

The complaint

Mr S is unhappy with AXA Insurance UK Plc's (AXA) handling and partial decline of a claim he made under his let property commercial insurance policy.

Where I've referred to AXA below, this also includes any actions or communications from agents acting on behalf of AXA during the claim.

What happened

Mr S owns a property which is let out to tenants, he insures the property with AXA. In July 2022 the tenants moved out and Mr S made a claim to AXA for damage to the render, porch and garage door.

AXA's position on the claim changed several times, and Mr S was given conflicting information about what would and wouldn't be covered.

AXA accepted their claim handling had been poor and offered compensation, along with settling the garage door part of the claim. They also paid towards the render, but not a sufficient amount for Mr S to carry out repairs. AXA didn't increase this when Mr S raised concerns as they said this part of the claim had been incorrectly accepted – but they didn't ask Mr S to return the settlement they'd paid.

Mr S was unhappy with the conflicting claims decisions from AXA, and with their overall handling of his claim. So, he approached this service.

Our investigator upheld the claim part of the complaint. She noted the garage part of the claim had been accepted, so she didn't need to reach a finding on this point. But she said AXA should have accepted the full render claim, so recommended they settle the quote for £4,800 (deducting the £1,271.02 already paid) with 8% simple interest added to the additional amount due. She also said AXA should accept the porch claim as AXA hadn't shown an exclusion applied and she proposed Mr S obtain three quotes, AXA pay the lowest, with 8% simple interest added.

The investigator didn't recommend the compensation be increased, as she thought what had already been paid by AXA was reasonable.

AXA partially accepted the investigators recommendations for the render. But they maintained the porch decision was correct. As an agreement couldn't be reached, the case has been passed to me to decide.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to respond to my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I'm minded to reach a different outcome to our investigator on part of the complaint, I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

I'll separately consider the overall service Mr S has received, along with each of the claimed areas of damage.

The overall service

Firstly, I should explain that I don't intend on commenting on every event which occurred throughout the claim. Instead, I'll focus on the key points which are important in me reaching my provisional decision. I don't mean this as a discourtesy, instead it reflects the informal nature of this service, and my role within it. But I'd like to reassure both parties that I've considered all the information they've provided when reaching my provisional decision.

AXA accepts the service they have provided fell short. And this is why they have offered compensation during the claim. From AXA's final responses, they have offered:

- 21 October 2022 - lack of communication, poor service and no call backs - £250 compensation. Declining the claim was incorrect - £250 compensation.*
- 16 January 2023 – they should have declined the claim from the outset. Since the settlement dispute the claim has since been declined. Inconvenience has been caused by asking Mr S to obtain quotes. £400 for the first complaint and £250 for the second. An additional £25 for the first complaint and £25 for the second due to not responding to the complaints in time.*

Our investigator thought AXA has paid a total of £700 across both complaints – and said this was fair. From my interpretation, I actually think it's £1,200 – but AXA's final response and file submissions aren't clear.

I'd invite AXA to clarify in response to my provisional decision whether they have in fact paid a total of £1,200 or £700 across the complaints.

But regardless of this, ultimately, I think for what happened and the confusion that has been caused by accepting, rejecting, partially accepting and making payment, and then rejecting Mr S' claims, £700 compensation is reasonable. So, it also follows that if it is in fact £1,200 that AXA has paid, I also think that's fair too.

So, as it stands, unless anything changes as a result of the responses to my provisional decision, I don't intend to direct AXA to increase the amount of compensation paid.

The garage door

Ultimately this part of the claim was accepted. It wasn't accepted from the outset, but this decision was later changed by AXA. And it's since been settled. As this point isn't in dispute, I don't need to make a decision on this part of the claim.

But I have taken into account what happened with this part of the claim when considering the claim handling and appropriate compensation above.

The render

This part of the claim was declined, then accepted and AXA made a payment of £1,271.02. Mr S was unhappy with the amount, and AXA then offered to increase this to £2,700. But before this was paid, the claim was then declined again. AXA didn't ask Mr S to return the £1,271.02 settlement they had already paid.

Our investigator said AXA should settle Mr S's quote of £4,800. And AXA agreed.

So, this point is no longer in dispute. AXA has confirmed the settlement amount as:

- Mr S' quote £4,800*
- Minus payment already made - £1,271.02*
- Minus excess under the policy - £250*
- Remainder to pay = £3,278.98*

AXA will also need to add 8% simple interest from the date the first payment was made, to the date of settlement of the remainder.

Whilst I don't need to make a decision on this point as AXA has already accepted this part of the claim following the investigators recommendations, I have taken into account AXA's handling of this part of the claim when considering the overall service and appropriate compensation above.

