

The complaint

Mr J and Miss M complain about how AXA Insurance UK Plc (AXA) handled a claim under their home insurance policy for a burglary at their property.

AXA use agents to administer the policy and to assess claims. Reference to AXA includes these agents.

Mr J and Miss M were supported by a representative in bringing their complaint. References to Mr J and Miss M include their representative.

What happened

In June 2023 Mr J and Miss M returned home to find their property had been broken into, the thieves gaining entry by removing and climbing through a kitchen window. The thieves took items from the property, which was undergoing some renovation work at the time following Mr J and Miss M moving into the property in February 2022. They contacted AXA to tell them about the break in and lodge a claim for the damage. They also notified the police.

Given the renovation works (to the bathroom and kitchen) were nearing completion at the time of the break in, some tools were being stored in the property. Others, including ladders, chain saws and a lawn mower, were also in the property as the property didn't have secure outside storage. There were also some materials to be used in the renovation work, such as bathroom tiles, taps and shower heads as well as appliances awaiting fitting in the kitchen.

AXA appointed a firm (D) to assess the claim and the stolen items. They also appointed a separate firm (M) to visit the property and assess the damage to the window. In their report, M said the removed kitchen window would require a lintel to be fitted above before it could be replaced. M offered a cash settlement for the cost of replacing the window. On the list of stolen items provided by Mr J and Miss M, D concluded they were mostly unfixed materials and other items that were part of the ongoing renovation works.

AXA subsequently told Mr J and Miss M they would only cover the window (and another item) because the policy had an endorsement that excluded cover for the renovation work, including losses or damage to any part of the building undergoing renovation; and unfixed materials or goods used as part of the renovation work. They said the policy (under an endorsement for renovation work) didn't cover unfixed materials or goods used as part of the renovations. AXA offered a cash settlement of £436.10 (net of the policy excess of £350) for the kitchen window and £54.99 for an electrical item.

Mr J and Miss M were unhappy at AXA's decision, saying some of the stolen items on their schedule weren't part of the renovation work, so should be covered. After further review, AXA maintained their decision not to cover the items.

Mr J and Miss M then complained to AXA. In their final response, AXA didn't uphold the complaint. They referred to their assessment of the claim and the decision to exclude items they considered were part of the renovation work, and the policy endorsement. AXA's technical team had reviewed the claim and maintained the decline as the items were stored,

ready to go into the newly renovated part of the property. So, they confirmed their decision to decline the claim for the items concerned.

Mr J and Miss M then complained to this Service. They were unhappy at AXA declining to cover the items, which they'd had to replace, as some of them weren't part of the renovation work. Having a broken kitchen window (with a young baby in the property) which they couldn't afford to replace (nor the lintel required) was also very stressful. They'd declared the renovation work when taking out their policy, but AXA had relied on the endorsement about renovation work to decline their claim, saying tools shouldn't have been in the property and being used for the renovation work. They wanted AXA to accept their claim in full.

Our investigator didn't uphold the complaint, concluding AXA had acted fairly in line with the policy terms and conditions in declining elements of the claim. She thought the declined items would have been used for renovation, for example tools. And as the appliances weren't installed, they would also fall under the renovation endorsement. On the kitchen window, as there wasn't a lintel fitted to the window before its removal, she wouldn't expect AXA to cover the cost of fitting a lintel as this would constitute betterment.

Mr J and Miss M disagreed with the investigator's view and requested an ombudsman review the complaint. They said they'd clearly stated the property was being renovated when they took out the policy. The items stolen were a mix of tools, some used for the renovation works and others that weren't. Without outside storage, the items had to be stored inside the property. This included a new lawnmower, a chainsaw and ladders, which were never part of the renovation work. The washing machine was not part of the renovation, but a new appliance that hadn't been fitted due to a leak. At the time the kitchen had already been renovated. Similarly the fridge freezer was new and would have been regardless of the renovation. But they accepted some tools were being used as part of the renovation, as were the bathroom suite and tiles.

In my findings I concluded AXA acted fairly and reasonably in covering the cost of a replacement window, but not covering the cost of a lintel.

I then considered the schedule of items provided by Mr J and Miss M to support their claim, in the context of the wording of the endorsement to the policy.

On the bathroom tiles and other fittings awaiting installation, I think it reasonable to conclude these would fall under the heading Unfixed materials or goods used as part of the renovation. They were stored in the property and hadn't been affixed to the bathroom. So, I think AXA acted fairly to exclude these items from the claim.

On the kitchen appliances, which appeared to be a washing machine and a fridge freezer from Mr J and Miss M's response to our investigator's view, I thought they would reasonably be thought part of renovating the kitchen. And as neither were installed then I thought they both fell within the same 'unfixed materials or goods' heading. So, I've concluded AXA acted fairly and reasonably in declining to cover them under the claim.

On the issue of tools used as part of the renovation work, I hadn't seen a clear schedule of what Mr J and Miss M of those tools they considered weren't used in the renovation. I noted my role was to decide whether AXA acted fairly and reasonably in declining the claim – not to assess the claim and decide which specific items would fall into which category. In the absence of any other specific evidence or information, I couldn't conclude AXA acted unfairly or unreasonably in declining these items from the claim.

