PH [policyholder]'. I have noted AXA's submission in respect of the theft claim that only insured items were ever removed from a property by its agents and because paperwork was not an insured item there was no possibility that it had been removed. The first entry on the BER list would appear to contradict this statement.

By its own admission, AXA's agent did not act as it should have done. It removed undamaged items from the property. It disposed of Mr C's property without his consent. It has no documentation to prove it returned undamaged items to Mr C. Mr C has produced a list of items. It is likely he produced this in contemplation that AXA, or its agent, would produce the necessary documentation, therefore, I consider it unlikely that he would have exaggerated the items contained on that list. In the circumstances, I am of the view that the only reasonable course to take is for AXA to meet the replacement cost of the undamaged items on Mr C's list that were disposed of by its agents. Where there is any dispute as to the value of any items an independent valuer should be appointed at AXA's expense to ascertain a value. The payment should not form part of the insurance claim as it comes as a result of AXA's agent's negligence and not as a result of an insured peril operating.

theft

It is usual for insurers, when a claim is made for theft of property, to ask for some proof that the insured owned the items for which he is claiming. The items being claimed by Mr C total a significant amount of money. AXA is entitled to ask that Mr C come up with some form of substantiation for his loss. Mr C has been unable to come up with any substantiation; he claims that AXA's agents removed all such documentation when it cleared out the property. AXA have denied this happened, however, I am unable to ignore the entry on the BER list as referred to above. AXA's agents have prejudiced Mr C's ability to prove ownership. That is not his fault.

It is my view that this claim should be reconsidered by AXA in line with the remaining policy terms and conditions. It should accept that all proof of ownership has been destroyed by its agents. Where there is any dispute as to the value of any of the items Mr C claims were stolen then an independent valuer should be appointed at AXA's expense in order to ascertain the value.

general distress and inconvenience

AXA has offered to pay Mr C the sum of £200 and I am content that such a sum is in line with what this service would award in similar circumstances.

my provisional decision

My provisional decision is that I uphold this complaint in part and I require AXA Insurance UK Plc. to do the following: -

- 1. If it has not already done so, to pay Mr C the sum of £25 per day for five weeks (a total of £875).*
- 2. As agreed, to pay Mr C the sum of £1160 which constitutes £5 per day for 232 days as an additional disturbance allowance.*
- 3. If it has not already done so, to ensure its agent has paid Mr C the sum of £500.*
- 4. To meet the cost of the undamaged items Mr C has listed as being removed and destroyed by its agents. If there is any dispute as to the value of any of the items on the list then an independent valuer should be appointed to determine the value, the cost of which should be met by AXA.*
- 5. To reconsider Mr C's claim for theft, as itemised by him, in line with the remaining policy terms and conditions. It should accept that Mr C is unable to substantiate ownership of the items on his list. If there is any dispute as to the value of any of the items on the list then an independent valuer should be appointed to determine the value, the cost of which should be met by AXA.*
- 6. Interest to be added to any sums paid at the rate of 8% simple per annum (less tax if legally deductible) from the date of loss to the date of payment.*
- 7. To pay Mr C the sum of £200 in acknowledgement of the distress and inconvenience he suffered.*

I make no further award."

AXA responded to my provisional decision and made the following submissions:

1. It accepted my conclusions in respect of alternative accommodation, disturbance allowance, underinsurance, disposal of Mr C's effects by its agent, and finally, for distress and inconvenience.
2. In respect of my conclusions regarding the theft aspect of Mr C's claim, AXA has stated that it seems as though it has already paid for the military memorabilia under the fire claim in error. It referred to its notes in respect of the fire claim made in February 2012. It explained that it seemed that Mr C submitted a total claim list for both fire damaged and stolen items to the loss adjusters which totalled just over £50,000. It went on to explain that, for reasons unknown, the loss adjusters did not differentiate between the damaged and stolen items which meant AXA applied average to the total value of the contents claimed. Of the total settlement, £20,372 of it was for the military memorabilia both damaged and stolen.
3. AXA also commented that it attempted to explain this to Mr C in June 2013, when its claims team spotted that the stolen items had in fact formed part of the settlement, however, Mr C remained of the view that AXA had not paid for the stolen items. AXA believed Mr C attributes the shortfall in settlement between the total claim and the actual settlement to a failure by AXA to include the stolen items as part of the claim. AXA maintains this was not the case.

4. AXA acknowledged that it had not made this very clear before or spotted it when issuing its final response to Mr C's complaint. It reiterated, however, that it is evident that it had paid for the stolen items; it asked that this element of my provisional decision be reconsidered.

