

The complaint

X complains about AXA Insurance UK Plc's (AXA) handling of a subsidence claim made under a block insurance policy which covers a property they rent out. X says AXA's poor service and claim handling has resulted in financial losses, including loss of rental income.

Where I've referred to AXA below, this also includes any actions and communication by the various parties appointed by AXA to act on their behalf.

What happened

X is a leaseholder for one of two flats in a building, and they rent their property out. The other flat is owned by the freeholder of the building, who is also the policyholder of an insurance policy which covers the whole building – including X's leasehold flat. X isn't a policyholder but is noted on the policy as an interested party due to being a leaseholder, and the policy was taken out in part for their benefit.

Only X is party to this complaint, and it is about the alleged impact and financial losses incurred directly by them as a result of AXA's handling of the claim.

There was a tenant in X's flat and they moved out at the end of May 2020. In early June 2020 during an inspection before reletting the flat, X discovered the property had various cracks, so they notified the freeholder.

The freeholder contacted AXA to make a claim. It was determined to be subsidence, and monitoring was required, along with the removal of a local authority owned tree. The property was determined as stable in May 2022 and AXA could then move towards repairs.

X has been unhappy with AXA's handling of the claim throughout and raised several complaints. This includes X saying they were unable to let out the property, and X is holding AXA responsible for loss of rental income during the claim.

AXA issued several complaint responses in which they paid compensation. But AXA didn't agree to pay loss of rent as they don't think the property was uninhabitable.

X remains unhappy with AXA and approached this service.

One of our investigators looked into things but he didn't uphold the complaint. He thought AXA had acted fairly by not paying loss of rent, and he thought the compensation was already reasonable, so he didn't recommend this be increased.

X didn't agree so the case was passed to me to decide.

I issued a provisional decision. I wasn't minded to uphold the complaint, but for partly different reasons to the investigator. So, I issued a provisional decision, to give both parties an opportunity to comment on 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.

I'm issuing a provisional decision. I'm not minded to uphold the complaint, but there are some partly different reasons for not doing so. Therefore, I'm issuing a provisional decision, to give both parties an opportunity to comment on my initial findings, before reaching my final decision.

I'll start by outlining that I don't intend on commenting on everything that occurred, or every complaint point, concern, or issue that X has raised. Instead, I'll focus on what I think is important in reaching a decision which is fair and reasonable in all the circumstances. I don't mean this as a discourtesy to either party, 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.

The claim has been complex, with various parties involved, including X, the freeholder, AXA, loss adjusters, solicitors, the local authority, arborists, builders and others too.

Our investigator issued two lengthy assessments on X's complaint, and X provided extensive and significant amounts of comments and information in response to these. I don't intend on revisiting this all here in my provisional decision. Instead, I'll focus on the points which I think are relevant in reaching a fair and reasonable decision.

AXA's responses to X's complaints

Following a number of complaints being raised during the claim, AXA provided several final responses. I've summarised these below.

27 March 2021 final response – this was addressed to the freeholder and X jointly. This addressed the temporary repair to the door area which was preventing monitoring access. AXA said they appreciated the frustration this had caused. They also said they can see confusion was caused surrounding when repairs would be carried out. They awarded £200 compensation, but this was payable to the freeholder.

24 June 2021 final response – this addressed delays with the claim and communication issues. AXA paid £200 for this.

25 June 2021 final response – AXA apologised that X hadn't received a copy of the final response dated 27 March 2021. They said they agreed with the previous response, so the position remained unchanged. However, they recognised X wasn't awarded the compensation previously, so they paid this (£200), with an additional £50 added for what had happened.

9 September 2022 final response – This considered the declined loss of rent claim, and X being unhappy with the claim cover due to the freeholder (policyholder) being underinsured.

AXA said they didn't think the property was uninhabitable at any point, including when the local authority was due to bring the felled tree through X's property. The

response also commented on the extent of the temporary repairs that had been completed being sufficient, along with the back door being stuck. They also said that they thought the separate claim for a leak had been fairly declined, as it was due to age related wear and tear.

AXA also noted X was unhappy with the proportion of the claim they weren't including due to underinsurance, but as this was in relation to the freeholder and a separate complaint, they didn't comment on this further.

Additionally, AXA said they didn't think there had been a data protection breach, as the freeholder hadn't received the original final response of 27 March 2021. But AXA accepted some confusion had been caused.

However, AXA also recognised the first part of the complaint had been raised a considerable time beforehand, but hadn't been addressed by them, so they paid £600 compensation for this. And they paid £75 for the second part and confusion caused.

