

The complaint

Miss W complains that AXA Insurance Plc (AXA) have unfairly declined to cover her contents, that were damaged during a fire in the exterior of the building directly outside of her flat. She's also unhappy that the replacement window installed by AXA's contractors is scratched and damaged. Miss W has told us that she's also experienced significant distress and upset as a result of the way AXA has handled the claim.

What happened

On 16 February 2022, I issued my provisional decision, explaining why I was intending to uphold this complaint. This is what I said:

What happened

There have been several contractors, loss adjusters and other businesses involved in this complaint who have acted on behalf of AXA. However, for clarity, I'll refer only to AXA by name in this decision, even when referring to the actions of its agents.

Miss W suffered damage to her flat caused by a fire, in July 2020. The fire damaged external parts of the building and her window. Water from the fire-fighter's hoses caused her window frames to expand and sent water inside her flat, causing damage to her internal walls, blinds, curtains, carpet, and TV unit.

Miss W complained to AXA about the way they'd handled the claim. On 24 June 2021, AXA sent Miss W their final response letter, upholding her complaint. They accepted that unacceptable, avoidable delays had occurred, unnecessary stress and anxiety was caused by the unexpected arrival of a contractor on a day of annual leave Miss W had taken, and that the service Miss W had received from AXA's contractors was poor. AXA apologised and offered Miss W £550 compensation for the distress she'd suffered.

Miss W didn't accept the offer of compensation from AXA and brought her complaint to our service. In addition to the matters addressed in the final response letter, Miss W also explained that she believed her damaged contents also ought to be included in the claim, because they were damaged through no fault of her own.

Our investigator looked into Miss W's complaint and, on 15 July 2021, issued her view upholding the complaint. In summary, she said:

- AXA accepted the service Miss W received wasn't good enough, but due to the catalogue of errors that had been made, and the resulting distress they'd caused Miss W, the compensation should be increased to £1,000.*
- As the loss adjuster had said that her damaged contents would be covered by the claim, AXA should cover her contents, including carpet, curtains blinds, and TV unit on receipt of invoices.*

- AXA should have one more attempt at repairing the window, and, if that isn't successful, make a cash settlement to Miss W for her to get it repaired by a contractor of her choice. In that instance, Miss W was to provide a quotation which AXA was to meet.

Miss W accepted our investigator's view, but AXA did not. They said that Miss W didn't have contents cover with them, and she couldn't prove AXA said they would cover those items. AXA believed that Miss W would need to speak to her own contents' insurer about that. The increased compensation was agreed to by AXA, and they said they were trying to rectify the damaged window.

Our investigator shared these comments with Miss W, and she said she was pleased AXA were going to pay the increased amount of compensation. With regard to her contents claim she said she had asked on more than one occasion from the outset, about whether she would be covered. She maintained that when the loss adjuster attended her property he maintained categorically that it wasn't her fault, and everything would be covered so she didn't need to worry. She believes that because AXA provided incorrect information (via their loss adjuster) which effectively stopped her from making arrangements to seek compensation from other sources, then they should pay the claim.

As AXA didn't accept our investigator's view, the case has been passed to me for a decision to be made.

What I've provisionally 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. Having done so, I'm intending to come to a different conclusion to that reached by our investigator and partially uphold this complaint. I will explain why.

There have been a number of issues raised by Miss W, during the period of this claim. I understand that the internal and external repairs have now been completed, so those elements of Miss W's original complaint are now resolved. I therefore won't be addressing those elements of the claim in this decision.

I will address the three remaining elements of Miss W's claim under the following headings: claim for damage to contents; claim for damage to window; and compensation for distress and inconvenience.

Claim for damage to contents

Miss W told us that her carpet, curtains, curtain pole, blinds and TV unit were damaged by the water from the fire hoses that entered her flat on the date of the fire, and again, on a further occasion during a storm as a result of the external window and wall not being made weather tight. She says that AXA's loss adjuster confirmed to her on more than one occasion that the contents would be covered by the claim, as the damage had happened through no fault of Miss W's.

The claim history notes I've been provided with by AXA show that the broker asked them in November 2020 whether Miss W's contents could be included in the settlement, and AXA said they would not, as the policy only covers damage to the building. The broker challenged that decision, on the basis that Miss W was effectively an innocent third party and the policy provided cover for third party property damage. AXA confirmed that it wouldn't be covered by the third-party

property damage part of the policy, and after referring the query to the underwriter, also said that no ex gratia payment would be made.

