

## **The complaint**

Mr O complains about AXA Insurance UK Plc's decision to decline a claim he made after his tenant maliciously damaged his property.

## **What happened**

Mr O has a landlords insurance policy underwritten by AXA which covers a single property he owns and rents out through an agent.

In July 2022, Mr O's tenant stopped paying rent and missed arranged inspections, which were to have been carried out by the letting agent.

In August 2022, Mr O began eviction proceedings, assisted by AXA's agent's legal team. The property was eventually repossessed in April 2023.

When Mr O attended the property after the repossession, it became apparent the tenant had maliciously damaged the property – the main damage being to ceilings and the kitchen.

Mr O's policy provides cover for malicious damage by tenants, so he made a claim for the cost of the necessary repairs. AXA's agents – who have delegated authority from AXA to administer policies and handle claims – declined the claim on AXA's behalf.

They said the malicious damage cover was provided on condition that the property was inspected at least every three months. And they said Mr O hadn't inspected the property during the period from July 2022 to April 2023.

Mr O wasn't happy with this and made a complaint to AXA. And when they maintained their position that the decision to decline the claim was correct, Mr O brought his complaint to us.

Our investigator looked into it and thought AXA had acted unfairly in declining the claim. He thought that if AXA were to apply the policy terms in the way they had with Mr O, they would have needed to provide more information to Mr O when he bought the policy. In essence, they ought to have explained how the relevant term would be applied.

In all the circumstances, he thought AXA should settle the claim – adding interest at 8% simple for the cost to Mr O of any works that had already been carried out – and pay Mr O £150 in compensation for his trouble and upset.

AXA disagreed and asked for a final decision from an ombudsman.

## **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.

When our investigator made his view on this complaint known to AXA, their initial response was to say that any fault in the way the claim had been handled was with their agent – because they have full delegated authority to administer the policy and handle claims.

AXA appeared at that point to be admitting that Mr O had been treated unfairly, but asking us to make the agent put things right for Mr O.

This is a policy underwritten by AXA. They are the insurer. They can delegate tasks to others, but they are ultimately responsible for the actions of their agents. Given AXA's size and length of time in the insurance market, I'm very surprised that we had to point this out to them.

Just to be absolutely clear, Mr O is insured by AXA. They have responsibilities to him, as their customer. I've no doubt they will engage with their agent to decide which of them carries the cost of putting things right for Mr O. But that's not my concern – or Mr O's. AXA underwrite this policy and they are the party we'll instruct to ensure things are put right for Mr O.

It was only after we'd explained this position to AXA that they then – in an apparent change of mind – decided that Mr O *had* been treated fairly after all. Their argument, in summary, was as follows.

They said that when Mr O bought the policy (through an on-line application process), he said he was a landlord. He then declared that he owned (and implicitly let out) at least one property. Therefore, he is a commercial customer, not a private consumer. And therefore, they did not have the same obligations as they would when selling a "domestic" policy to a private individual.

In essence, their contention is that Mr O was a commercial customer, who ought to be more aware of how insurance policies work – and who therefore would and/or should have been aware of the full implications of the clause in the policy which says malicious damage is only covered if inspections are carried out.

I don't agree with AXA, for a number of reasons – which I'll explain.

One – AXA are right that Mr O is a commercial customer. He is letting out a property and he bought a landlord's policy which is explicitly for commercial customers. That means different standards can be applied – and there are certain legitimate expectations about Mr O's knowledge and experience.

However, it certainly doesn't absolve AXA of their obligation to be clear and upfront about the policy terms when the policy is sold, particularly in this case since Mr O appears to be running a small business and might not be expected to have the same knowledge or expertise as, for example, a large landlord and letting company.

Two – where the relevant condition on the malicious damage cover (that the property had to be inspected every three months or more) is set out in the policy terms, there is no mention at all of how that condition might be applied (or not) in circumstances where the landlord cannot meet the terms of the condition because the tenant has ceased contact, is not cooperating and/or is being evicted.

