

The complaint

Mr L has complained that AXA Insurance UK Plc ('AXA') declined his claim for damage to his rental property after initially advising him that a payment would be made under his home insurance policy. For the avoidance of doubt, the term 'AXA' includes AXA's agents and representatives in this decision letter.

What happened

Mr L lodged a claim with AXA in May 2023 following damage caused by illegal use of his rental property as a cannabis farm. AXA appointed a loss adjuster who duly visited the property. AXA then gave Mr L the impression over the initial three-month period of the claim that it was a valid claim, and that AXA would cover the cost of repairs. AXA ultimately declined the claim and said that its initial indication was given in error. It considered that the relevant exclusion in the policy had been properly applied. Mr L complained to AXA, however, it maintained its stance.

Mr L then complained to this service. The relevant investigator said that as the damage to the property was due to its use as a cannabis farm, it was reasonable to consider that it had been caused deliberately. She understood that AXA was willing to consider a claim for any damage caused by the police gaining entry to the property as this was something that the policy covered. Finally, the investigator thought that the compensation paid by AXA of £300 was within the range of what the service would deem appropriate.

Mr L remained unhappy with the outcome of his complaint. The matter has therefore been referred to me to make a final decision in my role as Ombudsman. In April 2024, I issued a provisional decision for this complaint and explained why I was minded to partly uphold Mr L's complaint as follows; -

'The key issue for me to determine is whether AXA applied the terms and conditions of the relevant policy and generally treated Mr L in a fair and reasonable manner. On a provisional basis, I partly uphold Mr L's complaint. I consider that AXA eventually applied the relevant exclusion clause correctly. However, I don't consider that it acted fairly and reasonably in relation to the cost of reconnection of the electricity supply. I also don't consider that compensation of £300 was a reasonable response to AXA's acknowledged service error.'

In reaching this provisional decision I've also carefully considered the parties' submissions as summarised below. Turning firstly to Mr L's submissions, his complaint is that his claim was declined over three months after AXA had originally advised that payment would be made. He was also unhappy with the overall lack of communication and clarity from AXA.

Mr L said that he'd explained all the circumstances surrounding the claim to AXA at the outset, but at no point during the initial months was he advised that the claim would be declined. He said he'd provided the relevant crime reference numbers to AXA and had provided details of the damage. He said that the initial letting of the property 'was carried out by a reputable letting agent who carried out all necessary checks including credit and identity checks. The initial deposit and the subsequent monthly rentals were paid by bank transfer to the agent.' Mr L believed he'd followed all appropriate guidance as a landlord.

Following the initial visit of AXA's loss adjuster, the loss adjuster explained what Mr L needed to do in relation to arranging a quote. The loss adjuster said that AXA could arrange the work or Mr L could arrange for his own contractors to carry it out. The loss adjuster also said it would probably be quicker if Mr L arranged the work himself. Mr L said he supplied quotes for the remedial works amounting to just over £8,600, and was advised two months later that a report had been prepared, advising, 'that payment had been requested'. He was also asked to provide bank details for payment. The loss adjuster advised a few days later that payment should be made within about two weeks.

In August 2023 Mr L tried to chase AXA but was unable to get hold of anyone. By mid-August however, AXA advised Mr L that the claim was being declined as the tenant had been arrested. Mr L said that this was completely incorrect. Whilst arrests had occurred, 'they were not people listed on the tenancy agreement, nor had they any permission from us to use the property...'

Mr L said that it wasn't until September 2023 that AXA advised him that the claim was being declined due to the damage being deemed to be deliberate and that the loss adjuster shouldn't have given the assurances that he had. Mr L said that he'd carried out a significant amount of essential works in the belief that the claim would be paid. He'd been asked to provide receipts for the work and so this reinforced his belief. This work had cost about £4,400 and he had to pay this from his savings. Mr L felt that this loss up to the point of AXA changing its position should be reimbursed as a final settlement.

