

The complaint

Mr C complains that AXA Insurance UK Plc unfairly declined a claim he made under his home insurance (buildings) policy. He's also unhappy that AXA wouldn't help him make a claim against the insurer of the third-party driver who damaged his property.

AXA is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As AXA has accepted it is accountable for the actions of the agents, in my decision, any reference to AXA includes the actions of the agents.

What happened

In late 2022, Mr C made a claim under his home insurance policy with AXA after a vehicle collided into his property causing damage to the fence and wall of the house.

AXA arranged for a loss adjuster to visit the property to validate the claim. AXA then told Mr C it had come to light that material information had not been disclosed to it at the point of the policy's sale. It asked him some questions about the property and its occupancy. It also informed him that the outbuildings were underinsured.

After Mr C had answered its questions, AXA referred the matter to its underwriters. It then told Mr C that an endorsement had been applied to the policy and it was declining his claim.

Mr C raised a complaint, but AXA maintained its position. It said it had become evident that the property was unoccupied when the damage occurred. If it had been aware of the correct property information, the terms would have been different. The claim was repudiated as AXA doesn't cover collisions with wild animals or vehicles when a property is unoccupied.

Mr C remained unhappy, so he brought his complaint to the Financial Ombudsman Service. He said he was insured, and AXA only needed to tell the car's insurer to pay him the cost to replace the damaged property. He said AXA had spent all its time trying to avoid liability and not contacting the driver's insurer. He had complied with the policy. The property was never unoccupied for more than 30 days.

I issued a provisional decision on 18 October 2024, where I explained why I didn't intend to uphold Mr C's complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Based on what I've seen so far, I don't intend to uphold Mr C's complaint. I'll explain why. I've considered everything Mr C has told our service, but I'll be keeping my findings to what I believe to be the crux of his complaint. I wish to reassure Mr C I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Claim decline

AXA declined Mr C's claim based on a policy endorsement that it retrospectively applied after he made his claim. The endorsement says that no cover is provided under the Buildings Cover for a number of insured losses which include "Collisions with Wild Animals or Vehicles".

Mr C's property was damaged due to a collision with a vehicle. So, what I've needed to consider here is whether it was fair for AXA to have retrospectively applied the endorsement and decline his claim based on this exclusion.

The policy's terms and conditions say:

"Your cover is based on information you provide to Us, as detailed within Your Policy Documents. If this is incorrect, incomplete or changes during the policy year, You must take steps to tell us. If not, there is a risk Your policy could be cancelled, amended, additional premium could be charged or claims could be reduced or rejected. This isn't an exhaustive list, but changes You must tell us about include:

...

- Letting the Home or using it for any purpose other than as a private residence (including business use); or if there is a break in tenancy of 30 days or greater;
- If Your Home is no longer occupied solely by You or Your family; or will become occupied for 30 consecutive days or more..."

AXA says Mr C gave inaccurate information about the occupancy of the property when he took out the policy in February 2022.

AXA has provided screenshots to show the questions Mr C was asked when he took out the policy online as well as the statement of fact which shows the answers he gave.

In answer to the question "how is the property used?", Mr C said it was his permanent home. He also said that he lived there, and the property was normally occupied "at night". In answer to the question "for how many consecutive days is your property left unoccupied?" he answered "31 – 45".

The loss adjuster who visited Mr C's property in December 2022 noted that Mr C said the property had previously been let to private tenants, however it had been unoccupied for approximately six months.

According to the loss adjuster's report, Mr C said he intended to demolish the property and build two new properties. He had submitted planning permission for this work however the initial application had been rejected. For this reason, Mr C had not sourced a new tenant, but he visited the property regularly and completed a weekly check on its condition as he lived nearby.

In an email Mr C sent to AXA in February 2023 he said the property was let when the policy was taken out and it was currently vacant.

Given what Mr C subsequently told AXA about the occupancy of the property, I think it was reasonable for it to have concluded that he hadn't given it accurate information prior to the damage occurring. I can see the matter was referred to AXA's underwriters and the endorsement which said there was no cover for "Collisions with Wild Animals or Vehicles" was applied. I think this was reasonable.

I'm satisfied from what I've seen that this endorsement would have been applied if Mr C had given accurate information about the status of his property prior to his claim. So, I think it was fair for AXA to decline his claim based on this exclusion.

Mr C has since said that the information he gave to AXA when it was assessing his claim wasn't correct. He now says that his last set of tenants left his property in September 2020, which was around seventeen months before he took out the policy and around two years before the collision. He says the property was damaged by the tenants and it wasn't financially viable for him to put it back into a rentable condition, especially as he was planning to develop the plot. Mr C says he did a tiny portion of the bungalow up for his personal use and stayed there a few nights a week.

