

The complaint

Mr and Mrs B have complained about Mrs B's let property insurer AXA insurance UK Plc in relation to a claim she made after the property she owns was damaged when persons unknown attempted to convert it into a cannabis factory.

What happened

Mrs B owns a property which she insures with AXA. The property was let to tenants in November 2021 by virtue of a tenancy agreement between the tenant and Mr B. Rent was agreed but never received. In January 2022 the letting agent visited the property and found the conversion work. A damage claim was made to AXA which it accepted.

There were reportedly some initial delays with the claim – which AXA responded to in a final response letter dated 13 May 2022. The claim continued and by this time AXA was also considering a loss of rent claim. AXA agreed to make interim payments of loss of rent. In May and August 2022 it paid two sums totalling £32,400, equating to nine months lost rent. As AXA's claim review continued it began to question the loss of rent and also became concerned that not all the damage at the property had been caused by the conversion, also that the property was largely under insured.

AXA noted the property was insured for a reinstatement, or rebuild, sum of £408,000, but its loss adjuster said that would more likely cost £1.1 million (being a large 3 storey property, plus cellar). AXA felt it had some liability for the damage claim, but that this was reasonably limited given the non-incident related damage and the underinsurance. Regarding loss of rent, AXA noted the tenancy agreement was not in Mrs B's name. It said it would pay nothing further and it would attribute the previous payment made for lost rent to the buildings damage claim. AXA, giving some benefit of doubt to Mrs B regarding some repairs, felt the total cost for repair of the conversion damage was £91,316 plus VAT. Noting the rebuild values, it said Mrs B had only been 37% insured and applying that to the reinstatement cost, gave it liability for £40,659.55. To that sum AXA applied the payments made previously for lost rent (£32,400), deducting them, leaving a total of £8,259.55. It said this was what it would pay to Mrs B in settlement of her buildings damage claim. Mr and Mrs B were unhappy and complained.

Mr and Mrs B felt the rebuild value used by AXA was flawed, and presented their own. They also felt AXA had taken too long to answer their claim – its settlement offer and explanation only coming in January 2023. AXA, for its part, accepted there had been some delays. It apologised and paid a total of £500 compensation. It wasn't minded to change its view on the loss of rent issue, under insurance or what it would pay in settlement of the damage claim. Although it did advise Mr and Mrs B that if they presented a detailed, rebuild cost, that would be considered. Mr and Mrs B complained to the Financial Ombudsman Service.

Our Investigator felt there was no provision for loss of rent on the policy and that AXA had not been unfair when applying an average of 37% to the claim settlement. He felt the compensation AXA had paid for upset caused by delays was fair.

Mr and Mrs B were unhappy. They pointed out AXA had paid the loss of rent claim initially. They noted AXA had used certain industry standards to calculate the rebuild cost, but that the policy doesn't say only these standards can be used. Mr and Mrs B said their surveyor had put the rebuild cost (£450,000 to £550,000) and this hadn't been mentioned by our Investigator. Finally they felt that the compensation paid didn't fairly reflect the more than twelve month period of delays caused by AXA.

Our Investigator provided some further clarification to Mr and Mrs B. And they provided further evidence from their surveyor regarding his rebuild calculation. This was shared with AXA. AXA maintained that its value most accurately reflected the likely rebuild value for the property. The complaint was referred to me for an Ombudsman's consideration.

I was minded to uphold the complaint in part, regarding loss of rent. But I was also mindful that I couldn't reasonably take into account any upset Mr B had been caused. So I issued a provisional decision to explain my views to both parties. My provisional findings were:

"Mr B

Mr B does not own the house and is not named on the policy of insurance with AXA. However, he is in place as the landlord of the property, which Mrs B owns. And the policy does offer cover for loss of rent. So, arguably, I can see that Mrs B likely believed the policy was taken out for Mr B's benefit as well as her own. But Mr B is not AXA's customer and according to the policy terms, the policy isn't actually there to benefit him. That is because the policy offers loss of rent cover to the policyholder only, which is Mrs B. So whilst Mrs B believed the policy was for Mr B's benefit as well as hers, she was wrong in that respect. And as AXA has no link to providing a benefit to Mr B, I can't reasonably find it liable for any upset Mr B has suffered on account of any failings by AXA during this claim.

Loss of rent

As I've noted above, the policy does not cover Mr B's interests as landlord. Rather it offers to pay its policyholder rent they've lost. As Mrs B was not owed rent by the tenants, because she was not the landlord, strictly speaking, she has no loss for AXA to cover. In that respect I can see why AXA wouldn't have wanted to pay a loss of rent claim.

