

complaint

Ms M complains that AXA Insurance UK Plc has rejected her home insurance claim for accidental damage/loss and theft of her items during their removal from storage when moving home. She further complains that the policy was mis-sold to her leading her to believe she would be covered for the removal.

background

In November 2015 Ms M completed the sale of her former home and arranged for a removal company to move all her goods into storage. She asked her then insurer if it would cover the move and it said it would not. In December 2015 Ms M found a policy with AXA through a price comparison website. She spoke to the sales team to clarify some matters and to arrange the purchase of the policy. Specifically she asked if she would be covered for the removal of the goods from storage to her new home. She was told this coverage came as standard. She queried what the meaning of professional removers was and was later called back with clarification for this. She later spoke to a different member of the sales team and purchased the policy.

In December 2015 Ms M completed the purchase of her new property. The same company, which had moved her items in November to the storage unit, removed her goods from storage to her new property. However on looking through her goods Ms M noticed a large number of items had gone missing, including some jewellery. Also a number of other items had been damaged. She initially informed the removers who sent her a claim form for their insurance. Ms M later, in January 2016 made a claim to AXA. She was advised initially that the claim wasn't covered under the policy terms. This was because removals were only covered from the home to a new private residence, not to or from storage.

Ms M protested that if she had been told the removal from storage was not covered, she'd have bought a different policy to cover her. AXA agreed to look at the claim. It appointed loss adjusters who came out for a site visit in late January. It was agreed that Ms M would draw up a list of items lost with their values and any proof of ownership, receipts etc. Ms M drew up a partial list and following this the loss adjusters carried out a further site visit in March 2016 and took a full statement from Ms M. AXA agreed to wait for the police report and in the meantime it still awaited a full loss list from Ms M. AXA was contacted by Ms M's representative but despite several attempts by the loss adjusters to discuss the matter, neither Ms M nor her representative responded. The claim was closed in December 2016.

Ms M contacted AXA again in January 2017. She explained that she hadn't been able to draw up a fuller loss list. The loss adjusters attended her home again and reported back further to AXA. After reviewing the circumstances of the case AXA advised Ms M in August 2017 that it wouldn't be paying the claim. It said that this was because the policy didn't cover removal from storage. It also said that it was likely that the goods were lost or damaged before the policy started. It did say that there had been delays and that it shouldn't have told her previously that it would consider the claim. It paid her compensation of £200.

Ms M pointed out that her complaint was about the mis-sale of the policy to her and that this hadn't been addressed. AXA issued a final response on this point in January 2021. It said that while it accepted Ms M was given incorrect information this wasn't the sole reason the claim was declined. It pointed out that there was an exclusion for jewellery under the removals term in the policy and that, on balance, it was likely that the loss and damage occurred before the start date of the policy. So even if the policy were to cover the removal

from storage the loss occurred before then. AXA paid Ms M a further £100 because of the incorrect information.

Ms M referred her complaints to this service. We considered the decline of the claim separately from the mis-sale though for reasons I shall explain I think the two complaints should be considered together. In respect of the claim our investigator said that the policy didn't cover removal from storage. This included any damage or loss caused up until the removal was complete. In respect of the alleged mis-sale our investigator advised that though Ms M had been given incorrect information, there was no mis-sale of the policy and the payment of compensation was sufficient to address this.

Ms M disagreed, she said she had very clearly been mis-sold the policy having been assured it covered her from the storage facility to her new home. She thought it most likely that the loss and damage occurred at her new home. She pointed out that there were random items missing because of the way they were packed, so they were likely to have been taken from the removal van by an opportunistic thief outside of the new home. She thought it unlikely that the goods had been stolen from her former home as this is in a remote location where strangers would have been noticed. She further said that when AXA reconsidered its initial decision it promised it would pay the claim and that it has gone back on that promise.

Ms M made further complaints that she was discriminated against on the grounds of her disability and that when she made her claim, she was told not to approach the removal company's insurer or her former insurer. Those complaints have been dealt with by me already, under a separate reference number, within a previous final decision.

I issued a provisional decision. In it I said that although I thought that the policy had been mis-sold to Ms M, I didn't think that she had shown that the loss likely occurred during the policy term.

AXA accepted my provisional decision.

