

The complaint

Mr K is unhappy with AXA Insurance UK Plc's handling of a claim he made under his commercial (landlord's) insurance policy, following an ingress of water.

What happened

The details of this complaint are well known to both parties, so I will not repeat them in full detail here. But to briefly summarise, Mr K is the landlord of a building comprised of a commercial unit and some flats. A claim was made for water damage to the commercial unit, and AXA appointed contractors to repair the damage in January 2023.

AXA's appointed contractor mistakenly began decoration works in one of the flats, instead of the commercial unit. After the mistake was realised, the contractor abandoned the work in the flat and completed the work in the commercial unit.

Mr K complains that his tenant was left with an incorrectly, half-decorated kitchen, and that neither AXA nor its agents contacted him to make him aware of the mistake or to offer to put it right. He says his tenant moved out because of this issue, causing a loss of rent, and that he had to pay out of his own pocket to put things right. He wants AXA to cover his losses.

AXA says it wasn't made aware of the issue until Mr K complained in March 2023. It says Mr K was aware of the issue from the outset as it was him who stopped the contractor painting the wrong flat. It also says Mr K signed a satisfaction note for the works to the commercial unit. However, AXA accepts a mistake was made and has offered to have the contractor come out to put things right free of charge. It also offered Mr K £50 for the distress and inconvenience caused by its error.

Our investigator didn't think Mr K's claim should be upheld. She said AXA wasn't made aware of the issue until Mr K complained and that once aware, it had offered reasonable compensation. She didn't think AXA needed to reimburse Mr K's costs, as he decided to carry out the repairs outside of his insurance contract.

Mr K didn't accept our investigator's findings. So, as no agreement had been reached, the complaint was been passed to me to decide.

I was minded to reach a different outcome to our investigator. So I issued a provisional decision setting out my thoughts and inviting further comments or evidence before I reached my final decision. Here's what I said:

"What I've provisionally 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.

Having done so, I'm minded to reach a different outcome to our investigator. So, I'm issuing a provisional decision, to give the parties the opportunity to respond, before I reach my final decision.

Notification and the cost of repairs

Mr K complains that he wasn't made aware of the issue by AXA or its agents, and so couldn't have taken any action to put things right for his tenant. But AXA says he was aware and signed a satisfaction note.

I've seen a copy of the satisfaction note, and can confirm that this was signed by someone other than Mr K. I queried this person's name with Mr K, and he confirmed that he is the tenant of the commercial unit. Based on this, and considering the evidence of all the correspondence between the parties, I'm persuaded that Mr K was not made aware of the issue at the time, and so couldn't have acted any sooner to notify or complain to AXA.

AXA says it wasn't made aware of the issue until Mr K raised his complaint, and I have no reason to doubt what it says here. But unlike Mr K's situation, AXA's contractor was its agent, as far as the contract of insurance is concerned, and therefore was an extension of AXA. So, the fact AXA wasn't told about the issue by its contractor doesn't absolve it of responsibility for the time which elapsed before an offer of redress was made or the impact of the lack of communication with Mr K.

Had everything happened as it should have done, Mr K (as the policyholder) would have been notified about the issue when it happened, and the offer to send the contractor to put things right would have been made straight away. But because this didn't happen, AXA didn't make the offer to put things right until April 2023, several months after the incident. And after Mr K had, reasonably in my view, already paid out of his own pocket to put things right. So, in these circumstances, I consider it would be fair and reasonable for AXA to cover the costs incurred by Mr K in putting right the issues caused to the flat by its contractor. I say this because Mr K wouldn't have needed to incur these costs had AXA (by extension of its agents) done everything it ought to have done to bring it to his attention and put things right at the time of the incident.

Mr K has provided a copy of his contractor's invoice for the redecoration of the flat in question. So, unless anything provided in response to this provisional decision changes my mind, I'm intending to direct AXA to consider Mr K's quote for redecoration and reimburse him for the works required as a result of its contractor's mistake.

I'm also intending to award 8% simple interest on the amount due to Mr K from the date he was out of pocket to the date he is reimbursed. This is to compensate Mr K for being deprived of funds he would otherwise have had available for other purposes.

Loss of rent and compensation

Mr K has provided evidence from his property management company stating that the tenant of the flat in question gave notice because she was dissatisfied with his handling of the redecoration works to the flat. Mr K says that if AXA had dealt with the situation properly, this wouldn't have happened. He says he was without a tenant between February 2023 and May 2023 as a result.

I've thought carefully about Mr K's arguments here. But from what I've seen, his tenant didn't give notice until early March 2023 and wasn't due to vacate until mid-May 2023, presumably due to their notice period. So, although the tenant may have physically vacated sooner, I can't see that Mr K will have actually experienced a loss of rent between February and May 2023. And crucially, I haven't seen any evidence to support Mr K lost out on any rent payments either. So, based on what I've currently seen, I'm not minded to make any award for loss of rent.

However, should Mr K be able to provide evidence that he did suffer a loss of rent, he should provide that in response to this provisional decision, and I'll consider this further.

That said, regardless of any actual loss of rent, the loss of a tenant as a result of AXA's error would have been understandably distressing. And the effort required to arrange repairs as well as to find and secure a new tenant would have been undoubtably inconvenient. So, taking this into account, I don't think AXA's offer of £50 compensation goes far enough to put things right.

Instead, considering the impact to Mr K of the initial issue, the subsequent communication issues, and the consequential impact of his tenant deciding to vacate due to these issues, I'm currently minded to decide that AXA should increase the compensation due to Mr K to £500."

I asked both sides to provide any further comments or evidence they wanted me to consider within two weeks.

Mr K responded to confirm he was happy with my provisional conclusions and didn't have anything to add.

AXA responded with additional comments to explain why it disagreed with my provisional conclusions. To summarise, it said:

- Mr K's tenant vacated, and repairs were completed, before it was notified about the complaint.
- Because Mr K carried out repairs before notifying AXA, it hasn't had a reasonable opportunity to put things right. Had it been told about the issue in February 2023, it would have instructed the contractor to complete the works then.

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've also carefully considered the responses to my provisional decision. Having done so, my provisional conclusions remain unchanged. I'll explain why.

I accept AXA's argument that had it been made aware of the issues in February 2023 that it likely would have instructed repairs sooner. But as I explained in my provisional decision, I think the fact AXA wasn't made aware of the issue sooner is more a result of its contractors poor handling of things, rather than because of anything Mr K did wrong.

Given that the property had been left in a half-painted state for several weeks, and his tenant was clearly unhappy, I don't think it was unreasonable of Mr K to move straight to remedial works in the hopes of appeasing his tenant.

As I've said, ultimately, AXA ought to have known about the issue from the outset as its contractor should have notified it. And as the contractor was acting as AXA's agent, AXA is responsible for the fact this didn't happen. So, I remain of the view that AXA needs to consider Mr K's quote and reimburse the costs he incurred for putting right the damage caused by its contractor.

I've not received any further comments or evidence about my provisional findings on Mr K's alleged loss of rent or on the level of compensation I recommended. So, in the absence of further comments or evidence, my conclusions on these points remain the same as outlined in my provisional decision – and for the same reasons.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr K's complaint in part.

AXA Insurance UK Plc must:

- Consider Mr K's invoice for the redecoration of the flat in question and reimburse the costs he incurred for putting right the damage caused by its contractor.
- To the above, add 8% simple interest* from the date Mr K was out of pocket to the date he is reimbursed.
- Pay Mr K £500 compensation for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 November 2023.

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

Adam Golding
Ombudsman