

The complaint

Mr and Mrs O complaint about how AXIS Speciality Europe SE handled and settled a claim they made following water damage to a rental property they own.

Mr and Mrs O's representative brought this complaint to our service. But for clarity – I'll refer to all submissions as being made by Mr and Mrs O directly.

What happened

Mr and Mrs O owns a property that they rent out. This property is covered by an insurance policy provided by Axis.

On 25 January 2022 they suffered damage to their rental property following an escape of water from a faulty washing machine within the property above. This damage rendered the Mr and Mrs O's rental property uninhabitable. They'd only recently fully renovated this property shortly before the damage occurred and tenants had moved into this property on 5 January 2022. Their tenancy agreement was for a period of 12 months.

After Mr and Mrs O reported the damage to Axis it appointed a loss adjuster to assist it in overseeing the claim. The loss adjuster authorised the necessary reinstatement work. But the funds weren't paid to the appointed builder promptly, which led to delays in the property being restored to a habitable condition.

During the period that reinstatement work was being undertaken, Mr and Mrs O's tenants had to vacate the property and move into temporary accommodation. They moved into hotels and incurred accommodation expenses, which were authorised by the loss adjuster but not reimbursed promptly.

Mr and Mrs O said they received conflicting information about the status of funding for the claim and spent a considerable amount of time chasing Axis for the funds to pay their builder and tenants' alternative accommodation.

Mr and Mrs O also said insufficient funding led to delays in the claim being progressed, which meant that their property wasn't reinstated as quickly as it could have been. They said this caused distress and inconvenience and led to their tenants terminating their tenancy early. Mr and Mrs O said they suffered financial loss as a result and complained to Axis about what had happened.

When Axis responded to Mr and Mrs O's complaint, it acknowledged that there had been delays in the progression of the claim. It said the loss adjuster had raised requests for payments the day invoices were received. But that they were unaware, at the time, that there was insufficient money in the loss fund to pay the invoices and that there was a delay while the account was topped up.

Axis upheld the complaint and apologised for Mr and Mrs O's experience. It offered to compensate them £75 for the trouble and upset they'd suffered. But it declined to cover the

loss of rental income Mr and Mrs O said they experienced as a result of their tenants terminating their tenancy agreement early.

Being dissatisfied with how Axis had dealt with her complaint, Mr and Mrs O complained to our service. Our investigator assessed the evidence provided and recommended upholding this complaint. They thought that Axis had acted unfairly in declining to cover a loss of rent claim and said it should settle a claim for loss of rent. They also thought Axis should pay £350 compensation for the distress and inconvenience Mr and Mrs O had been caused.

After issuing their view, our investigator was made aware that they'd taken into account aspects of Mr and Mrs O's complaint that Axis hadn't yet investigated such as loss of earnings, impact on health and the loss of enjoyment of a holiday. They confirmed with Axis that it would investigate these concerns under a new complaint and revisited their compensation recommendation. And they subsequently reduced the compensation they recommended Axis pay from £350 to £150 overall, which included the previous offer of £75 that had been made.

Axis accepted our investigator's view of Mr and Mrs O's complaint in relation to the compensation award, but it didn't agree that it should settle the loss of income claim. Mr and Mrs O rejected our investigator's recommendation. So, I've been asked to decide the fairest way to resolve 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.

My role is to decide the crux of the complaint and ensure that I respond to the main issues. Where I haven't commented on a specific complaint point raised by Mr and Mrs O or Axis it's not because I've failed to consider it, but because I don't think I need to comment on it in order to reach what I think is the right outcome for the complaint as a whole.

The crux of this complaint is whether Axis made a mistake, or treated Mr and Mrs O unfairly, such that it needs to now put things right.

I appreciate this has been a stressful situation for Mr and Mrs O and I imagine that they thought, at the start, this claim was all going to be sorted out with minimal fuss. However, that didn't happen; the claim process was unnecessarily complicated, which caused delay in the settlement of the claim. It also resulted in Mr and Mrs O receiving conflicting information about funding and led to their tenants leaving early.

The evidence demonstrates very clearly that there were issues with the availability of funds, which hampered the progression of this claim. I'm satisfied the builders tasked with the reinstatement work undertook the work they were able to as efficiently as was possible. After they'd completed all the work they could, work to reinstate the kitchen ceased pending payment for the new kitchen. I'm satisfied the builders were unable to continue with reinstatement work due issues arising from non-payment that weren't their fault.

