

The complaint

Mr P is complaining about the amount AXA Insurance UK Plc has paid to settle a claim he made on the commercial property insurance policy that covered his property. He's also unhappy that it wouldn't pay for him to move into alternative accommodation.

What happened

In November 2021 Mr P says he noticed a potential leak in his bathroom so he contacted AXA with the intention to claim on the insurance policy that covered his building. AXA appointed a loss adjustor – who I shall refer to as C – to handle the claim on its behalf. C inspected the property and it was believed that there was a blocked pipe, but said further investigation work was required. Following this, it was concluded that the flooring would have to be lifted to gain access to the issue. But Mr P said he was going to have a tenant rent the flat for another four months and he didn't want to do the significant works until after this. He also said it was tenanted at that time. But he said he would have access to the flat again in October 2022.

In October 2022 Mr P appointed a number of contractors to quote for the works and he presented the quotes to C. It then agreed to pay Mr P £35,000+VAT – in line with one of the quotes – to enable him to appoint a contractor to complete the works. However, the contractor – who I shall refer to as K – later advised Mr P that, having started the works, it was more extensive than first estimated and said they couldn't complete everything for the amount quoted. So it ended its involvement.

Mr P arranged for another contractor to complete the works, but he later contacted C to explain that it had cost him significantly more than what AXA had paid and he wanted AXA to pay this. AXA didn't agree as it said it had paid the agreed amount and didn't think it owed anything further.

Mr P also complained that AXA didn't provide him with alternative accommodation ('AA'). He said the property wasn't safe to live in as it was full of dust and the maintenance hole cover was open for extended periods of time causing a noxious smell in the property. He said there were regulations under the Homes (Fitness for Human Habitation) Act 2018 ('the Home Act') that required a property to be habitable and he said this wouldn't have been the case while the works were being carried out.

AXA said the works could be isolated and it didn't think AA was required. It said that there would always be a degree of inconvenience when making a claim. It said it would only generally pay for AA based on circumstances that would render a property uninhabitable, such as no washing facilities, access to drinking water, fire damage, major flooding or escape of water etc. And it didn't think this was the case here.

I issued a provisional decision partially upholding this complaint and I said the following:

"I should first set out that I acknowledge I've summarised Mr P's complaint and AXA's comments in a lot less detail than they've presented it. Mr P has raised a number of reasons about why he's unhappy with the way AXA and C have handled this matter. I've not

commented on each and every point all parties have raised. Instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy by this, but it simply reflects the informal nature of this service. I assure all parties, however, that I have read and considered everything they've provided.

There are essentially three issues Mr P has raised that I need to consider:

- 1. AXA won't settle the additional costs Mr P says he's incurred in repairing the property;*
- 2. AXA didn't agree to provide Mr P with AA; and*
- 3. Communication issues.*

In the first instance, I'm conscious all parties have agreed with the investigator's findings on the communication issues Mr P has raised. So I'm not going to comment further on this, other than to say I don't think the investigators opinion that AXA should pay £500 in compensation was unreasonable.

Additional costs incurred

Both parties have provided extensive submissions surrounding whether AXA should pay the additional costs Mr P says he's incurred. AXA has cast doubt on the reasons why the original contractors stopped the works – particularly highlighting that it thinks Mr P is affiliated to the replacement contractors. Mr P says the original firm highlighted further works were required and wouldn't complete the works for the amount it originally quoted.

I note AXA's concerns in this regard and I can understand them, especially given its thoughts that Mr P's family is affiliated to the replacement contractors. But I haven't seen anything to show that Mr P hasn't acted in good faith in this regard. Of particular note, he's provided a statement from the original contractor which stated:

"[K] took on the project at [Mr P's property] on an estimated quote of £35,000 + VAT on the basis of a vague surveyors report which did not include the works required to complete the project. As the work progressed it became clear that the scope of works was much bigger than was indicated and therefore the £35,000 was insufficient to complete the project. [K] has a full order book and since the funding was insufficient for this project we terminated our involvement.

The specific issues were as follows:

- Access to drainage could only be achieved via the dressing room which required the removal of the computer equipment, fitted furniture and timber floor covering. We managed to retain the furniture but the floor covering could not be saved*
- To ensure that the waterproofing subcontractor (WING) warranty remains in force, both the walls and floor needed to be taken back to brick and concrete subfloor. Hacking off the render and taking up the screed was a nightmare*
- Working in a small unventilated space with breakers was extremely difficult and time consuming requiring longer breaks and shorter hours to ensure health and safety*
- Sourcing the specified tiling materials was impossible and a very specialised stonemasons job*
- Whilst the job appeared small it required virtually every trade and with many on multiple visits"*

Ultimately I'm persuaded by K's statement that, after starting the works, it became apparent the initial scope of works the surveyor prepared were insufficient. As AXA will be aware, this isn't an unusual scenario where further works become apparent after works start. And it

seems to me that this is the reason the costs increased – not because of any unreasonable actions by Mr P. Ultimately, I think the additional costs Mr P says he's incurred are a direct result of the insured event.