The problem for AXA though is that that is exactly what it did – whilst having the benefit of both the knowledge of the scope of the policy and the tenancy agreement naming Mr B as landlord. It made payments whilst knowing all of that in May and August 2022. It then noted in August that Mr B was the landlord and began to have concerns about settling the claim. But it was January 2023 before it came to its final view in this respect and shared that detail with Mrs B. At that time it was satisfied it had made a mistake in paying that sum and explained it had decided to off-set the payment against the outstanding damage claim settlement. Maybe if AXA had done that sooner that might have been seen as not unreasonable. However, Mrs B accepted the money paid by AXA in good faith and used the sum to pay for necessary bills – bills which she's explained are otherwise usually covered by the rental income from the property. So I think AXA acted unfairly when it looked to recoup that mistaken outlay from Mrs B by off-setting the sum of £32,400 from the damage claim settlement. When it settles the claim (the circa £8,000 offered has not, as I understand it, yet been paid) it will not be able to make a deduction for the loss of rent outlay.

*I know Mr and Mrs B would like further payments to be made by AXA regarding rent lost during the remainder of 2022 and since. But, as I noted at the start of this section, Mrs B is the policyholder but not the landlord of the property. The policy offers to pay Mrs B for any rental income **she** loses, where **her** business is affected by damage covered under the policy. And Mrs B, because she is not the landlord, has not suffered any effect on her*

business causing lost rental income. So it wouldn't be reasonable for me to make AXA make further payments to Mrs B to account for rental income Mr B lost.

Under insurance

Mrs B's policy includes a declared value for the property. The policy defines "declared value" as "Your assessment of the cost of reinstatement of the buildings...". The terms of the policy also say that if the declared value stated on the policy is less than the reinstatement (rebuild) sum, any claim will be settled proportionately in line with that percentage shortfall. So if a policy has a declared value of £50,000 but it would cost £100,000 to rebuild it, then any claim would be settled at 50% of the repair cost. That's not an unreasonable term and its common to many policies like this one. So if AXA can show that the declared value on Mrs B's policy fell short of the rebuild sum, it can fairly settle the claim proportionately.

The declared value set out on Mrs B's policy was £408,157. AXA says the rebuild cost is £1.1 million. Mr B has presented two documents from a surveyor disputing AXA's sum. So I've compared the evidence from both parties.

AXA's sum is based on certain industry standard costs. It's not unreasonable for it to have used those and they, in my experience, are the most common set of costs used. I bear in mind though that Mr B's surveyor has said they can sometimes provide skewed data as they are based on large contractor costs – so might not reflect the savings available of using local, independent contractors. But, having noted this argument, I don't think any further discussion of the issue of contractor costings is necessary here for me to determine which valuation can fairly be relied upon as a reasonable declared value for Mrs B's property.

I note this is a substantial property, comprising a cellar and three main living floors, which in turn comprise five reception rooms, thirteen bedrooms and five bathrooms. When Mr B's surveyor first gave a rebuild sum for the property, he estimated the property's area to be 320-350m². He did not make reference to there being a cellar. Whilst talking about the property's area in metres, he referred to using a sum of £140 per square foot to create an estimated cost for the "reconstruction of the dwelling" of £450,00 to £550,000. I think mixing the forms of measurement is not helpful, and it's unusual for a valuation like to this be so generic – not giving any detail of room sizes, or any breakdown for the cost. Nor any costs for outside areas. So I can see why AXA wasn't minded to think this should reasonably change its view on underinsurance.

An update from that surveyor was provided. The surveyor explained that only estimated measurements were used initially – but it was accepted that 470m² is an accurate measure for the property's area. The update shows costs for the cellar are included. Provisional sums are detailed for the kitchen and bathrooms – with the cost for reinstating each bathroom being provisionally set at £5,000. The total for rebuilding the house is given as £508,500. The valuation suggests that external areas of the property wouldn't ever need to be rebuilt – but in the instance that is necessary a flat sum of £150,000 is allowed for them. Giving an overall rebuild value of £658,500. With an added contingency of three percent, which is nearly £20,000. Even taking this at face value – Mrs B's declared value was some £408,000 which is around £270,000 less than that set out by Mr B's surveyor.

