

## **The complaint**

A limited company, which I will call H, has complained about the handling of a claim and the settlement made under its "Retailers Insurance" policy with AXA Insurance UK plc. Mr and Mrs A, directors of H have brought the complaint on its behalf.

AXA is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As AXA has accepted it is accountable for the actions of the agent, in my decision, any reference to AXA includes the actions of the agents.

Mr and Mrs A also appointed a loss assessor to represent them in the claim. For ease, I will refer to Mr and Mrs A, or H, throughout this decision.

## **What happened**

In May 2021, H made a claim under its policy for loss of stock and business interruption, after its shop premises were burgled. It had to close for 10 days, as it was a crime scene. H also says that when it was able to reopen, it could only serve customers at the door due to damage to the shop.

AXA confirmed there was cover under the policy and appointed loss adjusters to assist with the claim. Having assessed the claim, AXA offered the total sum of £49,161 for loss of stock, £5,729 for damaged stock and £600 for portable devices. In respect to the business interruption claim AXA assessed the average gross profit before and after the theft and offered £1,347.07 for the period the shop was closed and the four-week period immediately after the loss.

Mr and Mrs A are very unhappy with the amount offered and with the way AXA handled the claim. They have made a number of submissions in support of their complaint. I have considered everything they have said but have summarised the main points below:

- It would have taken around £2,000 per day in the 10-day period the shop was closed. The offer of £1,347.07 is therefore not enough.
- In addition, the amount offered for the business interruption part of the claim fails to take into consideration various factors that meant its income was increasing, including the upward sales trend for its stock during the Covid-19 pandemic and that the business was in development and had plans to move to a bigger premises before the burglary prevented this.
- The delays in making interim payments meant it was unable to replace stock and missed out on seasonal sales.
- Also, due to the pandemic and Brexit, the price of stock has gone up significantly and it has been more difficult to source items. The settlement should take account of the fact it cost it considerably more to replace the items stolen; and that it was unable to replace some of the higher end items. As such, it was unable to sell them on, which meant it lost more profit.
- AXA has not explained the way it calculated the business interruption payment.
- AXA asked for so much information and they had to spend hours and hours dealing

with the claim and repeatedly requested for information.

H wants compensation for AXA's negligence with the claim and an increased settlement taking account of the above issues. H suggests the loss of earnings was around £2,000 per day for the 10 days it was closed. H says it also lost over £27,000 in profit it would have made on the stolen items due to the delay in AXA settling the claim and the difficulties replacing stock; and that the cost of replacing the stolen items was £86,908.37 but it was paid £56,083 for it by AXA.

AXA said all the information it requested was required to properly assess the claim. AXA also said that the increased cost to H of replacing stock items is irrelevant, as the claim did not cause the increased price, which was due to external factors. It has indemnified H for the loss of stock and it can't therefore reasonably be expected to also compensate for loss of sales of that stock. AXA says it only has to pay the loss of value at the time of loss and does not pay loss of profit on the stock it has already paid for. To do so would mean H would gain the sales revenue for no cost which would not be right.

AXA said there was evidence of a decrease in sales in the four weeks immediately after the burglary, compared to previous years, but this got back on track from 14 June 2021. AXA also said that H ran at a gross profit loss overall, therefore any closure in fact meant savings were made. AXA says H has not provided any evidence to support the figures it claims, so it therefore maintains that the £1,347.07 is reasonable for the business interruption caused by the theft.

AXA did however accept that it had not managed H's expectations when dealing with the business interruption aspect of the claim and offered £100 compensation for this. AXA also agreed that there were avoidable delays and offered £300 for this (so a total of £400 compensation).

One of our Investigators looked into the matter. He did not think the complaint should be upheld, as he was satisfied that AXA had made a reasonable offer in settlement of the claim. H does not accept the Investigator's assessment, so the matter has been passed to me.

### **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.

#### Loss of Stock

H's policy sets out how it will settle claims. In relation to loss of stock claims it says:

*"What is covered*

*We will pay you for damage to the property insured ...We will pay the value of the property insured at the time of the damage...*

*Basis of claims settlement*

*Claims for stock will be settled on the basis of its value at the time of loss or destruction with an adjustment for wear and tear."*

I think the terms are sufficiently clear that the cover is for the value of the items lost at the time of the loss. The evidence available to me shows that AXA paid the value of the items based on the amounts paid for them by H. It has not been suggested that the price increased between the dates of purchase and the date of the loss, so I have not seen anything to say this was incorrect.