As to the Policy booklet, Mr L said there was nothing in the glossary to explain what would be deemed malicious or deliberate damage. He thought that alleged criminal activity or malicious damage where there was a crime reference number would be covered.

In relation to the service issues, Mr L said that AXA's communication had been very poor, and he didn't receive promised call-backs. Mr L said he'd suffered additional stress and sleepless nights due to the way he'd been treated by AXA. He didn't think that an offer of £300 compensation from AXA recognised the very poor level of service he'd received.

I now turn to AXA's submissions regarding this complaint. It said that the policy didn't provide cover for every eventuality. It noted that Mr L bought the property with the intention of it being a buy-to-let property. It was fully renovated and let out to a tenant in early 2023. AXA noted that Mr L had friends who lived close to the property who had kept an eye on it, and they'd noted suspicious activity. The police duly arrested individuals on site.

AXA then referred to the policy and the relevant exclusion clause regarding deliberate damage. AXA accepted that the tenant wasn't directly responsible for, or arrested for the damage at the property. However, it considered it likely that the tenant had passed on the keys to the responsible parties and said that there were no signs of a break in. Without any evidence to the contrary, it assumed that the damage was caused deliberately by 'anyone living at the insured address'. It considered that the decision to decline Mr L's claim for damage had been made correctly and in line with policy terms and conditions.

As to the service received by Mr L, AXA understood that 'the error in incorrectly accepting the claim has caused you further upset and distress at an already stressful time.' AXA stated that unfortunately, the policy exclusion had been missed and that the claim had initially been accepted in error. It apologised to Mr L for this error and upheld this element of Mr L's complaint and it offered £300 by way of compensation.

I now turn to the reasons for my provisional decision not to uphold the substantive element to Mr L's complaint, but to uphold it in relation to costs of reconnection of the electricity

supply.

The starting point in this respect is the wording of the relevant policy documents. In this case, the relevant extracts of the policy booklet read, under its 'Conditions and Limitations' section, as follows; 'Your policy will not cover loss, damage, liability, costs or expenses for claims in the following circumstances...Damage caused deliberately or recklessly by you, your guests or anyone living at the insured address...Alleged criminal activity where you don't have a crime reference number...' As to the relevant 'Buildings Cover' it includes the following: 'Your policy will cover the following Insured Losses... Malicious damage...Damage by emergency Services'.

It's often the case that a claim is set up at the outset, however following the validation and investigation process, the claim is ultimately declined. The issue here is whether the ultimate decision to decline the claim, based on the policy wording was a fair and reasonable one. The difficulty in this case is that the policy wording is not particularly clear, and a potential discrepancy wasn't explained in the definitions section of the document.

I have much sympathy with Mr L regarding the confusion caused. As he says, malicious damage is covered under the policy whereas deliberate damage is not, and AXA appear to have used the terms interchangeably. Damage can of course be both deliberate and malicious. Ultimately however, where there are no definitions provided in policy documents, it would be reasonable to give words their ordinary meaning. The word 'malicious' suggests damage caused by an individual who intended to do harm. 'Deliberate' damage suggests damage caused by an individual on purpose.

I consider this to be a finely balanced matter. On a provisional basis however, I conclude that the policy wording is sufficiently clear once carefully considered but could be far clearer. Whereas malicious damage is covered by the policy in principle, the limitation quoted above then specifies the circumstances when any deliberate (and also potentially malicious) damage wouldn't be covered. These circumstances include damage caused by anyone living at the insured address.

It appears that AXA now accepts that the tenant wasn't personally responsible for the damage and had disappeared. Unfortunately for Mr L, the wording of the policy also excludes cover where damage is caused by anyone living at the property, whether or not they are legitimate tenants. Again, the parties appear to accept that one individual had been seen to be occupying the property during the illegal operation and that a single mattress had been discovered there. On the balance of probabilities, I consider it likely that this individual had been wholly or partly responsible for the deliberate damage caused in carrying out the illegal operation.