I'm satisfied that when Mr O bought the policy – having considered the terms and conditions and decided the cover met his needs – he might very reasonably not have understood how AXA (or their agent) would apply this particular condition in the circumstances in which he unfortunately eventually found himself.

It would not have been unreasonable for Mr O to think – at that point – that he could meet the condition, as set out, by asking his agents to inspect the property periodically. I don't think it would be fair or reasonable to suggest that Mr O *should* – at that point – have

realised the full implications of the policy term if and when his tenant refused to allow inspections and/or was in the process of being evicted.

In essence – and to put it as simply as I can – I can fully understand Mr O's great surprise when AXA's agents decided to rely on this particular condition to decline his claim. The term says what it says – and strictly speaking the condition hasn't been met – but it would be perfectly justified to say that, surely, AXA didn't intend it to be strictly applied in these unexpected and unfortunate circumstances?

Three – Mr O could not possibly comply with the condition without forcing an entry into the property, which would almost undoubtedly have been a criminal act. According to Mr O, AXA's agents agreed with him that they might be seen to be encouraging him to commit a crime in insisting that he met the condition around inspections.

In my view, it is inherently unfair and unreasonable to place a condition on a customer which they could only possibly meet – in the circumstances – by doing something criminal.

I should also say that Mr O has provided AXA's agents with proof that he – and his letting agent – did everything they possibly could, within the law, to gain access to the property between July 2022 and April 2023.

Four – it's not unreasonable to suggest that many malicious damage claims will come about in circumstances where there's been a breakdown in the relationship between landlord and tenant. And/or where the tenant isn't complying with their contractual obligation to allow inspections and/or eviction proceedings are underway.

It might reasonably be considered unfair then for AXA to sell Mr O a policy which on the face of it covers malicious damage, but in effect excludes many of the circumstances in which that damage is most likely to come about – particularly where the relevant condition (as set out in the policy terms) remains entirely silent on what happens during evictions and/or when the landlord can't legally access the property.

Five – AXA's agents accepted Mr O's request for legal assistance to evict his tenant. So, they full well knew the circumstances at the outset – the tenant failing to respond to all requests to pay his rent, allow inspections and/or leave the property etc.

At no point did they suggest to Mr O that he might not be covered under the policy in the not entirely unlikely event that the tenant maliciously caused damage to the property. If they had done that, Mr O may have had the opportunity to seek cover elsewhere.

Taking all of that into account, I'm satisfied that AXA have acted unfairly in declining Mr O's claim for repairs to malicious damage. I don't think it's fair or reasonable to think that when Mr O bought the policy he would or should have realised – from consideration of the terms as set out - that any claim for malicious damage would be declined in the circumstances in which he eventually found himself.

### **Putting things right**

Given that I think it's unfair for AXA to decline the claim, for the reasons set out above, I agree with the outcome proposed by our investigator.

I'm going to require AXA to settle the claim. And to add interest at 8% simple on any payment they make to cover costs Mr O has already incurred (calculated from the date Mr O made the payment(s) to the date AXA reimburse him).

Mr O has undoubtedly been caused a degree of stress and worry over whether the cost of the repairs would eventually be covered – and the financial impact on him of covering the cost himself. And that's over sustained period (from around April 2023 onwards).

He's also had the inconvenience of arranging the repairs himself and having to chase AXA's agents for answers to his queries about the decision to decline the claim.

So, bearing all of that in mind, I'm also going to ask AXA to pay Mr O £150 in compensation for his trouble and upset

### **My final decision**

For the reasons set out above, I uphold Mr O's complaint.

AXA Insurance UK Plc must:

- Settle Mr O's claim for repairs to malicious damage caused by his tenant;
- Add interest at 8% simple to any payments they make to cover repair costs already incurred by Mr O (calculated from the date Mr O made the payments to the date AXA reimburse him); and
- Pay Mr O £150 in compensation for his trouble and upset.

If AXA Insurance UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from the interest payment set out above, it should tell Mr O how much it's taken off. It should also give Mr O 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 O to accept or reject my decision before 8 March 2024.

Neil Marshall  
**Ombudsman**