The porch

This part of the claim remains in dispute as AXA maintains this isn't covered under Mr S' policy.

There was extensive ivy growing on Mr S' property (the render claim was for accidental damage when the tenants removed the ivy). Mr S has made a claim for damage to his porch, which he says needs rebuilding.

AXA says the damage is gradual and occurred over time. They've relied on a general exclusion under Mr S' policy to decline the claim:

“General exclusions

These exclusions apply throughout your policy.

We will not pay for:

Gradual damage/deterioration/maintenance

Any loss or damage caused gradually or by wear and tear, depreciation, the effects of light or the atmosphere, mould, dry or wet rot or fungus and costs that arise from the normal use, maintenance and upkeep of your buildings and landlord’s contents.”

Our investigator said that it wasn’t reasonable for AXA to decline this part of the claim. She said the images taken didn’t show the inside of the porch. She said that whilst it may have been damaged gradually, Mr S wouldn’t have been aware of it, and reported it as soon as he was. So, she said AXA should accept this part of Mr S’ claim.

Whilst I appreciate it will come as a disappointment to Mr S, unless anything changes as a result of the responses to my provisional decision, I’m not minded to conclude AXA has acted unfairly by relying on this exclusion and declining this part of Mr S’ claim. I’ll explain why.

The claim was made for damage to the porch, and Mr S said the following repairs were required:

“In relation to the porch, which would include the removal of the existing porch and porch roof, disposal of the existing porch, installing a new porch, paint, painting the new porch, re-installing the light fitting inside the porch, re-installing the front porch door and locks, the verbal quote I received for the above a few months ago was £4,500 plus VAT.”

AXA’s claim agent said that the porch was suffering from historic damage, based on street view images of the property. Our investigator said it wasn’t reasonable to rely on this, as the internal damage couldn’t be seen. She also said there was no other images of the internal damage. She concluded AXA hadn’t sufficiently shown the damage was gradual or therefore that the exclusion applied.

However, AXA’s claim agent did actually take internal photos in September 2022. They also took photos of the outside of the porch and its roof. And this shows where the ivy had entered the porch structure. But internally it looks to be old ivy, whilst externally it appears to be alive and growing.

However, I don’t think relying in part on the external images is unreasonable here. AXA and Mr S have been sent images which I’ve considered when reaching my provisional decision.

Dating back to 2017, it can be seen that ivy was growing around the side of the porch and up the front of the main property. It appears to be the same in 2018. By 2020 the ivy looks to have grown significantly around the porch and started to spread out across the front of the property, and across the porch roof. In 2021 the ivy has been cut back considerably, leaving brown dead ivy and damaged render. But by 2022 when AXA inspected, the ivy had been allowed to grow back, and internally in the porch, old dead ivy is visible, presumably remnants from being cut back between 2018-2020.

So, it appears that over the years, ivy has been allowed to grow before being cut back and then allowed to re-grow. And this was all around the porch which is being claimed for. The fact that it has come through the roof internally, and remains dead in situ in 2022, indicates it has entered at some point in the past.

The porch roof has been identified as sagging. And if ivy has been allowed to grow and enter the porch over a number of years, it's likely this has allowed gradual damage to happen. The fact it's made it inside the porch means there would have been gaps created externally, and even when cut back, it's likely this would have allowed water ingress over time, and this along with ivy entering the porch supports why the roof likely would be sagging.

The images from the street view over the years and taken by AXA in 2022 also do appear to show the porch roof is historically in a poor condition too, appearing to deteriorate whilst being encapsulated by ivy over the years, from at least 2017. So, I think they show damage has, on balance, occurred gradually over time.

Furthermore, the notes indicate Mr S was aware of the potential for the ivy to cause damage, as he said that he had asked the tenants to maintain the ivy, and it was them doing so which led to the render damage. Mr S has said a letting agent was responsible for checking the property, but the file notes also indicate Mr S said they hadn't been doing this.

But regardless of whether the letting agent was responsible for managing the property and tenancy, but didn't then check, or the tenants didn't control the ivy either, the maintenance, upkeep and damage mitigation responsibility still ultimately rests with Mr S overall as it is his property. And given Mr S was aware of a potential issue and put the tenant on notice, it ultimately would have still been for him to ensure damage wasn't being caused to the porch. Just because there was a tenant living there, and a letting agent managing the tenancy, I don't think this absolves Mr S of any responsibility for preventing damage to his own property.