12 September 2022 final response – *this said that AXA was satisfied the previous complaint response of 9 September 2022 covered the points raised.*

So, across the claim and complaints, AXA accepted things had gone wrong at points and paid a total of £1,125 compensation.

X's complaints raised with this service

X said there were three main complaint points. I've summarised these below.

Complaint one – *X was given conflicting advice about who would be responsible for the temporary repairs and AXA caused delays. X also says the temporary repairs completed in October 2020 weren't adequate.*

Complaint two – *the back door to X's property became stuck in January 2021 and wasn't resolved by AXA, so X had to pay for this. There was also water ingress due to the temporary repairs not being adequate.*

Complaint three – *between April and July 2021 the local authority required the flat to be empty in order to remove the tree that had been felled.*

X says as a result of all of the above, they lost rental income and want AXA to pay this.

Jurisdiction

When the complaint was first brought to us, AXA said some of the complaints it had addressed had been brought to us too late and were therefore outside the jurisdiction of this service.

This is on the basis each of the final responses outlined X had six months from the date of that final response to bring the complaint to us, or AXA wouldn't give their permission for this service to consider matters which X had referred outside of these timescales.

The six-month timescale is one of the rules this service must follow to be able to consider complaints, the full rules are outlined in the Financial Conduct Authority handbook, available on their website.

X brought the complaints to this service on 22 December 2022. As outlined above, AXA issued final responses on 27 March 2021, 24 and 25 June 2021, and 9 and 22 September 2022.

So, of those final responses, only the final responses from September 2022 were brought to us within that six month period.

Our investigator said the main crux of the complaint was that X believed they were entitled to loss of rent payments along with other costs due to AXA's handling of matters.

AXA's final response of 22 September 2022 specifically dealt with the loss of rent claim, including reasons why it was declined. AXA also referred to previous points in the claim, which they say support their position. Our investigator said that whilst some of the individual complaint final responses were brought to this service too late, the 9 September 2022 final response revisited matters throughout the claim and the overall crux of the complaint. Therefore, he considered that this service was able to consider the overall claim and what had happened.

I'm minded to agree with what our investigator said here, and for the same reasons. AXA hasn't challenged this further, so from my understanding they have also agreed with this and are no longer raising a jurisdiction challenge, and they agree this service can look into what happened during the claim. Therefore, I'll now go on to consider the merits of the complaint.

Loss of rent and the policy terms

Our investigator entered into lengthy discussions around whether X was able to let the property or not, and by extension whether loss of rent should be covered. Whilst this is partly relevant, I think an important point wasn't actually considered – before getting to those arguments.

The policy terms say:

“What is covered

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- loss of rent due to You which You are unable to recover*
- additional costs of alternative accommodation, substantially the same as Your existing accommodation, which You have to pay for. while the Buildings cannot be lived in following loss or damage that is covered under Section One”*

To confirm, Section One includes subsidence, which is the relevant claimed event here.

So, this says the policy covers either loss of rent due which is unrecoverable, or the costs which have to be paid to live elsewhere during the claim.

The second point isn't relevant here as X didn't have to pay for them, or a tenant, to live elsewhere. I'll focus on point one as that's the most relevant here.

But there is an important point that doesn't seem to have been considered. The policy says loss of rent due to You. So, the starting point for a loss of rent claim to be covered is that the lost rent needs to have been due, and unrecoverable.

However, the tenant who was living at X's property moved out in May 2020. The cracking to the property was then discovered after, reported to the freeholder, and all that has happened since stems from the claim that was then made.

But loss of rent only applies for rent due and unrecoverable. But there wasn't a tenant in situ when the subsidence was discovered. So, there wasn't any rent due or unrecoverable at that point.

X says that a new tenant was lined up to move in shortly after the first tenant vacated. X says paperwork had been signed, but they then didn't move in:

"In June 2020 new tenants were supposed to move in – but cracking was noted to the building. Naturally they wanted to know the cause and what was going to happen before moving in."

However, there hasn't been any evidence provided, demonstrating a tenant was lined up and then withdrew. X says:

"The tenants signed up to rent my property at £1350 per calendar month. However, their data has been deleted because they did not move in due to the cracks and uncertainty of what was happening. Due to data protection, I didn't keep their personnel (sic) data any longer than necessary, for the purpose it was obtained."

Without any evidence to support there was a tenant who was due to move in, or that contracts had been drawn up to pay rent for a contracted period, how much and when this was, I'm not persuaded it's been demonstrated rent was due to X at that point. And in the absence of any rent being due, that part of the policy doesn't become operative by strict application of the terms.

However, X also argues that due to AXA's handling of matters, they were unable to let the property out either, so they say AXA has caused them to lose rent, by not being able to let out the property or obtain a tenant. I'll consider this separately.