Mr L also makes an important point regarding a second exclusion in the policy booklet being: 'Alleged criminal activity where you don't have a crime reference number...' Mr L clearly did have such a crime number and he considered that; 'this surely means that 'Alleged Criminal Activity if you DO have a crime reference number' is covered.' Again, I consider that the policy wording could be much clearer. On a provisional basis however, I conclude that each exclusion clause would need to be considered individually. It was clear that a crime had been committed here and damage as a result could potentially be covered, however the damage was also likely to have been carried out wholly or partly by the occupier.

In the circumstances, I have considerable sympathy for Mr L's predicament here, and the fact that the decline of this claim hinges simply on the question of whether criminal activity at the property was caused by someone who also occupied it. I'm also satisfied that Mr L did everything possible to arrange his tenancy through reputable agents and faces this situation through no fault of his own. However, on a provisional basis, I can't say that AXA acted in an

unfair or unreasonable manner when it ultimately declined Mr L's claim under the relevant exclusion in the policy.

As for Mr L's claim for work carried out at just over £4,400, in view of my provisional conclusion that AXA ultimately correctly declined his claim, I can't say that AXA should reimburse this amount, as Mr L would have needed to expend this amount in any event to make his property safe.

It is understood that AXA explained that it would be willing to consider a claim for the damage caused by the police gaining entry to the property. The investigator had concluded that it was fair that AXA made Mr L aware of this this, however it doesn't appear that this issue has been resolved to date. Mr L has candidly stated that the only damage from the police raid was 'that they required to have the main electricity supply cut off before fully accessing the property.' He said that the costs of reconnecting the electrical supply was part of the original claim which was declined. In the circumstances, and on a provisional basis, I conclude that AXA should now reimburse this aspect of Mr L's claim, on production by him of evidence of the cost and his payment for arranging the reconnection of the electrical supply.

As to Mr L's complaint about the service provided by AXA and having been led to believe that he was to receive a settlement of just over £8,600, and then to be notified that he would receive no reimbursement whatsoever. AXA acknowledged its error and the upset caused.

I've carefully considered this matter, and provisionally conclude that the sum of £500 would more fairly recognise the inconvenience and frustration caused to Mr L. He was led to believe for several months that the claim would be covered. It would undoubtedly have been upsetting to discover that AXA had changed its stance after such a long time. If AXA wished to rely on the relevant exclusion in the policy, then it should have checked the detailed terms and conditions of the policy much sooner than it did. It's also noted that AXA's responses had caused confusion with a lack of clarity as to the reasons for declining Mr L's claim. It's also noted that it's communication with Mr L was generally poor.'

In my provisional decision, I asked both AXA and Mr L if they had any further comments or evidence which they would like me to consider before I made a final 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 L responded to say that he thought the provisional decision demonstrated an understanding of the difficulties he'd encountered, and of the stress and frustration he'd felt through the claim process. He was pleased to see that a partial settlement was provisionally recommended, and he confirmed that he had nothing to add to the information he'd previously supplied.

AXA didn't provide any further comments or evidence in response to the provisional decision.

In the circumstances, I conclude that the provisional decision provides a fair and reasonable outcome to Mr L's complaint, and I require AXA to reimburse Mr L for the cost of reconnection of the electrical supply to his property, and also to pay the sum of £500 to Mr L in compensation for the distress and inconvenience caused by its handling of his claim.

My final decision

For the reasons given above, I partly uphold Mr L's complaint and I require AXA Insurance UK Plc to do the following in response to his complaint:

- Reimburse Mr L for the cost of reconnection of the electrical supply to his property within 28 days of this final decision, and following production by Mr L of evidence as to the cost of, and his payment for this work.
- To pay interest on the above sum, as calculated from the date Mr L paid this amount to the date of settlement, at 8% a year simple interest.
- To pay compensation in the sum of £500 in total for the distress and inconvenience caused (less any sum in compensation which AXA has already paid out to Mr L).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 June 2024.

Claire Jones
Ombudsman