Mr C says that when he told AXA the house was vacant for six months he wasn't concentrating. It was actually two years since he'd had tenants. He didn't consider staying there a few times a month to be relevant.

Mr C says he bought the correct policy and complied with the rules. He says he couldn't have purchased a policy for an empty house as he stayed there, and he couldn't buy a landlord policy as there were no tenants.

Our investigator asked Mr C for some further information to support what he's said about the property being his second home, such as council tax bills. However, Mr C hasn't provided these.

Mr C has sent us a video of the property which he recorded in August 2024. I can see that part of the property is furnished and looks to be in good condition while the rest is in a state of disrepair.

Mr C says this shows the property couldn't possibly have been rented out in 2022. However, this is a recent video, so it doesn't give me any indication of the condition of the property two years ago. Mr C has also provided a crime reference number. But this isn't of any use to me as I don't have access to police records.

Mr C may be able to provide further evidence to show that the property couldn't have been rented out when he took out the policy in February 2022. However, this wouldn't be enough to show that the endorsement shouldn't be applied. AXA applied the endorsement because it believed the property was unoccupied at the time it was damaged. So, I don't think the date the last tenants left is relevant here.

Mr C now seems to be suggesting that the property was his second home when he took out the policy and made his claim. He now says he's been staying in the property a few nights a month because he has an awkward relationship with his partner. But this contradicts what he said about the property normally being occupied at night when he took out the policy. It also conflicts with the information he gave AXA following his claim, when he said it was unoccupied or "vacant" and he visited the property regularly.

With so much conflicting information provided by Mr C, it's difficult to determine exactly what the occupancy status of the property was when the damage occurred. But I think it would be reasonable to place more weight on what Mr C told AXA prior to it making a decision on his claim, compared to what he said after his claim was declined. Moreover, Mr C has said that he rents out a number of properties. He has confirmed that this property was previously rented out and he's told us his intention is to either rent it out or develop it. So, I think it's more likely that the property was unoccupied at the time of the damage, than he was using it as a second home.

I appreciate this will be disappointing for Mr C, but I think AXA's decision to retrospectively apply the policy endorsement and decline his claim was fair and reasonable.

Third-party claim

Mr C has also complained that AXA wouldn't help him claim against the insurer of the driver of the car that collided with his property.

The policy's terms and conditions say:

"If appropriate, We may pursue a Third party to recover Your Excess and/or Our contribution to the claim."

AXA says it didn't request any information regarding the third-party driver or their insurer because it declined the claim, so it wasn't attempting to recoup any costs.

I appreciate this was frustrating for Mr C who says the police wouldn't give him information about the third party to enable him to deal with the claim himself. However, the purpose of Mr C's buildings insurance policy was to indemnify him for his loss in the event that it was damaged by an event covered by the policy. It wasn't AXA's role to help Mr C with a claim against the third party. So, I'm not persuaded AXA has done anything wrong here."

I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

Mr C disputed giving AXA inaccurate information about the occupancy of the property when he took out the policy. He requested evidence to support my findings, including the answers he'd given to AXA's questions when he applied for the policy online. So, I arranged for relevant documents to be shared with him.

Mr C said he'd made an error when he told AXA his tenants had moved out 6 months before the incident, when it was actually 18 months before. He hadn't realised that this was important information. If the loss adjuster had asked him to double check, he would have corrected himself within 24 hours of the initial comment. He said he was agitated and probably intoxicated when he sent an email to AXA in February 2023 which said: *"(The property) was let when the policy was taken out. It is currently vacant."*

Mr C suggested I call the police for confirmation of the incident that had made the property uninhabitable in 2020. He also suggested I check court documents. He said AXA had maintained all along that he should have had landlords' insurance, which was why it refused to pay up. This was after he'd pushed back on the original reasons it had given for not dealing with the claim.

Mr C provided links to planning applications to demolish the property and rebuild on the site. He said the planning application made in early 2022 was by a couple he'd agreed to sell the property to on the assumption they could get planning permission for their dream home. He said this couple were witnesses that the property wasn't rented out. He provided a telephone number for them and for architects who visited the property around that time and asked me to call them for confirmation. He said they would back up his claim that he didn't need landlords' insurance cover.

Mr C said he hadn't had insurance from May 2021 until February 2022. He didn't need it because he was going to knock the property down at some point anyway. He'd taken the

policy out because a big storm was expected, and he'd hoped one of the big oaks would fall onto the property and he could claim £250k to rebuild it. That was the only reason he'd taken out the policy. The previous policy he'd had was landlords' insurance.