Mr C responded to my provisional decision. In addition to restating some points he had made on previous occasions and which had already been considered by me in reaching my provisional decision, Mr C also stated that his other building insurer had told him that AXA should refund him the premiums he had paid it for buildings cover. In addition he stated that AXA or its agents were under a duty of care to advise him on the correct level of contents cover he required and that one or both of them had breached this duty. Mr C has also provided two letters from the damage restoration specialist. These letters appear to be an attempt to resolve the issue of the failure to return the items deemed beyond economic repair and Mr C has been asked to provide a list of such.

my findings

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

I am pleased to note that AXA has accepted the majority of the recommendations in my provisional decision. In respect of the payment for distress and inconvenience I overlooked that AXA had actually paid Mr C the sum of £500 in April 2012 and not the sum of £200 as stated in my provisional decision. It appears this sum may already have been paid to Mr C and I am content that it fairly reflects the distress and inconvenience Mr C was put to throughout the handling of his claim.

Turning now to the issue of the theft claim. I have, in reaching this decision, conducted a thorough review of the file provided by AXA. Having done so, I find no evidence that the theft claim has been settled nor that items forming part of theft claim were included as part of the settlement of the fire claim. I acknowledge that some military memorabilia formed part of the fire claim settlement, however, on comparing the list of items damaged in the fire with the list allegedly stolen I have noted that there is no duplication of the items cited. I have reviewed the sums paid by AXA to Mr C. Of the total sum paid, £20,451 was for the fire damaged contents which included everyday items along with some military memorabilia. This was after the average clause had been applied.

I have seen the notes written in February 2012 but I cannot see that they demonstrate that the theft claim was paid. They show that the value of theft claim was used to calculate the total value of Mr C's contents from which it became apparent that he was underinsured. I cannot concur that these notes demonstrate that the items forming part of Mr C's theft claim were included in the settlement of the fire claim. Other documents within AXA's file of papers clearly illustrate how the settlement was comprised and I am content that it did not include a portion for the stolen goods.

Mr C remains adamant that the theft claim has not been properly considered. I note from the file that he provided some substantiation to loss adjusters in January 2012 by way of militaria dealers and some catalogue photographs. In March 2012, AXA notes that Mr C was asked to substantiate his loss before the claim will be further considered. As stated above, it appears from the BER list that Mr C's personal papers were removed by AXA's agent and not returned. Beyond the substantiation already provided, it is not likely that Mr C will be able to produce anything further.

It remains my view that the theft claim should be reconsidered by AXA in line with the remaining policy terms and conditions.

Whilst I have noted the additional submissions made by Mr C, I am unable to comment substantively upon them. This is because they did not form part of his original complaint to AXA, therefore, AXA has not had the opportunity to investigate and resolve them. In respect of wanting a refund of the element of his premiums that related to buildings cover, Mr C would have to complain to AXA in the first instance. If he was dissatisfied with the outcome of AXA's investigation into his complaint then he could bring a further complaint to this service. Insofar as Mr C is discontented with the advice he did or did not receive when he was sold the policy, in respect of the contents sum assured, then he would need to contact the broker that sold him the policy. AXA is the underwriter of the policy and is not responsible for any advice given at the point of sale.

Finally, I have noted that Mr C is in direct contact with the damage restoration specialists, however, I am not of the view that the letters supplied by him alter the conclusion I have reached in my provisional decision. They appear to relate to the issue of the fire damaged items deemed beyond economic repair and disposed of against the wishes of Mr C.

my final decision

My final decision is that I uphold this complaint in part and I require AXA Insurance UK Plc. to do the following:

1. If it has not already done so, to pay Mr C the sum of £25 per day for five weeks (a total of £875).
2. As agreed, to pay Mr C the sum of £1160 which constitutes £5 per day for 232 days as an additional disturbance allowance.
3. If it has not already done so, to ensure its agent has paid Mr C the sum of £500.
4. To meet the cost of the undamaged items Mr C has listed as being removed and destroyed by its agents. If there is any dispute as to the value of any of the items on the list then an independent valuer should be appointed to determine the value, the cost of which should be met by AXA.
5. To reconsider Mr C's claim for theft, as itemised by him, in line with the remaining policy terms and conditions. It should accept that Mr C is unable to substantiate ownership of the items on his list. If there is any dispute as to the value of any of the items on the list then an independent valuer should be appointed to determine the value, the cost of which should be met by AXA.
6. Interest to be added to any sums paid at the rate of 8% simple per annum (less tax if legally deductible) from the date of loss to the date of payment.
7. If it has not already done so, to pay Mr C the sum of £500 in acknowledgement of the distress and inconvenience he suffered.

I make no further award.

Claire Woollerson
ombudsman