Ms M didn't accept my provisional decision. She made the following points:

- It is not the case that she asked her then insurer if it would cover the move and it said it would not. The previous insurer did cover the move, from their end. But as the period between her house sale and new purchase was then thought likely to be more than a month they said they would not insure her for longer than this time.
- She disputes my saying that despite several attempts by the loss adjusters to discuss the matter neither she nor her representative responded.
- She believes that on the balance of probabilities at least a percentage of the damage happened at the new property. She never thought AXA was solely liable for all the loss and damage. It should pay a proportion of the loss.
- She says there is evidence, by way of admissions from the removers that some of the damage to her items took place in her new home.
- AXA should treat her claim on the basis it was sold to her, as she has established at least a few things she knows for sure happened at or on the way to the new home. Then

by AXA reopening up and accepting these few things, it will also have to then become responsible for the claim on the remover's insurer.

my findings

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

The following were my provisional findings:

"claim

Ms M's claim was under the removals section of the policy. This covers:

"Accidental damage or loss to contents while being removed by professional removal contractors, from the home to any new private residence...."

So from the point of view of whether the policy terms which actually applied covered removal from storage to Ms M's new home it's clear that they don't – only removal from one home to another is covered. So, even if the damage and loss occurred whilst items were unloaded at Ms M's new home, the policy itself doesn't cover the claim. For the avoidance of doubt, if it could be shown that there was accidental damage or loss caused by the removers within the new home this is still not, in my view, covered under the above term as the contents were still being handled as part of the removal process which began at the storage unit.

mis-sale

Ms M says she was mis-sold the policy and was specifically told that it covered the removal from storage. I've listened to the calls made in December 2015. In the first call Ms M specifically asked if the policy covered removal from storage to her new property. The sales person confirmed that it applied as standard. He referred to the policy term on removals but didn't read it out in full, as Ms M queried what "professional removal contractors" meant. The sales person advised he would go away and find out, and it was arranged that he would call Ms M back. He duly did so and would have had the opportunity to clarify the meaning of the policy term. If he had drawn Ms M's attention to the exclusions she could have been advised that it didn't apply to accidental loss or damage while in storage or to jewellery.

I note AXA's point that Ms M should have looked at the policy terms herself but where her very reason for buying the policy was to ensure cover during removals, and where she'd specifically asked AXA a question in this respect to ensure the cover was suitable, I think it was reasonable for her to rely on what the sales person had told her. And while she allowed the policy to remain in place for a further two years the initial advice to her concerned the removals. So although I note that AXA offered to cancel the policy and refund the premium this didn't remedy the problem its initial poor advice had created.

I think the policy was mis-sold to Ms M. I'm satisfied that if it had answered her question adequately, she wouldn't have taken this policy and would have found cover elsewhere that did suit her needs. This means that AXA should act as though the policy in place would have covered the contents whilst being removed from storage. But as with any claim, Ms M reasonably needs to show that the loss or damage occurred during the policy term – in this case during that removal.

proof of loss

The onus is on the policyholder to show that an insured event most likely caused the damage or loss. This applies in all cases whether or not as here the policyholder was wrongly advised they have cover. So I must consider whether Ms M has shown that accidental loss during removal or any other insured event in the policy most likely caused the damage. Ms M believes the damage was most likely caused in or outside her new property. The reasons she gives are that the removal van was parked on a busy road and anyone could have taken a box or two. She says this couldn't have happened outside her old home as it was in a remote location and strangers would have been noticed.

Whilst I understand Ms M's reasoning, I note that Ms M wasn't present at her old property (for understandable reasons) when the removers took the goods from there to storage, and no inventory was undertaken. I understand the boxes were in an unoccupied house for several days and that as well as the removers the agents and a handyman had the key. Ms M also says some of her jewellery boxes were returned to her empty which would rule out an opportunistic thief grabbing them from the van.

As regards damage, Ms M refers to items being damaged by the removers but isn't able to say that they were damaged by them at or in transit from storage to her new home.

So bearing in mind that the policy only came into effect on the date of removal to Ms M's new home, I don't think she's been able show that the items went missing or were stolen or damaged during that removal. If she has evidence that items were damaged by the removers whilst at or in transit from storage to her new address, I would invite her to show the evidence to me in response to this provisional decision.

I note the possibility that items might have been stolen by thieves when in the new home. If that were the case the normal theft policy term applies. But Ms M still has to show that that most likely happened and I don't think she has.

