

The complaint

Ms D is unhappy AXIS Specialty Europe SE (AXIS) declined a claim under her commercial insurance policy for damage made to her rental property.

Any references to AXIS include their agents.

What happened

Mrs D owned a property which she rented out. The tenant moved out in December 2022, but Mrs D says the property was left in a poor condition. She made claim for malicious damage which AXIS considered. They agreed the property had been damaged, but thought this had been caused by neglect, rather than maliciously. Mrs D said she wasn't able to afford the repairs necessary to rent the property out again so decided to sell it. Mrs D says she suffered a financial loss in the region of £10,000 as a result of lost rental income, the cost of running the property when it was empty and reduced sale price and she complained to AXIS.

AXIS issued their final response letter in October 2023 and said they remained of the view they'd declined the claim appropriately. Mrs D referred her complaint to the Financial Ombudsman Service where it was considered by one of our investigators. Our investigator initially said she didn't think AXIS needed to do anything more to put things right. Mrs D didn't agree and provided more information.

Following this, our investigator said AXIS should consider the claim for damage to the window in the porch under the accidental damage section of the policy. AXIS agreed, but Mrs D didn't, remaining of the view AXIS should have covered more of the damage, so this matter has been passed to me to decide.

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.

First, I'd like to reassure Mrs D that while I've summarised the background to this complaint and her submissions to us, I've carefully considered all that's been said and sent. In this decision though, I haven't commented on each point that's been made and nor do our rules require me to. Instead, I've focused on what I think are the key issues to decide what I consider to be a fair and reasonable outcome, which is what I'm required to do.

The outcome of the claim

I think it's helpful to set out here I can only require AXIS to make a payment if what is claimed for is covered by the policy. The policy Mrs D took out doesn't provide cover for any and all damage a tenant might cause to a property.

The policy provides cover for malicious damage but doesn't define it, so I've considered the ordinary definition of malicious when deciding what's fair and reasonable. This means, while

there's no dispute the property sustained damage, I'd need to be persuaded the damage occurred with the intent to cause harm in order to say AXIS wrongly declined the claim.

I've started by considering the loss adjuster's assessment of the damage to the property. They noted the bedroom walls had been drawn on, wallpaper damaged and walls repainted in the wrong colour. The damage to the walls was noted to have continued on the stairs where a section of wallpaper had been removed. Further damage had been noted to the flooring, with damaged carpet and stained flooring.

The loss adjuster identified damage in the kitchen, by way of water damage to one unit and the back of another unit pushed away from the sides. The report contained photographs of some of this damage and other areas.

I've also considered Mrs D's comments about the damage sustained to the property and the photographs provided to support her assessment of the damage. But I don't consider the loss adjuster's conclusion is unreasonable and agree the areas of damage outlined do look more likely to have occurred out of neglect rather than with the intent to cause harm. For example, it's noted the walls had been drawn on, but the tenant had children and this likely explains the drawings and damage to the wall. But I'm not persuaded this could reasonably be defined as malicious. As the policy doesn't provide cover for damage caused by neglect, I'm not going to require AXIS to make a payment for the damage Mrs D says was malicious.

I've noted what AXIS said about the policy requiring the tenant to be on an Assured Shorthold Tenancy agreement. However, I'm not intending to consider this point further as I haven't concluded AXIS acted unreasonably in declining the claim for malicious damage.

Our investigator concluded AXIS should consider the damage for the porch window under the accidental damage section of the policy and Mrs D would be able to ask AXIS to consider any other areas of damage she can show were caused accidentally. AXIS said they will consider the damage to the porch window, and I agree this is a reasonable step to take to put things right for Mrs D.

Reduction in cover, lost rent and lower of sale price

Mrs D set out a number of other issues she said should be considered. These being that AXIS reduced the cover due to the time the property wasn't occupied, she lost rental income and had to accept a lower sale price due to the condition the property had been in.

I can see Mrs D has expressed some concern about the reduction of cover but it's not unusual for an insurer to consider an unoccupied property might carry a higher risk and take steps to reduce that risk. The policy wording defines the property as being unoccupied if its "*empty or no longer in active daily use for a period exceeding 30 consecutive days*". And if a property is unoccupied for up to 90 days the policy sets out a number of additional checks the owner is required to carry out.

AXIS says that at the point the property approached being unoccupied for 90 days the claim had been declined, so their decision to extend it by a further 30 days was provided beyond what would normally be provided. In any event, given I haven't concluded AXIS wrongly declined the claim for malicious damage and isn't responsible for the repairs, I can't say they acted incorrectly in reducing cover when they did.

I've considered the lost rental income Mrs D says she incurred because she couldn't carry out the necessary repairs required to get the property to the necessary standard to rent out again. The policy provides cover for loss of rent but as I've set out above, I don't consider AXIS acted unreasonably in declining the claim for malicious damage. And this means they

aren't responsible for how long it might have taken to carry out repairs required to rent the property out again. As I can't conclude the damage was caused by an event the policy provided cover for, AXIS isn't required to compensate Mrs D for any of the lost rental income she says she incurred.

Mrs D said as she was unable to cover the cost of the repairs she took the decision to sell the property. She's provided evidence from an estate agent which she says supports her view that had the repairs been carried out, she might have received a higher price for the property. This may well have been the case had the repairs carried out.

As I've said, I'm satisfied AXIS reasonably declined the claim for malicious damage, and the general principle of insurance is the policy holder needs to show an insured event has occurred. Whilst Mrs D has shown damage occurred, I'm more persuaded by AXIS' conclusion the damage was caused by neglect and a lack of care, rather than maliciously. It follows, I don't consider AXIS was responsible for carrying out the repairs needed or its failure to do so led to Mrs D receiving the lower sale price.

Putting things right

I'm requiring AXIS to consider the claim for the porch window, along with any other damage Mrs D can evidence was caused accidentally.

My final decision

My final decision is that I uphold this complaint and require to take the steps set out in the "Putting things Right" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 9 January 2025.

Emma Hawkins

Ombudsman