Having taken everything into account, on balance, I'm minded to conclude the images and all the information provided support the fact that the porch has been damaged gradually, which is excluded under Mr S' policy. So, unless anything changes as a result of the responses to my provisional decision, I don't intend to direct AXA to do anything further in relation to the porch."

Therefore, I was minded to direct AXA to pay Mr S the remainder of the render quote with 8% simple interest added, but I wasn't minded to direct them to do anything further.

The responses to my provisional decision

AXA responded and said they accepted the provisional decision. They didn't provide any further comments.

Mr S also responded, but he didn't agree with the provisional decision. He said the street view images don't show the ivy touching the porch until around ten months before the tenants moved out, and therefore deterioration didn't happen over time.

Mr S said there was no deterioration, and the damage was caused by the tenant negligently removing the dead ivy, which is also what caused the render damage which was accepted by AXA. He says the damage to the porch was caused by the same incident.

He also said that whilst the provisional decision referred to an image of the dead ivy, he'd also provided an image of when the ivy was alive. And he says that if ivy grows in a short time, it can't unsettle a porch, and therefore this shows it was the tenant removing the ivy that caused the damage.

In addition, Mr S disputes there is damage to the porch roof, and he says the images don't support that and there hasn't been any deterioration of the porch over time.

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.

And I've thought carefully about the provisional conclusions I reached, and the responses to it. Having done so, whilst I appreciate it will come as a disappointment to Mr S, my final decision remains the same as my provisional decision.

The garage claim has been accepted and settled by AXA, so I don't need to direct them to do anything in relation to this.

AXA needs to pay Mr S a further £3,278.98 for the remainder of the render repairs. AXA also needs to add 8% simple interest to this amount from when the first payment was made towards the render to the date of settlement of the remainder.

In my provisional decision, I asked AXA to clarify whether it had paid £700 or £1,200 compensation. But AXA didn't confirm this. However, as outlined in my provisional decision, if it was £700, I was satisfied this was already fair. So, if it was actually £1,200, it also follows that I think that's fair too. Therefore, I'm not going to direct AXA to pay any further compensation.

The porch

Mr S says none of the street view images show the ivy touching the porch until ten months before the tenant moved out. Whilst I note what Mr S says, I don't share the same view. I think the images support that it was in fact touching the porch, around the roof area, and progressively expanded and spread until being cut back in the 2021, before being allowed to regrow up to when AXA inspected in September 2022.

Mr S also disputes there is damage to the porch roof. However, I don't share his view on this either. I think the images show visible damage to the porch roof, and this can be seen in the street view images, visibly around the perimeter and to the flashing above. It does appear that the porch might have been painted at some point over the years, but it does appear to be that same porch which has been in situ throughout. I also think the images taken by AXA in 2022 do support the roof is suffering a level of wear and deterioration in particular around the edges, and patch appearance of the surface.

I can also confirm that I have seen Mr S' image of the alive ivy. And I've also seen images of the dead ivy. But ivy doesn't penetrate and enter a property in a matter of minutes or hours, it happens over time. And this would allow water to enter where the ivy had entered too. In the image Mr S has provided of the alive ivy, cracks can be seen around the paintwork and edges. And the images taken by AXA also show deterioration of the structure internally in similar areas.

I note that Mr S says the images show the alive ivy, and this wouldn't be able to unsettle a porch in a short period of time, and therefore this shows the tenant caused the damage when negligently removing the ivy. However, on balance, I don't think it's likely an entire porch would require full ground up replacement as a result of carelessly removing ivy as Mr S says, as a porch is a solid structure.

So, whilst I do share Mr S' view that a quick growth of ivy wouldn't unsettle a porch, I also don't think removing the ivy would either, given only a small amount actually entered the porch. And I think this supports, on balance, that there has been ongoing deterioration over time, which now means the full porch needs replacing.

I also note what Mr S said about the render being accepted. However, the render is a thin weatherproofing surface on the outside of the property, and it has clearly cracked and fallen in the areas of the ivy removal. Whereas the porch is a significant structure, which wouldn't have been susceptible to damage in the same way as render, so I don't think it's unreasonable to consider each independently of each other.

For the reasons outlined in my provisional decision and above, on balance, I'm persuaded its most likely damage has occurred over time. Therefore, I don't think AXA has acted unfairly by relying on the gradual damage and wear and tear exclusion in the policy to decline this part of Mr S' claim.

My final decision

It's my final decision that I uphold this complaint in part and direct AXA Insurance Plc to:

- Pay Mr S £3,278.98 which is the remainder due for the render repairs
- Add 8% simple interest* to this amount from when the first payment was made towards the render to the date of settlement of the remainder

* If AXA Insurance Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 October 2023.

Callum Milne
Ombudsman