

The complaint

S complains AXA Insurance UK unfairly declined its property insurance claim.

AXA's been represented by an agent for the claim. For simplicity I've referred to the agent's actions as being AXA's own. S is a limited company. It has been represented for the complaint. For the same reason I've referred to the representative's actions as being S' own.

What happened

In early 2023 S claimed against its AXA all risk property owners policy for water damage to its property. It said heavy rain had resulted in flooding of the floor of the flat – as a result of a blocked drain. It also said rain had overwhelmed guttering resulting in water entering through the roof.

AXA's loss adjuster (LA) didn't accept the damage to be the result of a single insurable event. He considered the problem to be the result of long term and widespread damp in the property. He said that isn't something covered by S' policy, so declined the claim.

S complained about that outcome. It said it had provided comprehensive evidence to support a blocked drain being the cause, during heavy rainfall, of damage to the flat. It said historical damp, reported by a tenant, is a separate matter to the claimed for damage. It asked that AXA accept the claim for the damage and pay loss of rent.

In October 2023 AXA responded to S' complaint. It said despite a review the claim was still declined. It felt the evidence didn't support an insured peril, including flood, to be the cause of damage.

S wasn't satisfied, so referred its complaint to the Financial Ombudsman Service. It said AXA had overlooked supporting evidence – including photos and an invoice for drain unblocking. It said the damage was caused by an insured peril – either flood or escape of water. S said it had been financially affected by the claim decline. To resolve its complaint it would like AXA to accept the claim for the damage and pay loss of rent.

Our Investigator highlighted to AXA that the policy is 'all-risk'. She was satisfied S had shown damage had occurred at the property. She was persuaded the cause of damage was flood. She said the exclusion AXA had referred to – gradual deterioration, wear and tear – doesn't apply to flood damage. So she said AXA can't rely on it to decline the claim. She added that, as S had shown evidence of tenants' departure due to the damage, she would be asking AXA to cover loss of rent for the period the property couldn't be let.

AXA didn't accept the damage had been caused by storm or flood. Instead it said it was due to poor maintenance and gradual deterioration. So it considered it could rely on the exclusion.

I issued a provisional decision. As its reasoning forms part of this final decision I've copied it in below. In it I explained why I intended C require AXA to accept S' property suffered damage and pay the amount of loss in line with the provisions of the insurance. I explained

why I intended to require it to pay S six weeks loss of rent. I invited both S and AXA to provide any further evidence or comments they would like me to consider before issuing this final decision.

what I've provisionally 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence S and AXA have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

I've considered the circumstance of the claim against the terms of the policy. It's important to note that it is an 'all risks' one. So, unlike more common policies, cover isn't limited to loss resulting from specified causes only – otherwise known as 'insured perils' – such as flood, storm, fire etc. Instead S' policy terms state:

'If any BUILDINGS suffer DAMAGE by any causes not excluded the Insurer will pay to the Insured the amount of loss in accordance with the provisions of the insurance.'

So all S is required to show is that its building suffered damage. Damage is defined by the policy as 'Loss destruction or damage'.

S has provided marketing photos of the property. It said these are from a few months before the relevant incident. It's also provided photos and videos from after the incident. These show clear damage to plaster above and around windows. They also show widespread build-up of water on bedroom floors. I think it's likely that amount of water will have caused damage to the property. The photos show damage to walls. So S has done enough to persuade me the building has suffered damage.

That means, in line with the above term, AXA must pay to S the amount of loss – unless it can reasonably show the damage is excluded by the policy terms.

AXA referred to the following exclusion:

'All other DAMAGE

1 to any PROPERTY caused by

- a) Its own fault or defective design or materials*
- b) inherent vice latent defect gradual deterioration wear and tear*
- c) faulty or defective workmanship on the part of the insured or any of their employees*

but this shall not exclude subsequent DAMAGE which itself results from a cause not otherwise excluded.

AXA's approach to the claim, via its LA, has been to require S to show the damage to be caused by an insurable event. Its notes state, for example, that the LA declined to cover the loss because he didn't accept there to be an insurable peril in operation. For the reasons given above I consider that a failure to fairly consider the terms of S' all risk policy. Instead as there is 'damage' it's for AXA to show one of the exclusions applies.