In conclusion I don't think AXA acted unfairly when it concluded that Ms M has been unable to show that an insured event under the policy terms most likely caused the damage or loss. I'm currently satisfied that its refusal to make any settlement to Ms M was reasonable.

advice/delays/promise to pay the claim

I think it's clear that right from the start AXA had decided that it couldn't pay the claim under the terms of the policy. But it did agree to consider the claim on account of the mis-sale. It seems that was a direct result of it considering the sales calls and realising Ms M had been misled. That's why in my view it only served to confuse matters when AXA said it wasn't considering mis-sale and Ms M had to make a specific complaint about it.

I don't think AXA promised to pay the claim – it clearly said it would be considering the claim and as part of that instructed its loss adjusters to investigate the claim. I think it was reasonable to ask Ms M for a loss list and for it to be complete with values and all available receipts and proof of ownership. This didn't amount to an agreement to pay what Ms M set out. Ms M says she did supply that but clearly the loss list she supplied wasn't complete. I do note Ms M had health difficulties from March 2016 which meant that she wasn't able to address the list. But she had appointed someone to represent her and the loss adjusters made several attempts to make contact. It was only in January 2017 that Ms M said she was

now acting for herself that the matter was able to progress. And I think that the loss adjusters tried to help with the itemising of the list.

AXA advised Ms M in August 2017 that it wouldn't be paying the claim. I do think this was an unnecessary delay from the point of the claim being reopened in January 2017. I note that in its final response letter AXA referred back to the policy term on removal and I take Ms M's point that it could have told her this in the first place rather than holding out that it would be considering the claim. I think it should at that stage have specifically referred to the mis-sale. Having said that it did explain that it also considered that the loss occurred before the policy came into being.

I do think there were delays and that AXA was unclear about the reasons for it reconsidering the claim.

compensation

AXA has paid a total of £300 compensation, £200 for the delays and in holding out that it would be considering the claim and £100 for the wrong advice leading to the initial mis-sale of the policy. Having considered all the issues and bearing in mind my conclusions I think that a reasonable amount of compensation has been paid. So I won't award any further compensation."

With regard to Ms M's previous insurer, it may well be that it wouldn't have covered the move into storage for the same reason that AXA's policy wouldn't cover the move from storage. But I don't know if that was the case as no claim was made to those insurers, and I'm not considering here a complaint about those insurers. In a previous decision I dealt with the issue of the advice given to Ms M about recovery, and I said that AXA wasn't at fault in that respect. Ms M was aware from August 2017 that AXA had declined to pay the claim.

Whilst Ms M disputes that AXA tried to get in touch with her or her representative during the period from March 2016 to January 2017, I can only go from the contemporaneous notes on the file. These show it made attempts to contact her then representative and received no reply.

Turning to the question of proof of loss, I considered very seriously whether I could be satisfied that the loss/damage most likely occurred at or in transit to Ms M's new property, even in part. And as Ms M says the loss could have happened at her old home, and there's a lot of speculation about how or when the loss occurred. Put simply no-one really knows, and I should clarify that I've not made a finding as to where I think the loss occurred. And in those circumstances I can't justify making AXA responsible for even a small proportion of the claim, as that would suggest that there is evidence that part of the loss occurred at the new property.

As regards the specific items Ms M says she has evidence were damaged at her new home, I can't see that, apart from Ms M's assertions, any such evidence exists. She says the removers made admissions to that effect. In her witness statement to the police, Ms M says she questioned the manager of the removers via WhatsApp about missing items. He denied any responsibility and said it was impossible for items to go missing. She contacted him again when she found further items missing. He said he would be contacting his legal team, and she asked for the name of his insurer. In response he sent her a claim form to complete. I've not seen any evidence that any written admissions were made by the removers about losing or damaging any items. In a report to AXA of 28 July 2017, the loss adjusters set out a

list of items damaged and the cost of repair. Some of those items Ms M says she has proof of where they were damaged. The loss adjusters commented however that *“we do wish to reiterate again that we have no way of establishing whether these items were damaged or broken as a result of the transit.”*

So I haven't seen evidence that establishes whether it is most likely that any items were damaged at or in transit to Ms M's new home. I should add also that even if could be established that AXA has a liability for a few items, that wouldn't reopen the claim so far as any of the other items are concerned. If it paid for those items AXA could choose to try and recoup the money from the removers' insurers. But it wouldn't be required to and in deciding whether or not to pursue such a recovery it would likely take into account that, over 5 years later the chance of such action being successful might be limited..

my final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 21 August 2021.

Ray Lawley
Ombudsman