I also struggle to see how an estimated maximum of £550,000 for rebuild of the house alone, based on the property's area being, at most, 350m² becomes a definite value of £508,500 when using the significantly larger figure of 470m² for the area. The sums allowed for the bathrooms also seem low to me and there is no breakdown given for all of the outside elements of the property which are given a blanket value of £150,000. The valuation does not give any detail as to things like the cost of debris removal, professional fees or VAT. Both of which the policy says should form part of the declared value.

Turning to AXA's valuation; this records the area of the main property as 473m², and adds the floor area – 40m² – for the cellar. So this would also make me question how Mr B's surveyor could include the cellar in the second valuation, but generate a value which is less than that given in the first valuation (based on a much smaller area size). Especially when noting the £150,000 for exterior costs. AXA's valuation, as mentioned, was based on an industry standard calculation. The values used as part of that calculation, as I understand it, factor in costs such as demolition and professional fees which are subject to VAT. On balance, particularly given the concerns I've highlighted with Mr B's surveyor's valuation, I find I'm more persuaded by this valuation from AXA.

AXA's valuation shows the reasonable declared value for Mrs B's property as £1,110,000, with the declared value on the policy being £408,157. The policy declared value then is 37% of what it should be. Given the policy terms I find it fair and reasonable for AXA to have applied that percentage against its claim settlement.

Damage reinstatement cost

Mr B has obtained several costs to reinstate the property. One of which was £103,630, and not subject to VAT. AXA said it had calculated what was needed for reinstating the property in respect of likely damage caused by the alterations it was covering under the policy. It felt the reasonable sum in that respect was £91,316 plus VAT. It felt the property had likely been in a dilapidated state before the alterations. AXA noted that was somewhat of a subjective view – but felt it was supported by photos of the property.

I've reviewed the photos and note that AXA has accepted that the view regarding "dilapidation" is subjective. And whilst it says it thinks that is supported by photos, it hasn't said what "dilapidations" are shown in the photos. Which, to me, adds, a further degree of subjectivity, rather than substantiating the reasonableness of the view.

I note there are some photos with some descriptions. One shows some peeling paint and a little mould around a window and refers to 'some bathrooms being in a poor pre-loss state'. But there is also a photo of one bathroom which seems in good condition. I don't see any rooms which are, for example, plagued with mould or show décor in general disrepair. I don't see any holes in the roof, or water damage, and all the windows at the property appear to be intact. I'm not persuaded from this that the property was dilapidated.

Even were I persuaded in that respect, AXA could only reasonably make deductions for dilapidations if it could differentiate between dilapidation damage and tenant's damage. And I note that in a further report one of AXA's loss adjusters notes that differentiating between the types of damage would be difficult. I note AXA has then determined the cost for reinstating the tenant's damage, with some benefit of doubt factored in, but it hasn't explained how it's been able to do that. Or even clearly stated what it is discounting as dilapidation damage. So I'm not persuaded that AXA has reasonably shown its cost for reinstatement of £91,316, plus VAT, before any deductions for underinsurance is applied, is fair and reasonable.

However, the sum of £103,630, is only representative of one of the estimates presented by Mr B to AXA. He also presented two others which are significantly lower, less even than AXA's figure – £75,000 and £87,250, both of which AXA says are subject to VAT. Usually when a policyholder presents estimates an insurer will pay in-line with the one returning the lowest price (where there is no dispute about the work detailed). And we'll often find that is fair. So even if Mr B's estimates contain more work than AXA's sum, because AXA's sum is unfairly limited due to it making deductions for dilapidations, I can't reasonably make it adjust its sum upwards. In short, the sum used by AXA is well within the range of prices Mr B has

asked it to base its claim settlement on, and actually exceeds the average of those costs. Therefore, whilst I have concerns as stated, about the methodology of how AXA came to a figure of £91,316 plus VAT – taking everything into account, I do think that's a fair sum to base its claim settlement on.

To settle the claim

As stated, I'm satisfied that £91,316 plus VAT is a fair and reasonable base for the claim settlement. I'm also satisfied, as also explained, that AXA can apply an average calculation to that figure. Doing so gives a sum of £40,659.55. I've explained above that AXA can't fairly and reasonably deduct from that in order to recoup the loss of rent payment it made. And whilst it previously offered the reduced sum of £8,259.55, I understand this was never paid. So that means AXA should now pay Mrs B £40,659.55, plus interest applied from the date of loss until settlement is made. In the instance that the reduced sum was paid to Mrs B, AXA should pay an amount equivalent to interest on the total sum from the date of loss until the reduced amount was paid, along with interest applied on the difference outstanding from that date until that outstanding sum is paid.