On the items considered garden equipment. Mr J and Miss M specifically referred to: a lawnmower; chainsaw and ladders (for which they provided receipts or estimated

replacement cost). Mr J and Miss M said they were stored within the property because of the absence of outside storage (such as a shed). I haven't seen anything to contradict this, so I didn't think this unreasonable. Looking at the endorsement wording, I didn't think these items would reasonably be considered to fall within the meaning of the endorsement. As the renovation work affected the bathroom and kitchen, I don't think it reasonable to say these items were Unfixed materials or goods used as part of the renovation work. So, I concluded AXA acted unfairly and unreasonably in declining to assess these items as part of the claim and using the renovation endorsement to decline to cover them.

Because I reached different conclusions to those of our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

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

My role here is to decide whether AXA have acted fairly towards Mr J and Miss M.

Looking at the complaint and what happened, the key issues are the decline of elements of the claim by AXA. These include the items stolen which AXA say wouldn't be covered because of the renovation endorsement on the policy. There's also a specific issue about the replacement of the kitchen window, being the need for a lintel above the window.

Starting with the issue of the lintel to the kitchen window, I can see from AXA's case notes there's an email from M that states:

"Please be advised a lintel would need to be fitted before we can fit the replacement window."

There's a further email from AXA which states:

"Please note on the report [from M] that there would appear to be no lintel which would not form part of the claim."

As the evidence indicates a lintel wasn't present before the break in – but was required for the replacement window – then I don't think AXA acted unreasonably in declining to cover the cost of a lintel (but would cover the cost of the window itself). That's because covering the cost of the lintel would put Mr J and Miss M in a better position than that they were in before the break in. This is known as 'betterment' and it's a general principle of insurance that policies are designed to put a policyholder back in the position they were before loss of damage – not in a better position.

So, I've concluded AXA acted fairly and reasonably in covering the cost of a replacement window, but not covering the cost of a lintel.

Turning to the schedule of stolen items AXA declined to cover, looking at the case I think they fall into different categories. These are: tools AXA say were used as part of the renovation work; bathroom tiles and other fittings awaiting installation; kitchen appliances awaiting installation; and items of what would be considered garden equipment. On the latter, Mr J and Miss M specifically refer to: a lawnmower; chainsaw and ladders.

As AXA declined elements of the claim because of the policy endorsement for renovation work, I've looked at the wording of the endorsement. It's set out on the policy schedule, under a section headed Your Endorsements which includes the following:

“An endorsement is a separate term, condition, or extension of cover that applies to your policy. An endorsement supersedes any of the terms within your policy booklet.

19 Renovations Endorsement Two

Whilst the home or outbuilding is being renovated, no cover is provided for:

- Insured losses or damage to any part of the building undergoing renovation;*
- Insured losses, damage or liability resulting from any work done by a contractor;*
- Liability for injury or death of a builder, contractor or subcontractor;*
- Unfixed materials or goods used as part of the renovation work;*
- Accidental damage under all sections of your policy;*
- Storm, water ingress, weight of snow and escape of water if the property is not fully wind or watertight.*

...These terms remain in place until we are informed that the renovation has been completed and we agree to remove the terms.”

The Statement of Fact document of the policy also sets out a description and total estimated cost of the renovation work (£9,999).

As the endorsement was contained in the Policy Schedule, which was provided to Mr J and Miss M when they took out the policy, I think it was clear to them from the start of the policy. It was reasonable of them to tell AXA about the renovation work, as recorded in the Statement of Fact. But that doesn't mean it was unreasonable for AXA to apply the endorsement to the policy.

Having renovation works at a property would affect the risk profile presented by Mr J and Miss M, which AXA would take into consideration when offering the policy and the terms under which they would offer the policy, including the endorsement. Again, this is common practice in insurance where renovation work is taking place (or scheduled to take place).

I've then considered the schedule of items provided by Mr J and Miss M to support their claim, in the context of the wording of the endorsement set out above.

Starting with the bathroom tiles and other fittings awaiting installation, I think it reasonable to conclude these would fall under the heading Unfixed materials or goods used as part of the renovation. They were stored in the property and hadn't been affixed to the bathroom. So, I think AXA acted fairly to exclude these items from the claim.

Moving onto the kitchen appliances, which appear to be a washing machine and a fridge freezer from Mr J and Miss M's response to our investigator's view, I note what they've said about the items being new and would have been regardless of the renovation work. However, I'm not persuaded this could reasonably be held to be the case. I can see a Schedule of items forming part of the kitchen renovation (including oven and hob) so I think a new washing machine and fridge freezer would reasonably be thought to be part of renovating the kitchen. And as neither were installed (the washing machine in particular) then I think they would both fall within the same 'unfixed materials or goods' heading. So, I've concluded AXA acted fairly and reasonably in declining to cover them under the claim.

