

complaint

Mrs R complained about AXA Insurance UK Plc's handling and settlement of her flood claim.

background

The complaint stems from a claim that was reported in 2003. Since that time AXA and Mrs R have been engaged in ongoing correspondence about settling the claim. This has resulted in previous complaints to this service, one of which was subject to an ombudsman's final decision.

This final decision detailed the ombudsman's conclusion regarding the settlement of the claim. To very briefly summarise, the decision held that the amounts AXA had offered or paid were reasonable apart from an extra £4,809 that the ombudsman awarded.

Mrs R did not accept the ombudsman's final decision. She considered that it was incorrect and contained inaccuracies. She continued to try to negotiate a fairer settlement with AXA. This process ultimately resulted in this complaint. AXA nevertheless confirmed that it would abide by the ombudsman's decision by paying Mrs R £24,809 (the extra £20,000 being in respect of the buildings aspect of the claim which had been offered but not paid).

Our adjudicator considered this complaint and concluded that all the 'old' issues raised by Mrs R regarding the claim could not be investigated again as they had already been considered and addressed by an ombudsman. He did however consider that there were two new issues which could be considered: damage to art/sculptures whilst they were in storage; and the unauthorised disposal of some furniture (for which AXA had offered Mrs R £3,000).

Our adjudicator concluded that this part of the complaint should be upheld. He felt AXA was responsible for the art/sculptures whilst they were in storage and that it was liable for any damage caused during that time. He further felt that the items had been damaged due to inadequate storage care and/or unsatisfactory storage conditions. Our adjudicator noted that AXA had already accepted that its agent had disposed of the furniture without authority. However, he felt it was unclear what AXA's offer of £3,000 had been based on. He therefore recommended that AXA appoint an expert to inspect the damaged items and quantify the loss; and to then make a cash payment to Mrs R based upon the expert's valuations.

Our adjudicator also concluded that AXA had handled Mrs R's complaint poorly. He therefore recommended that it pay her compensation for the distress and inconvenience caused.

To date, AXA has not formally responded to our adjudicator. It said it had reports and photos from when the items were put into storage which showed that they were not in the best of condition from the outset. It nevertheless said it would consider our adjudicator's recommendations further. About a month ago (roughly seven months after our adjudicator reached his conclusion) AXA informed us that it was due to speak with Mrs R with the aim of agreeing a settlement. We have not heard anything further.

Mrs R rejected our adjudicator's conclusions. She made various representations about the claim remaining unsettled and AXA not investigating or discussing any of the outstanding issues. She also referred to issues such as the previous ombudsman ignoring her instruction to AXA that her representative no longer represented her; the previous ombudsman's consideration of a report detailing what was wrong with the property; and the previous

ombudsman's incorrect assumption that some payments had actually been made by AXA. Mrs R did however confirm that she had 'no issue' with our adjudicator's recommendation in respect of the damaged art and missing items.

Given AXA's lack of response and Mrs R's rejection of our adjudicator's assessment, the complaint has been referred to me for consideration.

my findings

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

previous complaint issues

I can dismiss a complaint if I consider that the subject matter of it has previously been considered by the Financial Ombudsman Service (unless material new evidence which I consider is likely to affect the outcome has subsequently become available). I can also dismiss a complaint if I consider there to be compelling reasons why it is inappropriate for it to be considered by the Financial Ombudsman Service.

I appreciate Mrs R's opinion that the previous ombudsman's decision was incorrect and contained inaccuracies. However, I can confirm that there is no scope for an ombudsman's final decision to be appealed, changed or 'corrected'. An ombudsman's final decision can be judicially reviewed; however, my understanding is that the time-limit for pursuing a judicial review has long since passed.

In my view, the main issues Mrs R raised in this complaint – e.g. AXA's handling of the claim, the eventual settlement proposals, the surveyor's report provided by Mrs R and AXA's negotiation with Mrs R's representative – were all previously considered when the previous ombudsman issued her final decision. I do not therefore consider it appropriate for these issues to be considered again. For the avoidance of doubt, I do not consider there to be any material new evidence that is likely to affect the outcome of the previous complaint.