I recognise AXA's comments that it agreed an amount to settle the claim and doesn't think it's fair that it should have to pay more. But I also don't think it's fair that Mr P is losing out because of something that seems to have been out of his control. And AXA hasn't given me anything to show that these costs weren't related to works that weren't needed. So I remain persuaded by K's statement I set out above. I also haven't seen anything to show that AXA or C made it clear to Mr P it wouldn't pay anything further on the claim if further insured works were identified – i.e. it would be at Mr P's expense if this was the case.

Ultimately, while I note AXA's concerns in this regard, I think it should settle the additional costs Mr P has incurred in repairing the property, subject to him providing AXA with a verified invoice.

Alternative accommodation

While I don't think AXA were reasonable in saying it wasn't liable for the additional costs Mr P has said he's liable to pay on the claim, I'm not persuaded it's been unreasonable in regard to its decision to not offer AA. I'll explain why.

In the first instance, I should set out that the terms of the policy doesn't cover any lost rent Mr P may have incurred. It's important to note that the policy was taken out to cover the building's freeholder's losses and their respective liability to their leaseholders under the terms of any leasehold agreement they have. The policy only covers any rent the freeholder may have lost in the event of an insured peril – such as ground rent – and that's standard with this type of policy.

Under the terms of the policy, AXA will cover "the costs of reasonable AA while Your [Mr P's] Flat or Private Dwelling House is unfit to live in as a result of Damage insured by this Policy." So I think the core question here is whether the property was unfit to live in. But, crucially, the policy doesn't set out what is meant by being "unfit to live in". AXA has set out that this means circumstances that would render a property uninhabitable, such as no washing facilities, access to drinking water, fire damage, major flooding or escape of water etc. Whereas Mr P thinks it should be based upon the definitions set out in the Home Act.

Where a policy doesn't provide a specific definition I need to think what "a reasonable person" would consider a fair definition. So in this case I need to think about whether a reasonable person would consider the property uninhabitable, given the condition it was in during the repairs. In thinking about this, I've considered the statements by K, C and other appointed contractors in this case. But I'm not persuaded Mr P has given me enough to say the property was uninhabitable.

I'm persuaded that all contractors have set out that the areas of damage could be isolated. Crucially, I'm conscious that K specifically commented that one of the challenges of the work was that their workers had to complete the works in an unventilated area. By this very description it suggests that K was able to isolate the works.

I fully appreciate that the works made it harder and less pleasurable to live in the property. But this doesn't make it unfit to live in. I note Mr P has provided extensive submissions in this regard and made numerous references to the Home Act. However there will always be some inconvenience when making a claim, but this doesn't mean the policy has to cover it.

In this case the contractors and loss adjustors have set out that the property didn't require

AA. And, while I fully appreciate Mr P's stance in this regard, I can't say this was unreasonable.

But, even if I were to say AXA should have provided AA, I'm not persuaded I've seen anything to show Mr P has lost out because of this. He's told us he didn't live in the property and I've not seen anything to show anyone was living in the property at the time. So there wasn't anyone to put into AA, even if I thought it was something AXA should have provided. So, for all these reasons, I can't reasonably require AXA to pay Mr P anything for not providing alternative accommodation."

Mr P didn't agree with my provisional decision and he provided a detailed response saying why. He also made verbal submissions to the investigator about why he didn't agree. In particular he strongly disagreed with my statement that there wasn't a need for alternative accommodation. But, in summary, he said the following:

- He was happy that I'd said AXA should pay the additional costs he'd incurred. However, he further highlighted that AXA's loss adjustor wouldn't reattend the property to assess whether the additional costs were justified, despite him sending a lot of correspondence explaining why another contractor was required.
- He said AXA had never set out its concerns about the replacement contractor previously. And he said its allegations could amount to defamation.
- He didn't think I'd taken into consideration all the communication issues he'd had. He said the loss adjuster refused to inspect the property to assess either the AA claim or the additional cost claim. He then refused to respond to emails and ultimately refused to take his telephone calls.
- He highlighted that Section 13A of The Insurance Act 2015 gives policyholders the right to seek damages from insurers that do not pay insurance claims in a reasonable time.
- He ultimately thought the £500 in compensation I awarded was insulting. He said he could not quantify the amount of time spent on this but this figure does not even come close.
- He said he wasn't seeking lost rent, but he disagreed that the policy didn't cover loss of rent saying the policy said it covered "*rent (including ground rent and management charges) You should pay or should have received but have lost*". And he said there isn't anything in the policy that excluded rental income.
- He thought I'd disregarded all the evidence he'd provided about why AXA should have paid for AA. He said everything he'd provided has been supported by facts, but AXA never inspected the property. Given this, he queried how AXA could say the manhole covers could be covered or the smell was acceptable or not.
- He said AXA's own surveyor had said AA was required.
- He provided a letter from K where it said it tried to seal the area off as much as it could, but it said the property was not habitable throughout the time they were doing the work.
- He highlighted that, where the contract is ambiguous, the law says it was to be interpreted in his favour. He maintained the Home Act was relevant legislation and that it said the property wasn't habitable during that time. He thinks it's wrong that I've provided my own opinion without any reason why.
- He didn't agree with me that he hadn't lost out. He said he'd had to make arrangements to live elsewhere at the inconvenience of others. He'd lost out in receiving the payment of AA he was entitled to. He said he'd incurred direct costs in living in a different property. And he said he'd suffered due to the mental distress of being essentially homeless.