Did AXA's claim handling result in a loss of rental income?

X argues that at set points, due to AXA's handling of matters, they were unable to let the property out. I've focussed on the points I consider most relevant.

Structural stability

X says that after they reported the issue to the freeholder in June 2020, they didn't know anything further until September 2020 when the freeholder left a copy of the inspection report carried out, which didn't determine any structural safety issues.

X argues that until that point, they were concerned about the structural safety of the property, so they couldn't let out the property. And therefore, they lost rent.

Whilst I note that the report wasn't provided directly to X following completion, it was the freeholder's policy. They logged the claim, and they liaised with AXA. Whilst X

was an interested party noted on the insurance policy, without involvement in the claim directly at that point, I don't think AXA acted unreasonably by not sending any reports directly to X.

Furthermore, I can't see that X contacted AXA directly about any concerns they had during this time either. I recognise X contacted the freeholder, but I can't hold AXA responsible for any updates the freeholder may or may not have given. And in any event, a tenant wasn't in the property during this time, so rent wasn't due.

Temporary works

AXA agreed to do temporary works to the cracking. I understand that there was some confusion who would be responsible for the cost of this. This was later resolved, and X agreed for these works to be completed. This was with a view to letting the property out, as by that point, X was aware there were no structural safety issues.

AXA completed temporary works in October 2020, which included filling the cracks. X says these works weren't completed sufficiently. This seems to be on the basis that redecoration wasn't included, and it was solely to fill the cracks. X later arranged for the walls to be sanded and painted, but says the property couldn't be let due to AXA's unsatisfactory repairs.

However, these works were only temporary measures. Whilst I can appreciate why X would have wanted the property to be fully redecorated, given the property was still in subsidence mitigation stages, there was a high likelihood the cracks would reappear whilst the property was still stabilising. This is why temporary works would be carried out, and final works including redecoration would be in the repair stages after the property was stable.

I wouldn't expect AXA to carry out full redecoration at that early stage, as they would need to keep repeating this whilst the property was stabilised as cracks would likely reappear. AXA did offer to carry out redecoration works outside normal temporary works, along with a contribution if required from X, but this would have been instead of them doing them at the end – which is all they would have been responsible for.

I don't think AXA acted unreasonably here. And the property was part way into a subsidence damage claim. Therefore, whilst cosmetically the decoration wouldn't have been to the standard of a property without issues, that is to be expected during a subsidence claim. I accept that this would make the property less desirable to a tenant, but equally moving into a property which is going through a subsidence claim, with likelihood of cracks reappearing is equally not as desirable, even if the decoration is fully redone. I don't think AXA did anything wrong here or that they are responsible for the loss of rent during this time.

The stuck door

The back door became stuck in January 2021 and X reported this to AXA. X also says that due to the inadequacy of the works, the property suffered water ingress. X says that AXA failed to resolve this in a timely manner, and this was a health and safety issue, which resulted in the property not being able to be let out. As a result, X says AXA is responsible for the loss of rent here.

Ultimately X paid for the door to be planed, which enabled it to be freed and openable. AXA reimbursed this cost, albeit several months later.

However, I don't think this point is quite as straightforward as X alleges here – simply that AXA failed to act in a timely manner.

Firstly, X argues that this was a health and safety issue due to fire safety, which means the property was uninhabitable. However, it also appears from the file notes of a call with X at the time that they may have had a slightly different view then:

“Discussion: explained the reason for the door being classed as a fire door, (name) dispute this because windows are available for jumping through.”

I can't establish what was discussed with certainty either way, as it is a note of a call and AXA's interpretation of that call, rather than emails verbatim directly between the two parties.

But regardless of this, it does appear that AXA arranged for one of their contractors to attend and X was under the impression they would fix the door at that point. But X was also told they may need to scope for the works. The contractors then concluded it was a fire door and couldn't just be planed or fixed in that way. Instead, they said the door needed replacing.

However, due to the separate issue of underinsurance with the freeholder (and policyholder), which X wasn't party to, this meant a contribution was required from the freeholder to replace the door. But X says the freeholder didn't want to pay a contribution at that stage. X subsequently arranged for the door to be planed – and AXA reimbursed this, albeit some time later.

So, I don't think this is solely the fault of AXA. They aren't acting unreasonably in relying on their contractor's opinion that the door needs replacing and given it's a fire door, I wouldn't expect AXA to ignore this and arrange works against guidance. And given the door was needing replacing, but due to underinsurance required a contribution which the freeholder didn't want to pay, I don't think there is much more that AXA could have done here.

