

## The complaint

Mr A and Ms P complained that AXIS Specialty Europe SE (“AXIS”) didn’t fairly settle their claim for loss of rent when repairs to their property were delayed, under their commercial property insurance.

## What happened

AXIS settled a claim for Mr A and Ms P when a leak caused damaged to their property. Unfortunately, the flat required much longer to dry than anticipated, so wasn’t ready for four additional months.

Mr A and Ms P made a claim to AXIS for loss of rent for this period. However, AXIS said there was no evidence submitted by Mr A and Ms P to support this claim, showing that there was a tenant waiting to move in. Mr A and Ms P sent AXIS receipts in respect of costs incurred for dehumidifiers and council tax for the period the property was left vacant.

Mr A and Ms P claim is for four month’s rent, equivalent to £3,580.

Our investigator decided to uphold the complaint. He thought evidence existed that a tenant was ready to move into the property, so he asked AXIS to pay Mr A and Ms P loss of rent claim, plus 8% simple interest per annum. He asked AXIS to pay any outstanding council tax or utility bills incurred during the period of delay, along with the cost of the dehumidifiers (plus 8% simple interest per annum). AXIS disagreed, so the case has been referred to 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.

I’ve begun by reviewing what the terms and conditions of the policy set out. Page 42 of the policy sets out a loss of rental income provision, which shows Mr A and Ms P are entitled to any lost rental income as the damage experienced was an insured peril covered by the policy. The policy also extends to cover any business rates applicable during this period payable to public authorities.

However, whilst AXIS recognise there were delays, it said there is no evidence that Mr A and Ms P had a tenant lined up and ready to move into the property.

As part of the investigation of this complaint, I wrote to AXIS and stated “*I have reviewed the case file and I can see there is a strong history of this flat been rented out. Whilst it was empty at the time of the incident, I can see it there was a lot of interest in renting it out and I see the person who ended up renting the flat in July was a long standing customer of Mr A and Ms P, [who has] written a testimony that he’d have moved in [to the flat] sooner if it wasn’t been dried out. I’m persuaded by this evidence and think the investigator has reached a reasonable conclusion*”.

I asked if AXIS had seen this testimony. AXIS said it hadn't previously seen the testimony but said *"we later received evidence showing the property was on the market and had received enquiries however our stance was that the [loss of rent] was hypothetical and could not be considered at that time"*. Now having seen the testimony, AXIS said *"based on the evidence presented and on the balance of probabilities, [we] agree with allowing for loss of rent at £1,680 which equates to two months of lost rental income"*.

Mr A and Ms P informed me that they didn't think the offer was a fair settlement, as it only covers a small portion of the actual loss. So, I've considered whether I think the offer made by AXIS is fair based upon the new evidence provided.

The tenant who moved into the flat has written a signed testimony which states he viewed the property on 2<sup>nd</sup> March and agreed to rent the flat on completion of redecoration and remedial works after the flood damage. The tenant said, *"the final work is now complete, and a tenancy has been signed and began on the 18<sup>th</sup> July 2023"*.

Mr A and Ms P have claimed for four months of lost rental income. The time from 2<sup>nd</sup> March to 18<sup>th</sup> July is four and a half months. I think this is fair, it's unlikely the tenant would've moved in immediately after seeing the flat, but the evidence suggests he would've moved in soon after. Therefore, I uphold this complaint. I require AXIS to pay Mr A and Ms P £3,580 for four months loss of rent, plus 8% simple interest per annum (from the date of the claim to the date of the settlement) as they have been without this money.

I'd have expected the tenant to pay costs during this period, so if Mr A and Ms P have incurred any costs in this period for council tax or utility bills, then AXIS should reimburse these, plus 8% simple interest per annum (from the date of the claim to the date of the settlement) as they have been without this money.

Finally, it's not clear to me whether AXIS has paid the additional costs for the rental of the dehumidifiers. As the damage was covered by AXIS and this wasn't known earlier in the claim, I'd expect AXIS to meet these costs. So, if it hasn't already, AXIS should reimburse these costs plus 8% simple interest per annum (from the date of the claim to the date of the settlement) as they have been without this money.

### **My final decision**

My final decision is that I uphold this complaint. I require AXIS Specialty Europe SE to:

- Pay Mr A and Ms P £3,580 for four months loss of rent, plus 8% simple interest\* per annum (from the date of the claim to the date of the settlement)
- Reimburse Mr A and Ms P for any bills paid (council tax and utility bills) between 2<sup>nd</sup> March and 18<sup>th</sup> July 2023 if it hasn't already, plus 8% simple interest\* per annum (from the date of the claim to the date of the settlement)
- Reimburse Mr A and Ms P for any dehumidifier costs if it hasn't already, plus 8% simple interest\* per annum (from the date of the claim to the date of the settlement).

\*HM Revenue and Customs requires AXIS Specialty Europe SE to take off tax from this interest. AXIS must give a certificate showing how much tax it's taken off if Mr A and Ms P asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms P to accept or reject my decision before 16 July 2024.

Pete Averill

**Ombudsman**