

The complaint

Mr M is unhappy with AXA Insurance UK Plc's (AXA) approach to settling a claim made under his commercial property insurance policy.

What happened

Mr M made a complaint to AXA about damage to a property he rented out. AXA declined the claim, so Mr M referred his complaint to this Service. It was considered and decided by one of my ombudsmen colleagues in October 2023. In his final decision, the ombudsman required AXA to reconsider the malicious damage claim in line with the remaining policy terms. This decision focuses on what's happened following that final decision.

AXA reconsidered the claim and paid Mr M £5,000, which was the limit it could pay for malicious damage under the policy terms. Mr M complained, saying AXA hadn't truly considered if some of the damage caused could have been considered under another section of the policy. AXA responded to Mr M's complaint in February 2024, setting out why it didn't intend to cover those remaining areas of damage as separate incidents. Though AXA did acknowledge some delays in reconsidering Mr M's claim and paid £225 compensation for the delays.

Unhappy with AXA's response, Mr M referred his concerns to this Service. He said to put things right he wanted AXA to reconsider a number of areas of damage. Mr M's complaint was passed to one of our investigators who said she thought there were several areas of damage to be considered under the accidental damage section of the policy.

AXA didn't agree and asked for this matter to be reviewed by an ombudsman. I issued a provisional decision on 24 September 2024. In my provisional findings I said:

"As our investigator noted, the policy doesn't define malicious or accidental damage. And where there isn't a definition, we'd usually give these words their ordinary, everyday meaning.

Our investigator said AXA didn't need to cover the below areas of damage because she thought it more likely than not that the damage had been caused maliciously:

- *Walls that had been hit with a hammer*
- *Bathroom tiles which had been hit with a hammer*
- *Kitchen damage*
- *The gardens and the fence*

I'm inclined to agree. The damage to the majority of these areas shown in the images provided appears to have been carried out with the intent to cause harm. The walls and bathroom tiles appear consistent with being struck with a hammer and I'm not persuaded it's more likely than not this damage was caused accidentally, in a one-off event. I consider it more likely it was carried out with the intention to cause harm to Mr M's property. In addition to this, the damage in the kitchen with debris strewn across the floors and cabinets broken also appears to have been carried out with the intention to cause harm.

I'll turn now to the damaged fence in the front garden, the discarded rubbish in the back garden and the damaged wardrobe. It's very hard to say that any of these instances seem to have occurred accidentally, or as result of a one-off incident. It's also not possible to say any of these areas of the property were damaged with the intention to cause harm. It's not clear what caused the fence in the front garden to collapse and, as our investigator said, the rubbish in the garden could have been the tenants preferred way of storing this – though I accept it's not how Mr M considers rubbish should be stored. It's not possible from the images provided to determine if the damage to the wardrobe was as a result of a one-off event. So, I'm not intending to require AXA to cover any of the above areas of damage.

I'm also not intending to require AXA to cover to the light switches or carpets. The damage to the light switches appears consistent with what has been recorded as damage caused by a hammer to the internal walls and bathroom tiles. The carpets have been lifted and removed or left in a particularly dirty or poor state. Whilst we don't know for certain how the damage to the carpets occurred, I find myself more persuaded by AXA's account for why it declined the damage to the light switches and carpet, in that it doesn't appear to have occurred as a result of a one-off incident.

However, there are some areas of damage where I do consider AXA hasn't demonstrated the damage claimed for was caused maliciously and with an intention to cause harm. AXA is seeking to limit the settlement due based on its belief that the damage was caused maliciously. In these circumstances, I think the onus is reasonably on AXA to show that the damage was, on balance, most likely caused maliciously, rather than having happened accidentally.

I think the damage to the following areas could have been caused accidentally. And AXA's evidence and arguments haven't persuaded me that the damage was most likely malicious. So, in these circumstances, I consider it fair and reasonable to direct AXA to cover the following areas of damage:

- Front door*
- The internal door in the image*
- The single floorboard*
- The broken front window*

AXA says it considers the damage to the front door to be malicious. The images of the front door show a crack and a missing letterbox. AXA refers to damage to the rear of the front door. I've been provided with two images – a close up showing a crack and missing letterbox and one further away showing the external side of the front door. The crack is visible in both images.

Some of the other images showing damage in the house appear fairly consistent in nature, but the damage to the front door doesn't look like some of the other damage. AXA said the door was struck from the inside. That may be the case, but this means the damage to the front door could be consistent with in a one-off event. In the face of incomplete evidence – as is the case here because we don't know how the damage occurred – I need to decide which version of events I find myself more persuaded by. I don't consider AXA has persuasively demonstrated how it could fairly say this damage wasn't consistent with accidental damage. So, I'm intending to require it to settle this part of the claim.