Mr C commented that there was no policy for an infrequently let house. He'd read the rules and they'd clearly stated the property must not be left unoccupied for more than 30 consecutive days. He said he did not break the 30-day unoccupied rule. He would sometimes stay at the house for practical reasons. Whether the house was vacant, rented or unoccupied in October 2022, that insured car would still have crashed through the fence.

Mr C said the police had told him he wasn't allowed to deal with a claim against the third-party driver himself. He said AXA was very clear from the beginning that it would take care of it all.

Mr C said he felt there was an equal burden on AXA to prove he'd broken the contract as there was on him to prove he did not. He said it appeared that AXA's only evidence was the statements he'd made, and he wasn't a very reliable witness. He'd made a mistake with his initial statement. He felt the fact that his policy would have been cheaper if he'd gone with what AXA believed to be true was proof that backed up his story.

Mr C provided copies of his council tax bills covering the periods where he took out the policy and made his claim. He said he did not claim a vacant property discount and he would have done so if he had not stayed there two or three times a month.

Mr C suggested it was suspicious that AXA had amended the terms of the policy one day before it was due to expire. He also made some general comments about insurers not wanting to pay out on claims.

AXA didn't provide any comments in response to my provisional 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.

I'd like to reassure Mr C that I've carefully considered all of his additional comments, even if I've not commented on them individually. I will focus on what is relevant to the crux of his complaint.

Mr C has provided further comments and information to attempt to show that his property wasn't let out when he took out the policy. However, I explained in my provisional decision why it didn't make a difference whether the property was occupied by tenants when Mr C took out the policy or was already unoccupied. What's relevant is the occupancy status of the property when the incident the claim relates to occurred.

We've shared screenshots to show Mr C's online journey when he applied for the policy so he could see the questions he was asked. We've also sent him a copy of the statement of fact he received with his policy documents to remind him of the answers he gave.

Mr C chose to say the property was his permanent home when there were other options such as *"let to tenants"*, *"weekday home"*, *"weekend home"* and *"unoccupied"*. In answer to the question *"when is the property unoccupied?"* Mr C appears to have answered *"at night"* when there were several other options to show it was occupied less frequently or it was unoccupied. On the application form there was guidance which said that AXA needed to know how the property was normally occupied. It said: *"Normally" means 'usually' or 'most of*

the time”. The initial statement of fact that was issued to Mr C when he first took out the policy said the property was “*normally occupied at night*”.

This information doesn’t match what Mr C now says about the occupancy of the property when he took out the insurance, which is that he would only stay there a few nights a month. So, I’m not persuaded that he took care to provide accurate information when he took out the policy.

Mr C has provided his council tax bills for the period 1 April 2021 to 31 March 2023. He says these are proof that the property wasn’t unoccupied at the time of the incident as he would have claimed a vacant property discount if he hadn’t stayed there two or three times a month.

However, I’ve checked the council’s website going back to 2021. According to this, the discount for an empty property only lasts for three months. After three months, the council will charge full council tax. Given what Mr C has said about his last set of tenants moving out in September 2020, he wouldn’t have been eligible for an empty property council tax discount for the periods of the council tax bills. So, I’m not persuaded that the council tax bills are evidence that the property was occupied when the damage occurred.

The council’s website also says there is a 10% discount for second homes. So, the council tax bills don’t support what Mr C has said about occasionally staying there either.

Having considered Mr C’s further comments and the additional information he’s supplied, I’m not persuaded he’s shown his property was occupied when the damage occurred.

I don’t think it was unreasonable for AXA to have relied on what Mr C told it about the occupancy of the property on two separate occasions while it was considering his claim. And I haven’t seen sufficient evidence to satisfy me that Mr C made mistakes on these occasions. I’m more persuaded that what he told AXA about the occupancy status of the property prior to it declining his claim was accurate. I say this because at that time, I don’t think he was likely to have realised how this might impact the outcome of his claim.

I appreciate Mr C feels it’s unfair that AXA retrospectively altered the terms of the policy. However, the policy’s terms and conditions required Mr C to provide accurate information about the property being insured and it also advised him of the potential consequences of not doing so. These include amending the policy and declining a claim.

I acknowledge that Mr C feels it’s suspicious that AXA retrospectively amended the terms of his policy the day before it was due to renew. But that doesn’t mean it’s acted unfairly.

I understand it’s frustrating for Mr C that AXA won’t help him pursue a claim against the third-party driver. But I’ve already explained why it isn’t required to do this. Mr C may wish to seek legal advice on how he might try to recover his losses from the third party if he hasn’t already done so.

While I empathise with Mr C, I remain of the opinion that AXA’s decision to retrospectively amend the policy and decline his claim was reasonable.

My final decision

For the reasons I’ve explained, I don’t uphold Mr C’s complaint.

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

Anne Muscroft
Ombudsman