I also need to take into account that the property wasn't tenanted before the door became stuck and wasn't after it was freed either. And I don't think AXA is solely responsible for delays after being reported. And any water ingress was intermittent, but a tenant wasn't in the property during that time either. So, I'm not minded to direct AXA to pay X loss of rent on this basis.

Local authority

X also says the local authority insisted the property be vacant to remove the tree that was owned by them through X's property. So, X says they couldn't rent the property out during that time, so loss of rent should be payable.

Firstly, I haven't seen any evidence from the local authority that shows they said the property needed to be untenanted. Whilst X has provided a telephone number for the local authority and says we can ask them for further information around the reasons because X doesn't know, it's not our role to obtain the information on which X seeks to rely to support their argument.

So, I need to consider this argument on the information I do have. The tree was removed in the space of a single day, through X's property. I can understand why a local authority may require a property to be empty on the day of the tree removal. But had tenants of been in the property, whilst inconvenient, I don't think it's an unreasonable ask to leave the property empty for a day. Or if it was, then X may have been able to explore the policy cover for alternative accommodation.

But I don't think, on balance, X would be expected to leave a property empty and untenanted for several months in the lead up to the one-day removal of a tree. And in any event, evidence hasn't been provided to support this was a requirement by the local authority.

So, by strict application of the terms loss of rent isn't covered, as rent wasn't due for this period. And I'm not persuaded the property couldn't be let out solely as a result of this either.

Therefore, I don't intend on directing AXA to pay for the equivalent rental income for this period either.

Furthermore, whilst focussing on some of the main arguments above, I've also not seen any evidence to support that X actually attempted to rent out the property at any point during the claim. I also can't see that X tried to mitigate any issues with the fact the property was undergoing a subsidence claim to try to secure a tenant, such as by advertising at a lower amount, for example, either.

Our investigator also asked if X tried to let the property out during the claim and whether they consulted with any property professionals who advised on the prospects of being able to. X said:

"Due to the pandemic, I did video viewings and most people wanted to know what the yellow stickers (level monitoring stickers) were and what was going on with the crack above the rear door and water ingress. After explaining the property is being monitored for subsidence and the crack and ingress was going to be sorted, they were still not interested.

I self manage the property, always have done and never had a problem quickly finding a tenant."

X also said separately that they'd have been wasting their time doing viewings due to the condition of the property.

I don't think it's been shown that either due to AXA's handling of matters, or the local authority, that X's property couldn't be let out. And I haven't been provided with any evidence to support that X attempted to do so either. And I don't agree the property was uninhabitable or AXA's actions prevented the property being able to be let (or attempted to be let). So, I'm not minded to direct AXA to pay loss of rent on this basis.

Even if X did attempt to let the property out at any of the points in the claim, this would always have taken time for the new tenant to move in and start paying rent. Contracts would need to be drawn up and agreed, referencing and all the associated administration would also have been required too. And the tenant would have needed to be satisfied the property was undergoing a continued subsidence claim, and the rental price was reasonable for the inconvenience and disruption associated with that too.

But given the fact I've not been provided with anything which supports renting the property was attempted, I can't conclude on balance that rent was due. And as I say, there was no rent due at the time the subsidence was reported either, so this part of the policy cover wouldn't apply. And I'm not persuaded that X has shown either that the property was uninhabitable and couldn't be let (for the various reasons outlined above), or that they attempted to rent the property out but were unable to do so. Therefore, I don't think it would be reasonable to direct AXA to pay loss of rent outside of the strict application of the terms either.

The overall service and other points

AXA accepts the service fell short and this is why they paid a total of £1,125 compensation. I don't intend to revisit each point where they did fall short, but I've mentioned some of these where I've summarised the final responses above, and I do agree the claim has been prolonged and taken time.

However, subsidence claims are complex and lengthy in nature even where nothing goes wrong, and no avoidable delays occur. It was further complicated here by X being an interested party, whose leasehold property was impacted, but X wasn't the policyholder, and the freeholder was instead. Both parties communicated with AXA separately about different points, and there were many different parties involved on behalf of AXA too, which will inevitably complicate matters.

But X also says that AXA has caused the claim to be longer than necessary, for example, by carrying out monitoring for an extended period. And X says this could have been concluded sooner on the basis the local authority said they would only need monitoring for a specific period in consideration of the tree removal, but AXA wanted to monitor for a further six months, and this also includes after the tree was removed.

Whilst I recognise what X says here, it isn't for the local authority to decide how long AXA, as the insurer, needs to monitor the property for. Instead, AXA need to be satisfied the property is stable in order to carry out a lasting and effective repair and it's for them to decide at what point they have enough evidence to determine that. If the property isn't stabilised before permanent repairs are carried out and further movement occurs, then further repairs would be required, causing additional inconvenience and costs, which could be avoided if sufficient monitoring was carried out.