Our Investigator believed the policy terms didn't intend for the above exclusions (1a, b and c) to apply to the type of loss she considered had happened - flood damage. In

my opinion the terms aren't clear. I think it is possible those exclusions aren't intended to apply where the damage is 'flood' – as can be argued is the case here. But I don't intend to make a finding on that particular issue. That's because, in any event, I don't feel AXA's done enough to show it can fairly rely on the exclusions to decline the claim.

S' explanation for the damage is heavy rain backing up as a result of debris blocking a drain – and seeping into the property. A photo, on a plumber's report, supports this – showing a flooded outside lightwell area. S has explained damage to walls being the result of heavy rain overwhelming gutters and then entering through the roof.

AXA's suggested recent building work or the conversion of the building was potentially defective – allowing water ingress or damp. It has pointed to various potential explanations, including a lack of tanking, poor conversion works or lack of maintenance.

It seems then that, here, AXA considers the damage to be the result of 'defect, gradual deterioration, wear and tear or defective workmanship – as per the 'All other DAMAGE' exclusion. But importantly it, nor its LA, hasn't provided any persuasive supporting evidence for the possible causes it's suggested. Instead of developing its own evidence base to support its reliance on the exclusions, AXA directed S to evidence the cause of damage.

So I'm not currently persuaded it's fair for AXA to rely on an exclusion to decline the claim. That means I intend to require it to, in line with the policy terms, accept S' property suffered 'damage' – and pay it 'the amount of loss in accordance with the provisions of the insurance'.

If S has had the repairs made already AXA will need to reimburse S and add simple interest, at 8%, to the settlement. That will be from the date the cost was paid until the date of final settlement. This is intended to make up for S being without the funds – due to AXA unfairly declining the claim.

S would like AXA to pay loss of rent. The policy states in the event of damage to buildings resulting in a residential portion being uninhabitable the insurance extends to include loss of rent until its habitable. The policy terms go on to say the insurer will pay up to 33.3% of the sum insured of the residential portion of the damaged buildings. I'm satisfied S' cover includes loss of rent (AXA has questioned this). The policy certificate's reference to the 33.3% limits supports its inclusion.

For loss of rent to be covered the 'damage' must result in the flat being uninhabitable. I can understand why the tenant departed. The property appears from the evidence to have been uninhabitable as a result of the damage - with large areas of water on the floors and likely damage to fixtures and fittings.

I don't know how long it should, or did, take S to have made the property habitable again. So in the absence of relevant information and in the interests of coming to a practical resolution I'm going to estimate six weeks. So AXA should pay S the equivalent of six weeks rent – in line with the contracted rate of the departed tenant. It will again need to add simple interest to that amount. That will apply from the week the tenants departed until the date of final settlement.

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.

AXA accepted the findings of the provisional decision. S requested I award further loss of rent – as damages. It explained after the loss, in 2023, the property remained uninhabitable and unlet. It said as a result it was unable to fund repairs. However, alternative funding was sourced to allow repairs to commence in early June 2024. These completed in early August 2024, with the property finally let from early September 2024.

S referred to Section 13A of the Insurance Act 2015 and a final decision issued by this Service to support its position that AXA should cover its loss of rent for a longer period. I've considered its request and comments. However I'm not going to extend the loss of rent period AXA needs to cover.

First, based on the repair date range S provided I'm satisfied the six-week period I suggested is broadly, if not exactly, reflective of the time taken for repairs to make the property habitable.

If I'm to make an award for losses outside of the insurance contract, I need to consider if reasonable loss mitigation actions were taken. S is a limited company, with assets and a professional representative. Yet I haven't been provided with an explanation as to why it was able to source alternative funds in mid-2024, but was unable to do the same months earlier. I can't, based on what I've been provided with, say S did take reasonable actions to avoid losses. So I'm not persuaded it would be fair or reasonable to require AXA to cover additional loss of rent beyond the six-week period I set out above.

Putting things right

So my final decision will be the same as that set out in my provisional decision. That means AXA will need to accept S' property suffered 'damage' – and pay it 'the amount of loss in accordance with the provisions of the insurance'. As repairs have been completed AXA will need to reimburse S and add simple interest, at 8%, to the settlement. That will be from the date the repair cost was paid until the date of final settlement.

AXA will also need to pay S the equivalent of six weeks rent – in line with the contracted rate of the departed tenant. It will again need to add simple interest to that amount. That will apply from the week the tenants departed until the date of final settlement.

My final decision

For the reasons given above, I require AXA Insurance Limited to take the steps set out above under 'Putting things right'.

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

Daniel Martin
Ombudsman