

The complaint

Ms S complains that AXA Insurance Plc delayed dealing with a claim on her commercial property insurance, which led to her being unable to rent the property and caused a loss of rent.

What happened

Ms S owns a property which she lets out to tenants. In July 2022 a vehicle parked outside the property caught fire, and the fire caused some damage to the house. Ms S made a claim on her policy for the damage.

AXA accepted the claim and appointed loss adjusters to assess the external damage. It then arranged for contractors to carry out the repairs to the outside of the property.

Ms S said there was damage inside the house as well. She instructed a loss assessor and said she would use her own contractors and provide quotes for this, but needed some more information from AXA first.

Some repairs were attempted on the driveway in October 2022 after agreement from Ms S, but were not successful. In November 2022, AXA wrote to Ms S' loss assessor asking for an update.

Ms S' loss assessor provided a schedule of work in February 2023. There were discussions in February and March about loss of rent, with AXA saying this was not covered by the policy as the property could be lived in.

AXA asked its internal surveyors to review the schedule of work provided by Ms S. The surveyor then said there was some limited damage internally, caused by minor smoke contamination. AXA agreed internal redecoration was needed due to smoke damage but said that didn't mean the property was uninhabitable. It offered £18,981 to settle the claim, but Ms S didn't accept the offer.

Ms S chased for a response in June 2023. In July, a settlement of £20,063.98 plus vat was agreed and the claim was completed – subject to the outstanding dispute about loss of rent.

Ms S complained about how long it had taken to deal with the claim. In its final response, AXA accepted there had been some delays and paid compensation of £175 for the distress and inconvenience caused by this.

Ms S remained unhappy that she had not received any payment for loss of rent. AXA issued a further response, again saying there would be no loss of rent payment, as the property had not been uninhabitable.

When Ms S referred the complaint to this Service, our investigator said the policy terms for a loss of rent payment had not been met, but there had been delays and Ms S should not be out of pocket as a result. He considered AXA to be responsible for about 14 weeks of delay and asked it to pay the equivalent rent for that period.

AXA disagreed and said:

- The claim was handled well overall, with just some minor delays towards the end with surveyors cross-checking the loss assessor's costings. Contractors were approved and ready early on, but had to wait for Ms S' loss assessor.
- There was a lack of engagement between the loss assessor and Ms S, which led to her contacting AXA numerous times.
- There was no need for alternative accommodation or a loss of rent claim, as there was only minor smoke damage internally and the tenant could have stayed there while the work was done.

Ms S remained of the view there had been lengthy delays with the claim, which took a year to settle, and this had prevented her from renting the house to a new tenant after the existing tenant moved out.

The investigator considered all the further comments but didn't change his view.

As no agreement has been reached, I need to make a 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.

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. They should settle claims promptly once settlement terms are agreed.

AXA accepts there were some delays, but says these were minor and it has paid compensation for the distress caused. I need to decide if that's enough to put things right for Ms S, or whether she should be paid for loss of rent.

Loss of rent will be paid under the policy terms where the property cannot be lived in due to the loss or damage. That wasn't the case here – the tenant could have stayed in the house, but chose to move out for other reasons not connected to the fire. So Ms S is not entitled to a loss of rent payment under the policy.

The internal damage was not so severe as to mean the house could not be lived in. But there was some damage and AXA agreed in the end for the house to be redecorated. Given the condition of the property, it would have been difficult to find new tenants willing to move in. If AXA was responsible for delays, which meant it took longer than it should have to get the repairs done, that contributed to delay finding new tenants. Ms S did get new occupants into the property and I'm satisfied she would have done that sooner but for the delay. So it's fair to compensate her for any additional loss caused by the delays.

Looking at the sequence of events, there was some delay at the outset, when Ms S and her loss assessor were waiting for information from AXA. Later on, AXA received estimates from Ms S in February 2023 but an offer was only made in May and the claim was settled in July.

It would have taken some time to deal with a claim like this in any event, and not all of the delays were caused by AXA. But I think it's reasonable to say it contributed to around 14 weeks of delay. Ms S found new occupants through a local authority scheme in August 2023; but for the delays, she would have been able to do this sooner and so would have received that income sooner. So it's fair to compensate her for this.

Putting things right

Subject to Ms S providing proof of the income she received from August 2023, AXA Insurance Plc should pay her the equivalent to 14 weeks' income, together with interest from 31 August 2023 to the date of payment at 8% a year simple.

If AXA Insurance Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms S how much it's taken off. It should also give Ms S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold the complaint and direct AXA Insurance Plc to pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 5 November 2024.

Peter Whiteley
Ombudsman