

complaint

Mr D complains that AXA Insurance UK Plc ("AXA") will not meet in full a claim he made under his travel insurance policy for items stolen from his luggage.

background

In November 2014, Mr D arrived at an airport abroad to check in for a flight back to the UK. When he reached the check-in desk, he was told that because the flight was full, the hand luggage he intended to carry on to the plane would have to be checked in, as well as his suitcase.

He argued about this, but was told that unless he checked it in there and then, he wouldn't be allowed to board the flight. He wanted to take some things out of the bag, but wasn't allowed to do so. He secured the bag with a padlock and checked it in.

When he reached the UK and recovered his bag, he found the padlock had been forced and £500 in cash, some jewellery wrapped as a present, and a pair of sunglasses had been stolen. He claimed for these items under his AXA travel policy. AXA paid for the sunglasses, less the policy excess. However, it said that as the cash and the jewellery were "unattended" as defined in the policy, it wouldn't pay for these.

Our adjudicator recommended that this complaint should be upheld. He accepted that the strict terms of the policy entitled AXA to reject Mr D's claim in respect of the cash and the jewellery. However, we have to decide individual cases on the basis of what is fair and reasonable. In this case, Mr D had intended to keep the items with him on the plane. However, he wasn't allowed to do so, or given any opportunity to remove the items. He had done what he could by securing his bag with a padlock.

The adjudicator found Mr D's account of what happened convincing. He thought Mr D had acted reasonably and prudently in the circumstances. So it was reasonable for him to expect his loss to be covered by his AXA policy. The adjudicator recommended that AXA deal with the remainder of Mr D's claim, ignoring the exclusion about the items being unattended, but subject to any remaining conditions, excesses, or limits under the policy. It should also pay him interest on the amount now paid from the date of claim until settlement.

AXA responded to say, in summary, that

- Mr D hadn't produced any supporting evidence from the airline that he had been required to put his hand luggage in the hold and had not been allowed to take anything out. (The adjudicator said Mr D had asked the airline to produce such evidence, but it hadn't done so),
- the claim wasn't covered as its policy did not cover valuables in an aircraft hold. This service had previously accepted its stance in this respect, and said the policy restriction was sufficiently clear in the policy. It was irrelevant that the airline told Mr D to put his hand luggage in the hold, and
- Mr D could have avoided the loss by placing the items on his person, or in his wife's handbag.

my findings

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

This service considers each case individually and on its own merits. In this case, I find that Mr D intended to keep the items in question with him on the plane, when they would have been covered by the policy wording. At the check-in desk, he was told he could not do so, and was not allowed to take anything out of his bag. He did what he could at the time to secure his bag by means of a padlock.

With the benefit of hindsight, he could perhaps have insisted on unpacking the items from his bag. However, given the pressure of the check-in staff, with other people waiting behind him to check-in, I cannot say that he acted unreasonably in the circumstances. In the particular circumstances of this case, I think it is reasonable for Mr D to expect that his loss would be covered by his travel policy.

AXA should now deal with the remainder of Mr D's claim, ignoring the exclusion about the items being left unattended, but subject to the remaining conditions, excesses, or limits under the policy, with interest from the date of claim until settlement on the amount now paid.

my final decision

For the reasons I have set out above, my decision is that I uphold this complaint. I order AXA Insurance UK Plc to:

1. deal with the remainder of Mr D's claim, ignoring the exclusion about the items being left unattended, but subject to the remaining conditions, excesses, or limits under the policy, and
2. pay him yearly interest on the amount paid under 1. above at the rate of 8% simple from the date of claim until settlement.¹

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 November 2015.

Lennox Towers
ombudsman

¹ HM Revenue & Customs requires AXA to take off tax from this interest. AXA must give Mr D a certificate showing how much tax it's taken off if he asks for one.