The broker's case history notes show that Miss W was informed in December 2020 that the contents might not be covered, because the insurance policy only covered damage to buildings, not contents. The case history notes go on to show that in January 2021 Miss W was told that AXA had confirmed they wouldn't cover the contents.

Our investigator concluded that AXA should cover Miss W's damaged contents because the loss adjuster had confirmed that cover would be provided under the policy. AXA disagreed and said Miss W should claim on her own contents insurance policy, for the damaged contents.

In deciding whether or not AXA should include Miss W's damaged contents in settling the claim, I've first considered the policy terms and conditions, to see what they provide cover for.

Page 6 of the policy terms and conditions includes the following definition, which expressly excludes tenant's contents in individual flats, from the cover provided by the policy:

"Contents of Communal Parts

Furniture and all other property belonging to You or for which You are responsible in or on the stairs, halls, and other communal parts of the Block of Flats but not the contents of individual Flats themselves"

Section 2 of the policy terms, from page 14, includes the terms that are relevant to the insurance of the contents of communal parts. However, there is no reference in that section, or elsewhere in the policy terms and conditions to cover being provided for tenant's contents within the individual flat.

So, as AXA has suggested, the policy does not provide cover for damage caused to the tenant's contents, by an insured peril. I don't find this to be unreasonable because insurance policies don't cover every possible eventuality; they cover the specific risks detailed in the policy terms and conditions, which are reflected in the premium charged.

I've next gone on to consider whether it would be fair and reasonable for AXA to cover the cost of the damaged contents, in the circumstances of Miss W's complaint. Miss W has said she was assured a number of times by AXA's loss adjuster that the damaged contents would be covered as part of the claim. So, I've thought about whether that means AXA should pay the claim for the damaged contents, despite the fact the policy doesn't provide such cover.

The evidence on this issue is contradictory. On the one hand, Miss W is adamant that she was told everything would be covered. On the other hand, AXA disputes that the loss adjuster, being familiar with block building policies, (and the fact that they don't ordinarily cover contents), would have given any such assurances. In the absence of any corroborating evidence, either way, I'd need to form my view on this, on the basis of what I think most likely happened. However, I don't think it's necessary to come to a conclusion about what was likely said. I say this because even if the loss adjuster had given such an assurance, that in itself wouldn't put AXA 'on risk' to provide such cover. AXA was neither responsible for the fire nor had

agreed to provide cover for tenant's contents in individual flats when they underwrote the buildings insurance. So, despite what Miss W may have been told, I still don't think it would be reasonable to require AXA to pay Miss W's claim for her damaged contents.

Claim for damage to window

AXA accepted that the window would need to be replaced after the fire, and the cladding above the window would also need to be replaced. On 9 April 2021, they confirmed that the works had been completed. However, Miss W wasn't happy with the state of the new window. She said the window was cracked and dirty and she wasn't happy with the state of the windowsill. On 20 May 2021, the contractor returned to the property and installed a replacement windowsill on top of the existing one. Miss W said it still had marks on it and she said the contractor installed a dirty strip of fascia that was broken at one end underneath the new windowsill. The contractor did agree that the glass needed to be replaced due to scratches on it, and said they'd get that ordered. Miss W also said the contractor damaged the plaster and paint work on the side of the windowsill.

On 1 February 2022, Miss W told us that one of the panes of glass on the window still had a number of scratches on it, the whole window ledge was covered in scratches, scuffs and blemishes and the window ledge remained sawn off at a jagged angle at one end and hadn't been capped off properly. When issuing her view, in July 2021, more than seven months ago, our investigator said that AXA should have one further opportunity to repair the window. If that wasn't successful, our investigator said Miss W should provide a quotation from a contractor of her choice, for the outstanding repair works to be done, and AXA should make her a cash settlement sufficient to cover those costs.

From Miss W's recent email, it seems that, although AXA have not denied their responsibility for repairing the window, they've not made any attempt to arrange for the window to be repaired over the last seven months. In view of the period of time that this claim and complaint has been ongoing, I'm minded to require AXA to pay a further sum to Miss W to settle that part of the claim. To ensure the amount required to settle this part of the claim and complaint is fair to both parties, I would invite Miss W, in response to this provisional decision to provide a quotation from a contractor of her choice, to complete the outstanding repair works to the window and surrounds. I would also direct AXA, in response to this provisional decision, to provide a breakdown of the costs already incurred in repairing the window and surrounds and send a contractor to the property to provide an assessment of the cost to Miss W, of making good the damage to the window and surrounds. I will then have regard to the quotations provided, when deciding an appropriate award in my final decision.