Claim handling

I think this claim has been very protracted. I think it would always have taken a fair while to progress given some of the complexities involved. For example, there was a possibility at the outset that the property might have been used as a house of multiple occupancy but that AXA hadn't been advised of that. I think AXA reasonably needed to investigate that, and I can see that might have taken a little while to consider. But having reviewed both AXA's and its loss adjuster's file I can't see any real justification for AXA's claim decision to have continued to be so protracted beyond May and June 2022, by which point it had not only reviewed the tenancy agreement but also obtained its rebuild valuation. I think it should have taken no more than a few months at that point, for a carefully managed claim to have progressed to decision, and I say that even allowing for legal advice to be sought.

Mrs B then has suffered through about six months of delay. I accept that would be frustrating. I also think AXA's unreasonably low settlement offer was a cause for worry for Mrs B. But whilst saying that I bear in mind that she was upset not just about the deduction made for lost rent, but also regarding the reinstatement cost and the adjustment for underinsurance – both of which I've found were fair and reasonable. AXA has paid £500 compensation for upset caused during this period. I'm satisfied that is fair and reasonable and in line with the guidance used by the service. I don't intend to make it pay anything more in this respect."

Mr and Mrs B said they were generally happy with my findings. But said they felt, regarding the property valuation, there was no good reason to prefer one of the expert reports over the other. So they asked I review my findings to perhaps use the values from both reports to create a mean figure to factor into the reasonable repair calculation. Mr B said there's a lot of debate about how far a policyholder can go to provide an accurate rebuild cost when arranging insurance.

AXA said it was dissatisfied with my view that it was not entitled to off-set the loss of rent payment against the settlement for repair of the property. It asked to see the proof presented by Mr and Mrs B to show the money it had paid had been spent (which were shared with it). AXA said that as I accepted that the strict interpretation of the policy wording did not afford Mrs B the benefit of the sums, it would seem unfair for her to be able to keep them – that to allow that punishes it for it making payments in good faith whilst its claim enquiries were ongoing. It said it had made the loss of rent payments only because it had been told rent had

been received from the tenants, which it later found out was not the case. AXA said it would hesitate in the future in making payments until all its enquiries were complete.

AXA further argued that the loss of rent payments were credited to Mrs B's account without any reference to them being for loss of rent. It said that whilst it sent letters confirming payments had been made, to Mrs B and her broker (who was pursuing the claim on her behalf) the content of the letters did not attribute the money to any particular aspect of the claim. It said that as no rent had been paid by these tenants, and it hadn't seen income coming in before this tenancy – Mrs B couldn't reasonably have expected to use rental income to pay bills.

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.

I note Mr B's concern about what can reasonably be done when a policy is arranged. But this decision focuses on the claim that has occurred during the life of the policy and the terms which apply affecting AXA's reasonable settlement of the same.

I also note that Mr and Mrs B think there is no good reason to prefer one of the expert reports over the other. But I explained provisionally why I felt AXA's expert's report was most persuasive. I remain of the view it was fair and reasonable for AXA to rely on those findings, therefore, concluding the property was underinsured and settling the claim pro-rata based on the valuation returned by its expert.

I can understand AXA's concern regarding payments made in good faith. The Financial Ombudsman Service certainly encourages insurers to act pragmatically and fairly during the course of claims. But here, and regardless of what AXA was told about rent having been received before the loss, AXA had the tenancy agreement to hand, in fact had reviewed it when the decision was made to pay Mrs B in accordance with a loss of rent claim. And whilst the bank payment and letters sent may not have specified under what head of claim the payment was being made – the emails between the loss adjuster and Mrs B's broker were very specific in that respect. As such I think it was reasonable for Mrs B to think AXA had considered, accepted and settled, on an interim basis, her loss of rent claim. She's satisfied me that those sums were then spent. I remain of the view it was then unfair and unreasonable for AXA to seek to off-set that settlement.

Having considered the replies from the parties to my provisional decision, I've not been persuaded to change my views already stated. My provisional findings, along with my further comments here, are now the findings of this, my final decision.

Putting things right

I require AXA to pay Mrs B:

- £40,659.55[^], plus interest* applied from the date of loss until settlement is made.

[^]Unless part of this sum has been paid already, in which case the difference remaining will need to be paid, along with payments made to account for interest applied to each sum. The parties should advise in response to this provisional decision whether it's believed the whole or a part amount should be paid.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require AXA to take off tax from this interest. If asked, it must give Mrs B a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require AXA insurance UK Plc to provide the redress set out above at "Putting things right".

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

Fiona Robinson
Ombudsman