I've seen evidence showing that the funds for the new kitchen were requested by the loss adjuster on 11 February 2022. They weren't, however, received until 23 Feb 2022, which caused a delay of around 12 days. This delay was avoidable and caused by an error on the part of Axis.

Once the funds were received by the builder, I understand they purchased new kitchen units the same day. Work then resumed on 24 February 2022 – at the earliest opportunity – and

the outstanding work was completed within around 10 days. Mr and Mrs O said the property was habitable by 11 March 2022. So, it appears that the overall delay was around 3 weeks.

It's clear from the evidence I've seen that the reinstatement work was delayed due to issues with the sufficiency of funds. I'm satisfied that if there hadn't been delays in the funds being released to the builder, the work would have concluded earlier.

I accept the evidence from Axis that the loss adjuster raised every payment request on the day invoices were received. I also accept that they were unaware that, at that time, there were insufficient funds to pay the invoices, which led to delays in the work being completed.

Axis has told our service there are times when the loss fund runs low, particularly towards the end of the month. It said this may explain why there were insufficient funds to settle invoices presented by the loss adjuster. While I'm sympathetic to this, it was Axis' responsibility to ensure that sufficient funds were available to pay for the necessary work. So, I think it ought to have overseen the allocation of funds more proactively. This was an error on its part, which led to delay. And I think this detrimentally impacted on its obligation to deal with this claim in a timely manner.

I can see that the tenants experienced difficulties in being reimbursed their alternative accommodation costs in a timely manner. They aren't a party to this complaint, of course, as this complaint is between Mr and Mrs O, Axis and its agents. So, I can't direct that any compensation is paid to recognise their distress and inconvenience here. However, I mention the tenants' difficulties because it's clear they spent a considerable sum and period of time sourcing and funding temporary accommodation while the property was being reinstated. There were issues regarding the suitability of living in hotels and this is all bound to have caused the tenants trouble and upset.

Based on the evidence I've seen, I'm persuaded that if the property had been returned to the tenants in a habitable condition at the earliest opportunity they'd have, most likely, moved back in. Axis has argued that it thinks the tenants would have left irrespective of the delay. But I haven't seen any evidence that corroborates its view. So, I think that's a speculative assumption.

It's clear to me from the emails I've seen that it was the tenants' intention to move back into the property. The emails show the dialogue between the tenants and Mr and Mrs O. The tenants appear keen to leave their temporary accommodation and return to their new home. And, while they were initially understanding and patient about what had happened, they became more frustrated as the claim progressed and became delayed.

I've no doubt that the distress and inconvenience experienced by the tenants due to them having to find alternative accommodation, wait for the cost of that to be refunded and to be unable to return to their accommodation for over a month after it suffered damage led to them emailing Mr and Mrs O with notice of their decision to terminate their tenancy 25 Feb 2022. They left the property on 5 March 2022 having paid rent up to that date.

Mr and Mrs O are seeking compensation for the rent they say they've lost as a result of their tenants terminating their tenancy. But Axis seeks to rely on a clause in their policy that covers a policyholder for the loss of rent provided the tenant has not moved out.

I think it's important to mention that, in this case, the tenants were able to rely on a provision within their tenancy agreement, which entitled them to terminate the agreement if the property was uninhabitable for 4 weeks or more. Here, the period of uninhabitability exceeded 4 weeks.

I'm satisfied that Mr and Mrs O's property would have been habitable within this 4 week window had there not been delays in releasing funds to their builder. So, I think it would be unfair for Axis to rely an exemption clause. It follows that I'm directing Axis to pay Mr and Mrs O for the loss of rent.

In determining how much rent was lost, I've already mentioned that Mr and Mrs O's tenants were contractually liable for rent from 5 January 2022, when their tenancy commenced, to 5 March 2022 when it formally came to an end. Mr and Mrs O have confirmed that the tenants paid rent for this period.

After the tenancy ended on 5 March, the property wasn't habitable until 11 March. So, there's a period of 6 days where rental income was lost. Mrs and Mr D contend that their window of loss is much wider. In mid-April, they say they decided to market their property for sale and appear to believe that Axis should cover the loss of rental income for this period and beyond.

