

The complaint

Mr and Mrs R complain that AXA Insurance UK Plc rejected a claim on a commercial property insurance policy.

What happened

Mr R dealt with the correspondence regarding the claim and complaint, so for ease I'll refer to him throughout.

The claim concerns a property that was let to a tenant for around 12 years. When Mr R advised the tenant of a proposed rent increase, the tenant stopped paying the rent.

Mr R's agent visited the property in July 2022. They found the tenant had left, the property was in poor condition and the hob and oven had been removed. Mr R made a claim on the policy for repairing damage.

AXA instructed loss adjusters who visited the property in November 2022. The loss adjusters said there was no malicious damage and the poor condition of the property was due to wear and tear over time. They also said there was a delay between the discovery of the incident and AXA being notified and that Mr R hadn't notify the police, as required by the policy terms. So the claim was declined.

Mr R complained about the way the claim was handled and the decision to reject it. He asked if the claim could be considered under another part of the policy, but AXA explained why the claim wouldn't be covered by that part of the policy, which he accepted.

In his complaint, Mr R raised concerns about delays, said the site notes weren't completed or signed, and said the claim should be covered as the damage had been caused maliciously.

AXA accepted there had been delays and paid compensation of £100 for this, but maintained its position that the evidence didn't show there was malicious damage. So Mr R referred his complaint to this Service.

Our investigator said it was reasonable for AXA to reject the claim, as the evidence didn't show the damage was malicious, and Mr R hadn't reported it to the police. She considered whether it should be covered as accidental damage but didn't think that would be covered either. And she said the theft of the oven and hob was not covered.

Mr R disagrees and has requested an ombudsman's decision.

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.

Mr R has provided detailed comments and says the investigator hasn't addressed all of his concerns in detail. I've considered everything he has said. But our role as an alternative

dispute resolution service is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case. So I won't comment in detail on every single point and will focus on the key issues that are relevant to the outcome I've reached.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.

The policy provides cover for damage to the property but, as with all insurance, the policy doesn't cover everything that might happen to the property – only the insured perils set out in the policy terms. There are conditions and exclusions that limit the cover provided.

AXA considered the claim as being for malicious damage as Mr R referred to it in that way. Given that the policy covers accidental damage as well, I have considered both.

In the first instance, it's for the policyholder to prove their claim. So Mr R had to show there was accidental damage or malicious damage. From the evidence provided, I think it's fair to conclude he hasn't shown this.

The policy does not have a definition for malicious acts. Where there is no definition the usual approach is to give the words their ordinary, everyday meaning. I consider malicious to be where something is done intentionally to cause harm. So Mr R would need to show damage had been caused intentionally. AXA gave examples of this to Mr R, including someone deliberately breaking a window, or damaging a door or a carpet. There's no evidence the tenants deliberately caused damage in this way.

Accidental damage also isn't defined in the policy, but would generally be considered something unforeseen and unintentional. Again, the evidence doesn't show this.

There are signs of damp and mould, but those are likely to have developed over time, rather than being caused by a specific incident. There are marks on the walls, but it's likely this has also happened over time through neglect. And although there are some small holes in the walls, these are likely due to installing shelves or hanging pictures. The garden was overgrown.

The tenant lived in the property for around 12 years. It's likely the condition of the property deteriorated over time due to it not being well maintained. The tenant may not have cared for the property well, but that's not the same as saying they caused damage either maliciously or accidentally. The policy doesn't cover damage that happens due to gradual deterioration or wear and tear.

In addition, where there has been malicious damage the policy requires Mr R to notify the police, which didn't happen. So there was no investigation, which might have supported the claim, for example if the police found evidence of malicious acts by the tenant.

With regard to the oven and hob, the policy doesn't cover theft by the tenant; this would only be covered if there had been a forcible entry to the property by someone else.

I appreciate it was upsetting for Mr R to see the condition of the property, which required redecoration to bring it up to the standard where he would let it to new tenants. But that doesn't necessarily mean he could claim on the policy.

Mr R is also concerned that details in the site notes following inspection of the property have inaccuracies. Even if that's the case, it would not affect the decision as to whether the claim is covered.

The insurance is designed to cover specific insured perils, not a general deterioration in condition over a period of time. In the circumstances I think the decision not to cover the claim was in line with the policy terms and was fair.

There was some poor service and some delays dealing with the claim at the outset, but AXA acknowledged that and paid some compensation. I don't think it needs to do any more in relation to this.

My final decision

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 12 November 2024.

Peter Whiteley
Ombudsman