

The complaint

Mr T and X complain about the level of service and claim decisions reached by AXIS Speciality Europe SE (Axis) following claims against their real estate property owner insurance policy.

Reference to Axis includes their agents.

What happened

Mr T is the freeholder of a building which contains four flats. X was appointed as the sole managing agent for the properties, and co-owns the leasehold for flat one with Mr T. X took out the insurance policy with Axis through a broker and was named as the insured person, and says Mr T later became the insured person after the 2020-2021 renewal.

In 2020, X raised a storm damage claim for flat four. Further claims were later raised for separate storm incidents affecting flats one and two.

X says Axis didn't handle things well and caused delays. And the delays caused further damage to the internal parts of the building. Axis eventually accepted the claim made for flat one but declined the claims for flat two and four. They said X had no insurable interest in flats two and four, so they didn't think the policy should respond.

Mr T and X didn't think this was fair. X says he was the sole managing agent responsible for arranging insurance, amongst other things, for the benefit of the leaseholders. He also said he had a declaration of trust in place with Mr T which he says demonstrated he had an insurable interest in the building.

Axis didn't agree. They also say, even if they agreed X had an insurable interest in flats two and four, flat two was damaged due to poor workmanship, and repairs took place on flat four before the claim could be assessed, meaning their position had been prejudiced.

Mr T and X remained unhappy, so they complained. Axis responded to it maintaining their position on the claims. They did, however, pay £300 compensation to X due to the way things were handled.

Mr T and X approached our service.

An investigator here considered the complaint and recommended it be upheld. She didn't think Axis had shown they would have done anything differently had X originally said Mr T was the freeholder of the building, or there was a qualifying breach. She recommended Axis should reassess the storm damage claim for flat four, cover the carpets and underlay which had been an issue during the claim for flat one, and increase the compensation amount from £300 to £500. She didn't think Axis needed to take further action in respect of flat two.

Axis agreed to resolve the claim issues surrounding flat one and increase the compensation. They didn't however agree to change their decision regarding flat four. They asked for an ombudsman to decide, and the case was 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.

Axis entered a contract of insurance with X for the purpose and benefit of the leaseholders of the four flats within the building. I understand Mr T became the insured person after the claims were reported.

I don't think X has demonstrated they were a co-owner of the freehold of the building, but I don't think this makes a material difference here. X was the sole managing agent of the building and says he was responsible for arranging insurance, amongst other things.

It appears the incorrect name was recorded on the insurance policy, which was later changed, to Mr T. I also haven't been persuaded Axis have shown they wouldn't have offered cover had X originally said Mr T was the freeholder, or there was a qualifying breach here. As far as I can tell Axis was, and is, happy to insure the block – so it being in the wrong name is little more than a clerical error.

So, I don't think Axis acted reasonably when declining the claims for flat two and four on this basis. Although, I'm aware this wasn't the only reason why the claims were declined, so I've gone on to consider the remaining aspects. I'll refer to each flat in turn for ease of reading.

Flat one

X was the leaseholder and following our involvement, the claim was settled, including the carpets and underlay. I also note our investigator explained why the claim was recorded as it was, so I don't need to give any further comment to this part of the complaint.

Flat two

Axis say that water entered flat two due to previous poor repairs. They say previous repairs were temporary which had failed over time, which resulted in water entering the property. This isn't an aspect Mr T and X disputed. However, they think the policy should respond to the internal damage, and said Axis told them to hold off carrying out repairs which led to delays and further damage being caused.

I don't think Mr T and X have demonstrated that the internal damage was caused by a one-off insured event. Axis says the internal damage wasn't consistent with the same, and I haven't seen any strong supporting evidence to disagree. Nor do I think the policy is designed to cover the costs X says the tenant incurred when calling out an emergency engineer regarding the electrics.

That all said, I appreciate Axis caused delays and should have handled things much better overall, which I'll address later in my decision.

Flat four

X says storm conditions occurred around August 2020 which caused damage. I've also checked the weather records around this time, and I'm satisfied there is sufficient evidence to suggest there was one.

Axis declined the claim as they say X didn't have an insurable interest in flat four, and their position was prejudiced as repair work was completed prior to any claim assessment being undertaken. I've already explained why I don't think Axis should have relied on the insurable interest argument, so I won't repeat that again. But I also don't think it's fair to decline the claim because X had the works carried out when he did, particularly given the weather reports. I'll explain why.

X says he reported the damage to Axis and was told to obtain a report. X then says he was told Axis would attend to assess the damage later, in December 2020. However, X says, when Axis attended, he was told they were only able to assess the claim damage in respect of flat two. I've seen an email sent by Axis to X on 18 December 2020 confirming the same.

Mr T and X had a tenant in situ and considered it reasonable to have the work completed in order to prevent a breakdown in relationship with the tenant and, importantly, to mitigate the risk of any further loss or damage. I'm satisfied this was a reasonable decision for them to take. So, having taken all the information available to me into account, I don't think Axis acted fairly by declining to respond to the claim for flat four because the works were completed prior to them attending to assess the claim.

I therefore think Axis should reconsider the storm damage claim for flat four in line with the remaining policy terms. I note X says he would accept 50% of the repair costs incurred in respect of repairing the damage to flat four in full and final settlement. Given the time that's passed, and the repairs have been completed, I don't think this appears unreasonable. I'm mindful, however, Axis may wish to assess the claim and repairs to determine whether the policy should have responded.

Compensation

I agree things should have been handled better overall.

It's clear unreasonable and avoidable delays were caused. Mr T and X have told us there was a lack of communication, organisation and confusion caused by Axis when handling these claims. They said this resulted in inconvenience and a breakdown in the relationship between them and the tenants, amongst other things.

Having carefully considered things, I'm in agreement £500 compensation in total is fair, reasonable, and proportionate to the impact the way things were handled had on Mr T and X.

Putting things right

In concluding, I find Axis fairly declined the claim for flat two.

I don't think they handled things fairly in relation to flat one and four. The claim for flat one has now been settled, so Axis must now reconsider the storm damage claim for flat four in line with the remaining policy terms. Axis have the option to reimburse 50% of the repair costs X incurred in having repairs completed which totalled £2,040. This would be in full and final settlement of the claim for flat four.

My final decision

My final decision is I uphold this complaint. I now require AXIS Speciality Europe SE to reconsider the storm damage claim for flat four in line with the remaining policy terms.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and X to accept or reject my decision before 28 April 2022.

Liam Hickey
Ombudsman