I'll turn now to the issue of the internal doors. In response to the investigators' opinion, AXA says it shouldn't be asked to cover all eight internal doors when it's only been presented with evidence of damage to one door. I agree. A basic principle of an insurance claim is that

someone has to show there's been in insured event. Here, there's evidence of damage to only one internal door.

As with the front door, the damage in the photograph doesn't seem consistent with some of the other damage in the property. It's for AXA to show the damage was, on balance, most likely caused maliciously rather than accidentally. As I haven't been provided with a persuasive explanation as to how the damage to the internal door and frame was caused, I'm intending to require AXA settle this part of the claim.

I'm intending to require AXA to compensate Mr M for the damaged floorboard shown in the photographs, for the same reason as I've given for the front door and internal door. Although the photograph is labelled 'floor boards hit with hammer', the damage to the single floorboard doesn't look consistent with some of what appears to be acknowledged as hammer damage shown in some photographs and accepted as malicious damage. The photograph shows the end of one floorboard that is at an angle and below the other, level floorboards. Whilst the photograph of the damaged floorboard isn't seen in the wider context, I'm not persuaded AXA has adequately supported why it concluded this damage was consistent with the other damage in the home caused by a hammer beyond how the photograph was named. I'm intending to require it to settle this part of the claim.

I'm also intending to require AXA to accept the claim for the damaged window. AXA says there's no evidence to support the damage occurred accidentally and it was believed to have been carried out by a third party. But I've not been provided with any further evidence to consider that supports how AXA reached this conclusion. With this in mind, I'm intending to require it to settle this part of the claim.

With all these areas where I'm intending to require AXA to settle the claim, it should calculate the offer based on the estimate Mr M provided and pay simple interest at 8% from one month after AXA received relevant invoice (to allow time for it to have considered the evidence) until the date of settlement.

I've considered Mr M's request that AXA consider there was evidence of drug cultivation in the property. I've reached the same conclusions as our investigator and for the same reasons. I think AXA's position here is fair in that if Mr M believed this was happening, it's not unreasonable to say he would have reported this to the police at earliest opportunity. Instead, I understand it was reported to police some 10 months after damage was discovered.

There's no dispute there was evidence the electrical meter had been tampered with. However, this in itself isn't evidence of drugs cultivation. It could be, as AXA suggested, an attempt to circumvent having to pay a utility bill. Ultimately, beyond some tampering with the electricity meter, I haven't been provided with any evidence of drugs cultivation. I don't consider AXA acted incorrectly for declining this part of the claim.

I'll turn now to AXA's handling of claim. Mr M has expressed dissatisfaction with AXA's decision not to request the police report into the alleged drug cultivation. I don't think this was unreasonable for the same reasons I don't think it was unreasonable for AXA to decline this part of the claim. This was reported months after the damage discovered. And the police declined to carry out an inspection. I'm not persuaded the report would have led to a different conclusion.

In the final response AXA offered Mr M a total compensation payment of £225 to reflect the distress and inconvenience caused by the delays in telling him the outcome of his claim and responding to his complaint. I realise this matter has been ongoing for a long time for Mr M,

but here the payment from AXA reflects how its delays over a fairly short period of time impacted him. I consider this fair in the circumstances and I'm not going to require it to pay anything more."

Mr M confirmed he'd received my provisional decision but didn't add any further comments.

AXA also confirmed they received the provisional decision and said they would provide comments before the response date of 8 October 2024. Despite a reminder, I didn't receive a response from AXA.

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.

As I haven't had any further comments from either side to consider, I don't see any reason to depart from the conclusion set out in my provisional decision.

Putting things right

For the reasons I've given, I consider a fair and reasonable conclusion to this complaint is for AXA to settle Mr M's claim for the front door, one internal door and frame, front window, and floorboard under the accidental damage section of the policy.

AXA should also pay simple interest at 8% per annum as I've set out below, and £225 compensation for the distress and inconvenience caused by its recent handling of the claim.

My final decision

My final decision is that I partially uphold Mr M's complaint. To put things right, AXA Insurance UK Plc should:

- Settle the claim for the front door, one internal door and frame, front window, and damaged floorboard under the accidental damage section of the policy.
- If Mr M has already paid for these repairs, AXA should pay interest at 8% per annum simple on each payment Mr M made for from one month from after the relevant invoice was received by AXA until the date of settlement*.
- Pay Mr M £225 compensation for the distress and inconvenience caused if it has not already done so.

* If AXA Insurance UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr M how much it's taken off. If requested, AXA should also provide Mr M with a certificate showing the amount deducted, so he can reclaim it from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 November 2024.

Emma Hawkins
Ombudsman