I do also need to note that from my understanding, X decided to remove and decorate over the monitoring studs which were required to be able to conclude the property was stable. This was at a point where monitoring was nearing completion, but additional readings were still required and X removing and decorating over these impacted things.

And I also note that AXA was unable to gain access on the basis X was self-isolating and wouldn't agree to further visits until AXA had provided details and qualifications of parties involved in the claim. And AXA was also awaiting payment of the excess which hadn't been paid.

So, whilst AXA has caused some delays, and there are elements of poor claim handling, I can't hold them solely responsible for the overall timescale of the claim and everything that happened throughout. And overall, I'm satisfied AXA has provided a reasonable level of compensation (totalling £1,125), so I'm not intending to direct them to increase this.

X has also said they are unhappy with AXA's contractor's diagnosis of the cause of a water leak, as they suggested obtaining expert reports and replacing the flat roof, but this wasn't necessary. As a result, X says they have been subjected to intellectual abuse. However, the suggestion was made on the basis it was thought to be an issue at the time, so suggestions were made accordingly, but in any event X didn't pay for a report or roof replacement so they haven't been financially impacted as a result. And overall, I'm satisfied AXA has already paid a reasonable amount of compensation across the claim and complaints.

X says they needed to have treatment and tests from a medical practitioner. X has provided invoices of the costs incurred.

However, for me to recommend AXA pay for medical treatment costs, I'd needed to be persuaded this treatment was prescribed or directed by a medical professional, solely due to AXA's handling of matters, with evidence to support that. But nothing has been provided to show this. In the absence of evidence demonstrating this, I'm not minded to direct AXA to reimburse those costs."

Therefore, for the reasons outlined above, I wasn't minded to uphold the complaint.

The responses to my provisional decision

AXA didn't respond to the provisional decision by the deadline.

X responded to the provisional decision but they didn't agree. In response to the point about decorating over the monitoring studs and this impacting things, X said that AXA didn't specify a timescale in which they needed to remain in situ. X also said the property needed to be decorated as it had been vacant for some time, and because of water ingress and the tree being removed through the property.

In response to the point about AXA not being able to gain access, X said this hasn't been written in the context of the situation. X also said if any information has been provided by the freeholder, this should be discounted. X also said there is no mention of what they say are inaccurate file notes.

X said that I was correct in outlining it wasn't their policy and was instead the freeholders. So, they said the excess was the responsibility of the freeholder and they weren't sure why this was being mentioned. X also said they weren't provided with a copy of the original report, and this was sent to the freeholder instead, but AXA should have kept them updated.

X also said the utility and council tax standing charges haven't been considered.

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 my provisional decision. Having done so, and whilst I appreciate it'll come as a disappointment to X, my final decision remains the same as my provisional decision.

I note what X says about needing to decorate the property, decorating over the monitoring studs, AXA being unable to obtain access, and AXA needing payment of the excess. These points were mentioned in the provisional decision as some of the examples why I wasn't persuaded AXA were *solely* responsible for the duration the claim took. And for issues and delays AXA were responsible for, I was minded to conclude the compensation already paid was reasonable. And my final decision on the compensation remains the same, that AXA has already paid sufficient compensation so I'm not going to direct them to increase it.

X says the freeholder was responsible for paying the excess, but they were asked for half. Whilst I note what X says here, information X provided also outlined the freeholder wasn't willing to pay this at the time. I can't hold AXA responsible if the freeholder was unwilling to pay the excess. I already considered that AXA sent the freeholder a copy of the report in my provisional decision, and my thoughts on that point remain the same as I outlined, and for the same reasons. And as I also mentioned, I can't hold AXA responsible for any information the freeholder did or didn't pass on to X at that time.

X has also said there was no mention of what they say were inaccurate file notes. This relates to X disagreeing with the investigator's findings, and the reason they reached the outcome they did, which was based on alleged contact with X about the stuck back door. However, these notes of alleged contact weren't relevant in me reaching my provisional decision, as I didn't rely on those notes specifically like our investigator did. Instead, the reasons for the outcome I reached are outlined here, and those notes/alleged contact attempts with X do not form part of that reasoning.

X also said the utility standing charges and council tax have been ignored. However, I don't think loss of rent is covered under the terms or needs to be paid outside policy cover for the reasons outlined in my provisional decision, and I also don't consider these charges to be payable by AXA on the same basis.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 10 November 2023.

Callum Milne
Ombudsman