I can appreciate why Mr and Mrs O may have chosen to sell their rental property after the stresses their claim brought. But there isn't any evidence that proves their decision to sell was caused by the errors made by Axis. And, as the property was habitable from 11 March 2022, Mr and Mrs O could have mitigated their loss of rent by marketing their property for occupation from this date onwards. They didn't do this and that's not Axis' fault. It follows that I can't fairly tell Axis to pay for any loss in rental income beyond 11 March 2022.

Mr and Mrs O have asked our service to direct Axis to pay a tenant find fee. However, this contradicts their assertion that they marketed their property for sale without tenanting it further. I haven't seen any evidence that a tenant find fee was paid after the tenants ended their tenancy agreement.

I should also add that, even if Mr and Mrs O had paid a tenant find fee, had they decided not to sell their property, the terms of their policy wouldn't cover its reimbursement. The policy only covers loss of rent, which I'm directing Axis to pay. I can't tell Axis to cover losses that aren't insured under the policy.

Mr and Mrs O have said the way in which this claim was progressed detrimentally impacted their health. They're seeking compensation to reflect the way in which their health deteriorated. I understand what Mr and Mrs O have said about how this claim caused stress. But I haven't seen any medical, or other, evidence confirming to what extent the errors by Axis have caused their health to decline.

I can see that Mr and Mrs O are also claiming for loss of earnings. They say they've lost around 5 days of income and are self-employed. They state this has arisen through extensive chasing and a high level of correspondence between them, Axis and their tenants.

I've seen over 140 emails between Mr and Mrs O, their tenants, Axis and the loss adjuster, which indicates that it's taken a lot more time for them to deal with their claim than would have been necessary if there hadn't problems with funding. But not all communication occurred during the 3-week period of avoidable delay, which is what I'm considering here. And I haven't seen any evidence that shows 5 days of income was lost as a direct result of Axis' errors.

Mr and Mrs O are asking our service to make a claim that recognises the loss of enjoyment they experienced during a prebooked holiday that they took while their claim was ongoing. They said that, during the time they were away, they had to deal with a large amount of calls and emails from their tenants and builders which were caused by insufficient funds delaying the reinstatement works. They said they struggled to find internet access while away and lost

around 3 days of their holiday trying to resolve the problems that were caused. They also said they had to return home 2 days early.

Our investigator's recommended compensation of £350 took all these three issues into consideration. But I can see that these three parts of Mr and Mrs O's complaint haven't been addressed by Axis in its final response. It's confirmed it's raised a separate complaint on these issues. It has since agreed to pay an additional compensation award of £250 for these aspects of Mr and Mrs O's complaint.

I can see that our investigator revisited a compensation award when they became aware that the above three matters hadn't yet been investigated by Axis. They subsequently recommended that an overall compensation award of £150 (including the £75 previously offered) was fair to reflect the trouble and upset Mr and Mrs O had experienced. I understand that Mr and Mrs O have disagreed with this revised compensation offer and the new offer made by Axis.

In thinking about what a fair and reasonable compensation award would look like I've taken into account that the errors by Axis resulted in a delay of 3 weeks. I've then gone on to consider what consequences flowed from that 3-week delay.

The total compensatory award that's been offered by Axis and recommended our investigator is £400 - £150 from our investigator for the distress and inconvenience caused by delays and £250 from Axis for the loss of income, loss of enjoyment of a holiday and impact on health.

In the overall circumstances, I'm satisfied the overall £400 compensation award is a reasonable amount that fairly recognises the impact the errors, 3-week delay, additional time that was needed to communicate about this claim and the loss of enjoyment of a holiday had on Mr and Mrs O. It's in line with awards made by this service in comparable circumstances and it's what I would have told Axis to pay had an award not been suggested already.

I'm sorry to disappoint Mr and Mrs O but I haven't seen enough evidence to persuade me that a higher compensation award is merited. So, I'm not directing Axis to pay more than £400 in compensation.

Putting things right

To resolve this complaint, I'm directing Axis to pay Mr and Mrs O the loss of rental income from 5 March 2022 until 11 March 2022 inclusive together with compensation of £400 (including any compensation which may have previously been paid).

My final decision

My final decision is that I uphold this complaint in part. I'm directing AXIS Specialty Europe SE to resolve this complaint in the following way:

- Pay Mr and Mrs O the loss of rental income from 5 March 2022 until 11 March 2022 inclusive .
- Pay Mr and Mrs O £400 for the distress and inconvenience they experienced (inclusive of previous offers).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 20 February 2023.

Julie Mitchell
Ombudsman