

The complaint

Ms K complained that her claim was unnecessarily delayed by AXA Insurance UK Plc (“AXA”) under her “*block*” home insurance policy, which caused her to lose rental income on her property. The policy was taken out by Ms K’s management company, but she benefitted as a leaseholder.

What happened

Ms K owned a bottom floor flat that she rented out. Following a leak in the flat above on 20 July 2021, Ms K’s flat had damage in the kitchen and living room and the ceiling partially collapsed. As the property was in a poor condition, Ms K’s tenant terminated her agreement to rent the flat.

Ms K submitted an escape of water claim to AXA and it commenced its validation of the claim. It asked Ms K to provide evidence of the damage and what had caused it. AXA asked Ms K to obtain two quotes for having the damage repaired.

Ms K provided the information requested and AXA appointed a loss adjuster who further validated the damage and the cost of repairs on 25 August 2021.

Ms K then experienced a period of delays for various reasons which were generally accepted as avoidable delays by AXA. Most notably this including Ms K taking the decision to commission her own structural engineer at her own risk as she’d lost faith in the service provided by AXA and its contractors. This approach exposed several deficiencies in the work that had been recommended by AXA’s contractors.

AXA’s initial attempt to cash settle the claim for damage was initially rejected by Ms K, but was she later accepted a revised offer on 24 January 2022 once the value of the settlement offer had been significantly increased. Ms K felt the delays in reaching a settlement were avoidable. She said this delayed her been able to repair the damage to her flat, which delayed when she could rent it out. So, she wanted AXA to compensate her for the rental income she lost.

AXA said “you advised me that your tenant moved out of the property on the day the incident occurred. There was nothing that we could have done to prevent this and I cannot see that the tenant moved out because of any wrongdoing on our part. I am unable to consider your loss of rent costs as a financial loss, had you taken out cover for loss of rent this would have been included as part of the claim”.

Our investigator decided to uphold the complaint. She thought the compensation paid by AXA for the various delays had been fair. However, she thought the avoidable delays AXA had caused created a consequential loss for Ms K in lost rental income, so she decided AXA should reimburse this for the period 15 September 2021 to 24 January 2022. She also added 8% interest according to each month the rent would have been paid to the date of

settlement. AXA disagreed, so the case has been referred to an ombudsman.

My provisional decision

I issued a provisional decision on this on 17 June 2022. I said:

"In the investigator's view, she commented on the fairness of the compensation already paid by AXA for the various delays. She considered the impact these delays had on Ms K and she concluded the compensation Ms K was paid for each separate delay fairly reflected the distress and inconvenience caused to her. Ms K accepted our investigator's view on this point, so my decision will not consider this anymore.

AXA has disagreed with the investigator's view on the point around the consequential loss of rental income. It doesn't think it should be liable for this. I have checked Ms K's policy schedule and can see that Ms K chose not to pay the premium needed for this cover, therefore, Ms K isn't covered by the policy for loss of rental income.

However, Ms K think the errors and delays that have been caused by AXA and its contractors were avoidable. She said these delays caused subsequent delays in her repairing her house, which she said ultimately delayed in her been able to rent her property out.

AXA said, "I am of the opinion that Ms K could have mitigated her own financial losses by attempting to rent out the property in its damaged state, at a reduced rental amount, as the property wasn't uninhabitable". I don't find this statement persuasive as it contradicts what is written within the claim notes kept by AXA. One of the notes written by an AXA representative states "This claim was going on for far too long and we are at fault for that and [our contractor], the insured has lost income and continues to do so as the property is uninhabitable. The delays on this are unacceptable". Therefore, I don't think it's likely the property could've been rented out in its damaged state.

AXA has caused delays – Ms K was expecting AXA to manage her claim at a time of difficulty for her. When she needed help most, her insurer, the organisation expected to help her let her down. AXA has acknowledged this. From what AXA has said, it implies it thinks Ms K should've predicted all these delays that AXA caused, pay costs at her expense to make some temporary repairs on the off chance someone would rent her property out at a reduced rate and knowing that they may need to move out for a period of four days to allow the permanent repairs to take place. I don't think this is a reasonable expectation.

By AXA's own admission, Ms K's property was "uninhabitable" and the delays to getting her repairs completed were "unacceptable". AXA resolved the claim by finally offering a cash settlement as it couldn't get the work completed in a satisfactory time. I think this situation was avoidable had AXA managed the claim efficiently. So, I think AXA are responsible for the consequential loss of rental income for the delays it caused. Therefore, I intend to uphold this complaint. I appreciate Ms K didn't have certainty she would've rented her property out, but I think the delays AXA caused were significant, so I think it's likely these avoidable delays had a direct impact on her not been able to rent out her home – so I do think it's liable for the consequential loss of rental income.

The flat was rented at the time of the incident, so I think it's a reasonable assumption that the flat in decent condition would've been rented out again. Ms K was denied this opportunity due to the delays. Ms K has demonstrated that she did rent out the flat later following the repairs. So, I've considered the length of time, it's likely that Ms K suffered a financial loss for.

Once Ms K accepted the cash settlement offered by AXA on 24 January 2022, she said she agreed a contract to rent her flat out from 25 March 2022. Ms K has provided documents to support this statement. This shows Ms K managed to rent her property out after around two months after receiving her settlement from AXA. This allowed her time to have the repairs done, re-market her property and find a new tenant.

Therefore, I have considered what consequential loss Ms K suffered. The damage took place on 20 July 2021. I think AXA should've validated the claim and cash settled the claim in about six weeks (around the end of August 2021). I think this is a reasonable timeframe. If the two months turnaround is applied that Ms K managed on her flat, she could've had someone renting her flat from end October 2021.

She rented her flat out from 25 March 2022, so I think Ms K has demonstrated it's likely she would've lost rent for the period 1 November 2021 to 24 March 2022 (inclusive). Therefore, I intend to ask AXA to compensate Ms K for the loss of rental income during this period, once it has been able to fully validate Ms K did rent her property out from this date and at what rate the rent was set at. If Ms K didn't receive 100% of the rental income from 25 March, the amount of compensation should be reduced proportionately. As Ms K has been without this money, I intend for AXA to add 8% simple interest for each month she could've received rent to the date she is reimbursed this money".

Responses to my provisional decision

Ms K accepted by provisional decision. She said she was never offered a cash settlement of any amount.

AXA rejected my provisional decision and re-iterated points it had already made before. Although it did say its claim handler was wrong in saying the property was uninhabitable. AXA said it thought it would be more appropriate to pay a contribution towards the loss of rent.

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.

Given neither party has provided any new information, I see no reason to change my provisional decision.

My final decision

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

- Pay Ms K for the consequential loss of rent for the period between 1 November 2021 and 24 March 2022 (rent amount based on contracted amount and occupancy level from 25 March 2022)
- Plus 8% simple interest* for each month she could've received rent to the date she is reimbursed this money.

*HM Revenue and Customs requires AXA Insurance UK Plc to take off tax from this interest. AXA must give a certificate showing how much tax it's taken off it if Ms K asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 20 July 2022.

Pete Averill
Ombudsman