The issue Mrs R raised about AXA's failure to re-negotiate the settlement offer was not technically considered by the previous ombudsman (as this issue clearly arose *following* her final decision and Mrs R's rejection of it).

However, given that the previous ombudsman reached a conclusion as to what she considered a fair settlement, I consider it inappropriate for the Financial Ombudsman Service to now consider a further complaint about AXA's decision to not negotiate further with Mrs R over that settlement.

I therefore conclude that this part of Mrs R's complaint should be dismissed.

If Mrs R feels that any settlement of her claim remains outstanding (whether that be the £24,809 referred to above or any other payment) following the previous ombudsman's final decision, I can only suggest that she contacts AXA direct. Alternatively, she could seek legal advice about the prospects of recovering any monies through the courts.

new issues

Like our adjudicator, I consider that the only issues raised with AXA which do not appear to have been considered within any previous complaint are those of the damaged art/sculptures and the furniture that was disposed of.

In my view, AXA's appointed agents effectively took responsibility to store Mrs R's items in a safe manner. Accordingly, liability for any damage caused to the items whilst they were in storage or transit should be borne by AXA.

Mrs R provided AXA with a list of the damaged art/sculptures together with a description of the damage. I have not seen any evidence to demonstrate that AXA carried out much, or any, investigation into Mrs R's allegations. Further, I have not seen any persuasive evidence to support AXA's contention regarding the condition of the items when they were placed in storage. The only evidence I have seen is the inventories that were completed at the time; however, these simply refer to general damage such as scratches and chips. On the other hand, Mrs R has not provided any evidence to support her contention that the items were returned to her in a condition significantly worse than when they were taken away.

I am therefore faced with making a decision based on what I consider most likely happened in all the circumstances.

As outlined above, this claim has been ongoing since 2003. And I understand Mrs R's art/sculptures were in storage for a significant number of years before they were returned to her. I think the type of damage described – woodworm infestation and items being broken – is typical of damage that would be caused when items of this nature are in storage for long periods of time. I therefore conclude it is most likely that the damage Mrs R is now claiming occurred whilst the items were in storage. Accordingly, I conclude that AXA should compensate Mrs R for any loss she suffered in this respect.

The situation with the furniture is more straightforward – it is not in dispute that AXA's agent disposed of furniture without authority. It is therefore simply an issue of whether AXA's offer of £3,000 for this loss was fair.

I have not seen any evidence one way or the other as to what the value of the furniture was. AXA said it received a quote of £1,640 to restore the items, but I do not consider this to have any bearing on the value of the items.

For both issues I would ordinarily consider it necessary for Mrs R to provide evidence to demonstrate the loss she has suffered before I made any award against AXA. However, in this case, I consider our adjudicator's recommendation that AXA appoint and pay for an expert (or experts) to assess Mrs R's loss to be the fairest way forward.

compensation

Our adjudicator concluded that AXA's handling of the complaint was poor. I agree with his assessment in this respect. An example of the poor handling is the Financial Ombudsman Service having to chase AXA on numerous occasions and not receiving any meaningful response (or on most occasions not receiving any response at all).

I am not able to fine or punish AXA for bad practice or poor complaint handling. However, I am able to award compensation if I think such practice/complaint handling caused Mrs R

additional distress and inconvenience. I am persuaded that is the case here. AXA's clear inaction in dealing with Mrs R's complaint has, in my opinion, led to unnecessary delays; which in turn caused Mrs R additional distress and inconvenience. I consider our adjudicator's recommendation of £300 appropriate in the circumstances.

my final decision

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

1. appoint an appropriate expert/experts to inspect the damaged items and quantify the loss (of both the damaged art/sculptures and disposed furniture);
2. pay Mrs R compensation based upon the expert's valuations, plus interest of 8% simple per annum calculated from 16 May 2009 (being the date AXA informed Mrs R that the furniture had been disposed of); and
3. pay Mrs R £300 compensation for distress and inconvenience.

I make no other award against AXA.

Paul Daniel
ombudsman