

## **The complaint**

T, a business, complains that AXA Insurance UK Plc ('AXA') declined its claim for lost of market value on its property owners insurance policy, following a flood.

T wants AXA to pay a claim for diminution in value to its building.

All references to AXA include their claims handlers.

T's complaint is brought by Mr L on its behalf, but I shall refer to all submissions as being T's own for ease of reference.

## **What happened**

T's business premises suffered a flood in 2000. T made several claims on the policy including for a variety of things like reinstatement of the premises and loss of rents. The claims for reinstatement of the premises and loss of rents were settled and do not form part of this complaint.

The issue that T says remains is a claim for the diminution in value to its building. This arises out of a sale that was agreed in principle to T's tenants. T says that prior to the flood the property was valued at £495,000 and has since reduced significantly as a direct result of the flood. T also says that after the flood the tenants withdrew their offer and the sale was lost. Following this, the tenants' bank withdrew their mortgage offer. T says this was because of the flood and future flooding risk. T wants AXA to pay a claim for diminution in value to the property as a result of this and has supplied expert valuation evidence to support its claim.

AXA considered T's claim and declined it. They said that in order for the policy to respond to the loss of investment claim, the loss needed to be specifically due to the damage from the flood and not as a result of the future risk of it reoccurring or the flood itself. In this case AXA said there was nothing to support that the damage itself had caused the sale to fall through or the building to drop in value. AXA also considered the claim under the loss of market value section of the policy and said that this didn't apply because they'd already paid the cost of reinstatement of the building, and this exceeded the reduction in value claim. Finally, AXA considered the claim under the loss in value cover section of the policy but pointed out this only applied to buildings damaged within one mile of the insured property, which wasn't relevant here. As such that section of the policy didn't respond either.

Our investigator considered T's complaint and didn't uphold it. She said that whilst the policy does offer cover for loss of market value, this requires the loss to be as a result of the damage and in this case the evidence T had supplied showed the loss was as a result of the flood and the future risk of flooding. As such the investigator said the policy didn't respond and that it was fair for AXA to turn down T's claim. T didn't agree so the matter has been passed to me to determine.

## **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.

Having done so, I don't uphold T's complaint. I'll explain why.

The starting point is the policy terms. They say:

***"Loss of investment value cover***

*If any building awaiting sale suffers **damage** and the sale is delayed because of the **damage** and the price achieved is less than would have been achieved had the sale of the building not been delayed, **we** will cover **you** for loss of investment value following delay in sale as a result of **damage** provided that the loss was specifically due to **damage**, and not due to a general decline in investment values."*

*"Damage" is defined "Accidental loss, destruction of or damage".*

In this case it's clear from the valuation evidence I have seen that the cause of the diminution in value of the building is not as a result of the damage arising from the flood but the flood itself and the future risk of flooding. So, I can't say the loss of investment value cover to engages. And in this case AXA paid a claim for reinstatement of the building so I can't see any grounds for a successful argument that the damage is the cause of the loss of investment value. Because of this, I agree with the investigator it was fair for AXA to turn down T's claim accordingly.

Turning now to the loss of market value section of the policy, T, has argued that this section should have provided it with the amount it's seeking. T has adduced a letter from its Solicitor which it says supports its position. The relevant term says:

***"Loss of market value cover***

*We agree that*

*1 if **you** elect not to repair or rebuild the **buildings**, **we** will pay **you** the reduction in the market value of the **buildings** immediately following the **damage** but not exceeding the amount which would have been payable had the **buildings** been repaired or rebuilt*

*2 if as a result of **damage** **you** are required to rebuild or reinstate the **buildings** in a manner different from that immediately before the **damage** solely to comply with the Stipulations (as defined in the European Community and public authorities cover) and as a result there is reduction in market value of the **buildings** we agree to pay*

*a the cost of repairing or reinstating the **buildings***

*b a cash settlement representing the reduction in market value so that the total payment made is no greater than the amount that would have been payable had the **buildings** been repaired or reinstated in an identical manner to their condition immediately before the **damage**.*

*Provided that the total amount recoverable under any item of the **policy** will not exceed its sum insured."*

In this section that T could only have been successful in a loss of market value claim if it had elected not to repair or rebuild its building. But in this case AXA paid the reinstatement value of the building, which they say exceeded the loss in market value claim T was making anyway. In addition, I've seen nothing to support that T was required to reinstate the building in different manner from that immediately before the damage in order to comply with the stipulations set out within the policy. It follows that T isn't entitled to claim for a cash settlement representing the reduction in market value.

Finally, I've looked at the loss in value section of the policy. That only applies to buildings that are not T's responsibility that are damaged within one mile of the insured property which

isn't relevant here. As such I don't consider it applies to T's specific claim.

T has made reference to AXA paying out its claim for reinstatement of its building as a rolled up amount that related both to flood and fire damage, the latter of which occurred in December 2020. Whilst that might be right, I don't think this affects the outcome of T's complaint here for the reasons I've mentioned above.

In reaching my conclusions I want to reassure T that I don't disagree that the flood itself caused its property to devalue but based on the evidence I've seen, I can't say that the cause of this is the damage rather than the flood. And that is what is required in order for AXA to consider T's claim.

### **My final decision**

For the reasons set out above, I don't uphold T's complaint against AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 19 April 2024.

Lale Hussein-Venn  
**Ombudsman**