AXA didn't respond to my provisional 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.

I've taken Mr P's additional comments into consideration, but I've come to the same conclusion as I did in my provisional decision.

Firstly, I recognise Mr P doesn't think the compensation I awarded was fair and made reference to the Insurance Act. Firstly, I should make clear that our rules allow me to make an award for any avoidable distress and inconvenience a business caused. But, this Service is not the regulator, so we don't fine or punish businesses. Further to this, we're not a court of law so don't award punitive damages. Our compensation is to reflect distress and inconvenience that is distinguished between that which was a natural consequence of having to make a claim and what the insurer could have avoided.

I recognise that Mr P has spent a significant amount of time in this matter. But I think the majority of this is him having to discuss this claim with the insurer and its agents. AXA is not required to compensate him for this. Further to this Service doesn't award costs or compensation for using this Service. We're a free service to customers and there will always be some compensation from having to make a complaint. I'm ultimately remains satisfied that £500 is fair compensation.

I note Mr P's comments about the additional costs I awarded. However, AXA hasn't provided anything new. And, ultimately, neither party has given me anything new to think about here. So I still think my findings in my provisional decision was fair in this regard. And I have no further comments to make in this regard.

Mr P's primary unhappiness with my provisional decision is down to the fact that I didn't award A costs. I have considered all his comments in detail and reflected further whether I think my findings were fair. I'm sorry to disappoint Mr P, but I still think they are.

Firstly, I recognise I didn't interpret Mr P's email he sent to the investigator accurately. But I'm still not convinced Mr P has lived in the property for a number of months. He explained there were tenants living in the property for four months prior to the works starting. Further to this I've also seen an email from Mr P in July 2022 where he said the property was tenanted at that time. And he explained he would have access to the property in October 2022. The next tenancy started shortly after that. So, I don't think Mr P had lived in the property for at least seven months prior to the works starting. And I think it's likely it was longer than that too. He also told us that he moved back into the property to clear his belongings and ensure that various possessions were protected and put away safely before work started. I've not seen anything to show that he had intended to move back into the property on a permanent basis. So I remain of the opinion that there wasn't anyone living in the property to put into AA.

But, even if that wasn't the case, I'm still not persuaded the property was uninhabitable. Mr P has provided a lot of statements and information in response to my provisional decision. But I'm still not persuaded by it. Mr P has said AXA's surveyor said that the property was uninhabitable. But I haven't seen enough to support that. And, in fact, I can see that he spoke with AXA to specifically say he didn't think AA was required. He said there were no open drains and said he was happy there was no need for AA. He acknowledged that he might have told Mr P he might want to consider moving out, but didn't say the property was uninhabitable.

As I said in my provisional decision, I recognise there would have been some inconvenience

– and at times not insignificant – as a result of the works. And I’m not ignoring what Mr P has said or provided. But I remain satisfied that all experts have set out the issues could have been largely isolated.

In any event, Mr P still hasn’t provided anything to show he incurred additional costs over and above what he would have incurred from normal living. He’s said he wasn’t given the opportunity to be given the funds for AA. But the policy doesn’t give him money in lieu of AA. It pays where the consumer *actually* pays for AA. So, even if I’m wrong on all of the above, I can’t reasonably conclude that there’s anything for the insurance policy to cover.

Ultimately, taking everything into consideration, I can’t reasonably say that AXA was unfair in saying it wasn’t liable for AA costs.

Mr P has queried that the policy doesn’t exclude lost rent such as his, so queried why I said any rent he could have lost isn’t covered. As I said in my provisional decision, the insured party on the contract is the freeholder – i.e. not Mr P. Mr P indirectly benefits from the policy as a leaseholder. The policy covers the freeholder’s losses and liabilities – including any liability it has to Mr P under the leasehold agreement. But, ultimately, the policy only covers rent lost by the freeholder. The policy doesn’t provide loss of rent cover for leaseholders. And this isn’t unusual for this type of policy.

My final decision

For the reasons I’ve set out above, it’s my final decision that I uphold this complaint and I require AXA Insurance UK Plc to do the following to put things right:

1. Settle the additional costs Mr P has incurred in repairing the property, subject to him providing a verified invoice. If Mr P has settled these costs, AXA Insurance UK Plc should pay 8% simple interest on these payments from when he paid it until he gets them back. If AXA Insurance UK Plc thinks that it’s required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it’s taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate; and
2. Pay Mr P £500 in compensation for the distress and inconvenience it and its agents have caused.

I don’t award anything further.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 16 April 2024.

Guy Mitchell

Ombudsman