

The complaint

Mr R complains that AXA Insurance UK Plc unfairly declined a claim he made on his buildings insurance policy.

Reference to AXA includes its agents.

What happened

Mr R holds a buildings insurance policy with AXA. After his tenants were evicted from his property, he made a claim for the damage they'd caused.

AXA initially accepted some of the claim – on the basis it was malicious damage. But it declined some of the damage on the basis it wasn't malicious, and it was caused over time by the tenants, something it said the policy excluded.

Mr R then said he thought the property might have been used for illegal activity, namely the storage of drugs. He thought because of this, all the damage should be treated as malicious.

AXA didn't agree. It said the policy excluded damage caused by illegal activity, so it declined Mr R's claim entirely, including damage it had previously accepted.

Mr R complained. AXA didn't change its stance, but it did offer £150 on account of the claim decision being delayed.

Mr R didn't think this was fair and brought his complaint here.

Ultimately one of our Investigators didn't think Mr R's complaint should be upheld. They thought it was reasonable that AXA decline the claim on the basis there was illegal activity taking place in the house.

Mr R remained unhappy and asked for an Ombudsman's decision.

I issued a provisional decision. I explained I wasn't upholding the complaint. It said:

- *"Much of the dispute centres around whether there was illegal activity being carried out in the property. And if there was, whether it's fair for AXA to decline the claim as a result.*
- *I'm not going to make a finding on whether I find it likely illegal activity was being carried out – because I don't need to.*
- *That's because I don't agree with AXA's stance on this aspect. It's said it doesn't have to pay this claim because the terms of the policy exclude damage caused by illegal activity. It's pointed to the following term in the policy saying it won't pay for any loss or damage caused by "deliberate, reckless, wilful, malicious, illegal, or unlawful loss or damage caused (or allowed to be caused) by you, your guests or anyone living at the Insured Address"*

- *AXA seems to have said that because illegal activity was taking place (allegedly), no claim for damage is covered. But I don't think that's what this term says. This term allows AXA to decline claims where the damage is caused illegally. But I don't think that means that all damage is excluded if there's illegal activity being carried out. Rather it requires a link between the illegal activity and the damage itself.*
- *AXA hasn't shown that link here – so it's not fair it relies on this term.*
- *But I still don't require AXA to pay the claim. And that's because while malicious damage is covered in the policy, as per the above term, malicious damage caused (or allowed to be caused) by Mr R or anyone living at the insured address isn't. And I'm satisfied that extends to his tenants.*
- *That leaves the damage deemed not to be malicious – the damage AXA determined to be caused over time. AXA has said this too isn't covered by the policy. And in the terms the policy AXA set out "our policies don't cover gradual damage or damage caused by neglect, lack of maintenance, poor design or poor quality installation"*
- *I'm satisfied that how the damage has been classified is reasonable. Based on the reports I've seen there's clearly elements of malicious damage, and there are areas of damage best described as caused by neglect or lack of care.*
- *Therefore ultimately, I'm satisfied AXA's decline of Mr R's claim is in line with the terms and conditions of his policy.*
- *But I agree the claim journey could have been better. I don't think the illegal activity angle needed be explored. I understand it was Mr R who first raised it, but there was sufficient evidence to decline the claim in its entirety from the beginning. Accepting part of it, then declining it all is a poor claims journey. And while declining the claim isn't what Mr R would have wanted, had this been done at the beginning of the claim, a degree of distress and inconvenience could have been avoided.*
- *AXA has paid Mr R £150 to acknowledge the claim journey could have been better, and overall, I'm satisfied that's a reasonable award."*

Mr R replied to say he had no further comment. AXA didn't reply.

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.

Because neither party has added anything further following my provisional decision, I see no reason to depart from its findings.

Therefore, my final decision follows that provisional decision in both reasoning and outcome.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 January 2025.

Joe Thornley
Ombudsman