However, H says that it could not replace the items immediately and when it did the prices had gone up considerably. It says this was in part due to delays on AXA's part in making interim payments but also says there were significant difficulties in the supply chain at the time, due to the Covid-19 pandemic and Brexit.

AXA made three payments in settlement of the amount it says the claim was worth: £4,500 and £10,000 in July 2021, and a final payment of £39,500 on 25 August 2021. So the claim was finalised (albeit not to H's satisfaction) around 15 weeks after the date of the loss.

AXA accepts that there was some delay in settling the claim and I agree that the payments could have been made sooner. However, there is no convincing evidence in my opinion that even if the larger payment had been made say four to six weeks earlier, that H would not have had the same issues replacing the stock. I say this because it seems from the evidence provided to me that there were other issues at the time that had a more significant effect.

H provided a letter from a supplier confirming that supply chains were impacted by Covid-19 and Brexit. H said that it had stockpiled early in the pandemic buying "*double, even triple*" what it normally would because they anticipated stock issues. And H said in its submissions in April 2023 that most suppliers had "*back orders that wouldn't be fulfilled for a year at least*". H also said that stock was finally available towards the end of 2022.

Having considered all the evidence, I do not therefore think that anything AXA did wrong caused the problem with the replacement of stock (to include delay in receiving orders, and therefore loss of seasonal sales, or the increase in price when H could order). I do not therefore consider AXA needs to make any further payment to reflect the fact H could not replace the stock more quickly.

### Business interruption

H's policy provides cover for loss of gross profit as a result of business interruption. The policy says:

*"What is covered  
if any property used by you at your premises for the purpose of the business suffers damage during the period of insurance, and as a result your business is interrupted or interfered with then we will pay you for loss of profit by paying:*

*an amount representing the difference between the sales less relative purchases during the indemnity period as compared to the difference between the sales less relative purchases during the equivalent period immediately before the damage".*

The indemnity period is defined as being:

*"The period during which the business is affected, starting on the date the damage occurred and ending not later than the number of months shown in your schedule."*

The schedule says the indemnity period is 24 months.

The policy also states that:

*"Adjustments will be made for trends of the business and for variations and other circumstances affecting the business either before or after the damage or which would have affected the business had the damage not occurred so that the amount paid represents as closely as possible the results which would have been expected if the damage had not occurred."*

H says this means it is covered for its lost profits as a result of not being able to replace and sell the stolen stock; and the reduced profit it has made on those items it did finally replace as the trade prices were higher than AXA had paid for them.

The purpose of the policy is to indemnify H for losses arising from an insured event, in this case a theft. AXA has paid the cost of the stolen stock and has considered a claim for loss of gross profit as a result of the theft. I do not agree this loss of gross profit would include the loss of gross profit that H would otherwise have made on the stolen stock if H had still had it, or been able to replace it immediately, and sold it beyond the end of the indemnity period.

The policy provides for the value of the stock, which AXA has paid. The business interruption cover is to provide indemnity for sales that could not or weren't made as a direct result of the theft. The fact H could not replace the stock immediately was not directly due to the theft. And the fact that the replacement costs of stock were higher (and therefore the profit margin on those items lower) was also not a direct result of the theft.

As stated above, I also do not think the delay in replacing the stock was due to anything AXA did wrong. I am therefore satisfied that AXA has reasonably considered the business interruption cover as being the impact on sales as a direct result of the theft.

AXA said the indemnity period for this part of the claim would be the time the shop was closed and a period of four weeks thereafter, which is when normal trading resumed. It accepted the shop had been closed for a total of ten days, as a result of the theft. I have not seen any evidence that this is not a reasonable determination. I will explain why.

H says the shop takings for the same period (*i.e.* 12 May to 22 May) were £11,065.58 in 2019, zero in 2020 (as it was shut due to Covid-19) and £12,316 in 2022, but that it also had additional staff costs in 2022. However, this is not its gross profit figure for this period. And I think it was reasonable for AXA to consider a longer period than just the days the shop was shut to work out the actual loss to H.

AXA reviewed accounts figures from 2019, 2020 and 2021 in order to compare sales for the same period in previous years to that following the theft in May 2021. AXA determined that the accounts showed the following turnover for the periods below:

- 13/05/2019 – 05/08/2019 £85,430.00
- 15/06 2020 – 03/08/2020 £116,366.00 (AXA says this was likely inflated because people weren't able to purchase before June 2020 due to lockdown and there would have been a surge when stores like H were able to reopen).
- 11/05/2021 – 03/08/2021 £122,560.54

AXA therefore says the turnover for the 12 weeks after the theft was better than the previous two years, so it says the burglary had no negative impact on sales over that period.