Compensation for distress and inconvenience

AXA has conceded that there were a number of avoidable delays that occurred during its handling of the claim. They've also accepted that the service Miss W received from its contractors was poor. Initially, AXA offered Miss W £550 compensation for the upset, stress, and inconvenience she'd been caused as a result. However, our investigator didn't think that went far enough to make up for the difficulties Miss W had experienced. She recommended that £1000 compensation be paid, which both AXA and Miss W accepted.

When making an award for distress and inconvenience, I take account of the avoidable delays caused by the business, the actions or inaction the business is

responsible for, the impact that has on the consumer, and the level of compensation made by this service, for consumers in similar circumstances (examples of which are published on the Financial Ombudsman Service's website).

Having done this, I'm provisionally of the view that the £1,000 compensation recommended by our investigator, is fair, in all the circumstances of Miss W's complaint. The available evidence shows the impact of AXA's handling of the claim has caused Miss W substantial distress, upset, and worry over a sustained period. So, I intend to require AXA to pay Miss W £1,000 to compensate Miss W for that.

I concluded by saying, to put things right for Miss W, I was intending to require AXA to pay Miss W an additional sum to settle the remainder of her claim in relation to the replacement window, and pay her £1,000 for the distress and inconvenience she's suffered as a result of the way AXA has handled the claim.

I invited Miss W and AXA to let me have their final comments and any new evidence they wanted me to consider before I issued my final decision on the complaint.

AXA responded to say that they accepted the decision and had previously received a quote from Miss W, for £475, as their contractors weren't able to repair the window. They said they would therefore be willing to pay the cost of £475 in addition to the compensation payment of £1,000.

Miss W responded to clarify that the following issues were still outstanding:

- She still has a pane of glass in her window that has numerous scratches on it.
- The whole window ledge (the second one installed) is covered in scratches, scuffs and blemishes.
- The end of the window ledge remains sawn off a jagged angle at one end and has not been capped off properly.

Miss W explained that she had originally asked her builder to provide a quote to repair the end of the windowsill and damaged paint work. Then, depending on the outcome of the ombudsman's decision she was going to look at how to proceed with getting a UPVC specialist to provide a quote for repairing the damage to the surface of the window ledge. However, she hadn't yet had a chance to obtain those quotes.

In order to resolve this outstanding issue, in one attempt, Miss W said she would ask her builder to remove both of the damaged windowsills and replace them with new windowsills. She has provided an updated quote, for £835 (dated 28 February 2022) which includes that additional work. Miss W has also said that, in relation to the scratched glass, if the builder's quote can be covered, then she will live with the scratched glass.

I've taken both Miss W's and AXA's further comments into account in making my final decision on this complaint.

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.

As both Miss W and AXA have accepted most of the conclusions in my provisional decision, I see no reason to depart from those conclusions. Therefore, it only remains for me to

address the outstanding issue of the repairs to Miss W's window.

AXA have agreed to pay the first quote of £475, however, Miss W doesn't feel that addresses all of the outstanding issues. Miss W has provided an updated quote of £835 which she feels would adequately settle her claim.

I've looked at the two quotes and have considered the works and materials they include. I've also considered the fact that AXA have been provided with an opportunity to obtain their own quote for the completion of the repairs, and they've also had an opportunity to pay the lesser amount to Miss W, when they first confirmed their contractor couldn't repair the window and were sent the quote.

Having done so, I think Miss W's updated quote provides a reasonable basis for AXA to settle the remaining element of the claim. An additional £200 has been included for labour, which covers additional work to be completed in relation to the replacement of the windowsills and the related works, and an additional half day at the property, for the completion of the works, which allows time for the paint to dry in between coats. Also, an additional £160 has been included for materials which includes the new PVC windowsill and associated materials.

So, taking everything into account, I uphold this complaint and require AXA Insurance Plc to pay Miss W the sum of £835 included in the updated quote, together with the compensation previously agreed.

Putting things right

My final decision is that I uphold this complaint and require AXA Insurance Plc to pay Miss W:

- £835 to settle the balance of Miss W's claim in respect of damage to her window; and
- £1000 compensation for the distress and inconvenience she's suffered as a result of the way AXA has handled the claim.

My final decision

My final decision is that I uphold this complaint and require AXA Insurance Plc to pay Miss W the awards detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 7 April 2022.

Carolyn Harwood
Ombudsman