On the issue of tools used as part of the renovation work, Mr J and Miss M say the items stolen were a mix of tools, some used for the renovation works and others that weren't. I think it reasonable to conclude the former would be excluded from the claim under the

renovation endorsement. What I haven't seen is a clear schedule of what they consider to be tools falling into the latter category. My role here is to decide whether AXA acted fairly and reasonably in declining the claim – it isn't to assess the claim and decide which specific items would fall into the latter category. In the absence of any other specific evidence or information, I can't conclude AXA acted unfairly or unreasonably in declining these items from the claim.

I've then considered the items of what would be considered garden equipment. Mr J and Miss M specifically refer to: a lawnmower; chainsaw and ladders (for which they provided receipts or estimated replacement cost). Mr J and Miss M say they were stored within the property because of the absence of outside storage (such as a shed). I haven't seen anything to contradict this, so I don't think it unreasonable to have secured them within the property, in the absence of an outside storage option within the boundaries of the property.

Looking at the endorsement wording, I can't see how these items would reasonably be considered to fall within the meaning of the endorsement. As the renovation work affected the bathroom and kitchen, I don't think it reasonable to say these items were Unfixed materials or goods used as part of the renovation work.

So, I've concluded AXA acted unfairly and unreasonably in declining to assess these items as part of the claim and using the renovation endorsement to decline to cover them.

Having reached this conclusion, to put things right, AXA should assess the garden equipment (specifically lawnmower, chainsaw and ladders) in line with the remaining terms and conditions of the policy. If AXA accept the claim for these items, they should also pay interest, at a rate of 8% simple, on any settlement for these items from the date they declined the claim to the date they settle the claim.

My provisional decision

For the reasons set out above, it's my provisional decision to uphold Mr J and Miss M's complaint in part. I intend to require AXA Insurance UK Plc to:

- assess the claim for garden equipment (specifically lawnmower, chainsaw and ladders) in line with the remaining terms and conditions of the policy.*

If AXA accept the claim for these items, they should also pay interest, at a rate of 8% simple, on any settlement for these items from the date they declined the claim to the date they settle the claim.

AXA didn't respond to the provisional decision by the date requested, but Mr J and Miss E provided a response covering several aspects.

First, they accepted my conclusion AXA should cover the cost of the replacement window, but not the lintel. They also accepted my conclusion the garden equipment had been unfairly declined by AXA.

Second, on the issue of tools, they said some were duplicates or ones of a similar nature, as some were Mr J's and some Miss M's. Some of the former were used in the renovation, but there was also a box of tools stored at the property. They thought it unfair AXA to decline to cover all the lost tools because of the renovation endorsement, given it wasn't possible for Mr J to prove what was – and wasn't – used in the renovation. And some of the tools were left to Mr J from a relative, listing four specific items.

Third, while my provisional decision referred to specific items of kitchen equipment, it didn't mention an oven and hob. They were fitted and fixed at the time of the burglary, as shown by a photograph they'd provided. So, they shouldn't fall under the renovation endorsement.

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.

My role here is to decide whether AXA acted fairly towards Mr J and Miss M.

I've considered each of the points raised by Mr J and Miss M, specifically those where they don't think AXA acted fairly in declining their claim. These are the tools at the property and the kitchen appliances, in particular the oven and hob.

On the issue of the tools, I understand why Mr J and Miss M feel some of the tools weren't used in the renovation work and they've referred to a box of tools stored at the property and specific tools they say were left to Mr J by a relative. I've thought about this point, but I come back to what I said in the provisional decision about my role here is to decide whether AXA acted fairly and reasonably in declining the claim – it isn't to assess the claim and decide which specific items would fall into which category. And as Mr J and Miss M acknowledged in their response, it isn't possible for Mr J to prove what was – and wasn't – used in the renovation. Given these points, I haven't change my view that I can't conclude AXA acted unfairly or unreasonably in declining these items from the claim.

On the point about the kitchen appliances, Mr J and Miss M say they property didn't have appliances when they purchased it. And that the oven and hob were fitted and fixed at the time of the burglary. However, looking at the wording of the endorsement, while part refers to unfixed materials or goods used as part of the renovation work, there's a separate element that relates to no cover is provided for:

- *Insured losses or damage to any part of the building undergoing renovation.*

As the kitchen was undergoing renovation, then this would apply to it as part of the building. Which would include anything within the kitchen, which I think would include the oven and hob. So, they wouldn't be covered.

Taking all these points together, I haven't changed my conclusions from those set out in the provisional decision. So, my final decision remains the same, for the reasons set out in the provisional decision.

My final decision

For the reasons set out above, it's my final decision to uphold Mr J and Miss M's complaint in part. I require AXA Insurance UK Plc to:

- assess the claim for garden equipment (specifically lawnmower, chainsaw and ladders) in line with the remaining terms and conditions of the policy.

If AXA accept the claim for these items, they should also pay interest, at a rate of 8% simple, on any settlement for these items from the date they declined the claim to the date they settle the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Miss M to accept or reject my decision before 12 August 2024.

Paul King
Ombudsman