However, from other figures provided (management figures), the shop takings in the six weeks before the loss ranged from £3,364.84 to £8,171.31 per week (one week was only £580.15 but this appears to have been an outlier for some reason). Then for four weeks after the loss, takings ranged from £4,034.44 to £5,995.97 per week. Then from the fifth week after the loss (mid June 2021) until 2 August 2021 they ranged from £8,995.62 to £15,559.17 per week.

Having considered these figures, AXA noted that the four weeks immediately after the theft had seen lower than expected takings. It worked out the loss of gross profit for this period of four weeks, being the £1,347.07 offered.

I am also satisfied that AXA has determined the indemnity period reasonably, as there is no evidence of further losses beyond the four week period after the theft.

AXA has also pointed out that H's full accounts for 2019 and 2020 show that it was operating at a net loss. AXA also said H's profit and loss account for the year ending 2021 was £167,028 and the year ending 2020 (so before effects of Covid) was £172,131, so there was a downward trend in profit, rather than an upward trend as H has suggested.

AXA therefore considers its offer is fair and says H has not provided any evidence to support any further claim for business interruption losses.

H says it was making a loss in its first two years (2019 and 2020) as it was ploughing everything into starting the business up but 2021 should have been the best year, as related sales were up due to Covid-19 positively impacting its sector.

H says its gross profit for 2019/2020 was £43,317 (a gross rate of profit of 25.17%); in 2020/2021 it was £44,658 (a rate of 26.74%); and in 2021/2022 it was £31,535 (a gross rate of profit of 13.15%). H says this shows the effect on gross profit following the loss and that it was ongoing.

However, given the figures provided (which show the highest gross profit as £44,658 for the year 2020/2021, it is difficult to see how H contends that its loss of gross profit from the theft (which resulted in it being closed for ten days) resulted in loss of profit of over £57,000.

Around 500 items were stolen valued at around £56,000, which is a lot of stock, but the total of H's stock was valued at around £200,000 according to the accounts. I do not therefore see that H can claim to have lost more gross profit than it has previously made in a whole year. To put it another way, in order to have lost £57,000 profit as it is claiming, H would have had to have sold £56,000 worth of stock and made £57,000 profit (ignoring all other costs of sales); so another £113,000 of turnover and a total of around £235,000 turnover in the 12 week period after the theft in 2021. This is twice what it made in the previous year in the same period. There is no convincing evidence to support that H would otherwise have had an additional £113,000 in turnover during the 12 weeks after the theft, if it had not been for the theft.

It is for H to demonstrate the loss it is claiming and I do not think it has done enough to demonstrate that it incurred the losses it is suggesting as a direct result of the theft in May 2021. I also do not think there is enough evidence to show that the planned growth and projected performance of the business was prevented solely and directly by the theft.

Given this, I am satisfied that AXA has shown it make a fair and reasonable offer of settlement of the business interruption part of H's claim, and I do not consider that it needs to make any further payment.

#### Claims-handling and delays

H has also complained that AXA delayed dealing with the claim and kept asked for excessive information, sometimes the same information. I can see that H did provide a lot of information but I can also see AXA was asking for evidence to support the figures it provided and to evidence its claim for loss of profit.

While this would have been time-consuming for Mr and Mrs A, this information was necessary. I have not seen any evidence that the information and evidence AXA asked for

was unreasonable. AXA did however accept that it had not managed H's expectations about the business interruption part of the claim and offered £100 for this.

In its final response, AXA also accepted that the claim was delayed and it took around two months for the first interim payment of £4,500 to be made and three and a half months from the date of the theft for the final claim payment to be made. I agree these payments could have been made sooner. It would probably be reasonable for each payment to have been paid around a month earlier. AXA offered a further £300 compensation for this.

I can only consider and make an award that recognises the impact of any wrongdoing by a financial business on an eligible complainant. In this instance, the eligible complainant is a limited company, rather than any individual. A limited company cannot suffer distress or frustration. So, I cannot consider the impact on Mr and Mrs A personally of the way the claim was handled.

Having considered everything, including the fact H did not have the settlement monies available to it sooner, I consider the compensation offered already is reasonable in the circumstances.

### **My final decision**

I do not uphold this complaint. AXA Insurance UK plc has already made an offer to pay £400 to settle the complaint and I think this offer is fair and reasonable in all the circumstances. So my decision is that AXA Insurance UK plc should pay H £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 6 October 2023.

Harriet McCarthy  
**Ombudsman**