

The complaint

Mrs H complains about AXA Insurance Plc's handling of her Buildings Insurance claim.

Mrs H is being represented in her claim by Mr H, so I may refer to him below.

All references to AXA also include its appointed agents.

What happened

Below is a summary of the key events that lead to this complaint. It doesn't therefore contain a full timeline or list every point made.

In October 2023 the drains at Mrs H's rental property were blocked. A contractor was hired to clear the drains. However, when this was done, sewage flooded back into the property causing damage to multiple rooms.

Mr H contacted AXA to make a claim, he instructed contractors to clean and repair the property, removing contaminated contents and tenants entered alternative accommodation ("AA"). for around a month.

Mr H has submitted costs for repairs and AA to AXA for consideration.

AXA have accepted a claim for damage to the contents at the property. It has also agreed to make a payment of 25% of Mrs H's loss of rent.

However, it declined a claim for damage under the buildings section of the policy.

AXA has pointed to an exclusion under this section of the policy, which sets out damage caused whilst clearing or attempting to clear a blockage is not covered.

AXA also declined to cover the costs of AA. It said the policy wasn't designed to cover tenants.

Mr H raised a complaint with AXA. In its final response it reiterated its position regarding the claim.

However, it acknowledged it caused some delays in its handling of the claim, in its initial interpretation of the policy and whether certain parts of the claim would be covered. For this it offered an apology to Mrs H.

Mr H was unhappy with AXA's response. He brought Mrs H's complaint to our service

He said the policy is a landlord's policy. AA was required while the property couldn't be lived in – and Mrs H had to pay for AA for her tenants while works were carried out.

He said the policy the exclusion quoted by the business appears to apply to damage to underground services and they weren't damaged by the incident – all the damage caused was above ground.

He said he made several calls and spent significant time managing the claim. He said while he appreciated AXA's apology, he felt an offer of compensation was appropriate.

Our Investigator's view

Our investigator didn't recommend the complaint be upheld.

He said the policy sets out damage caused whilst clearing or attempting to clear a blockage is excluded. He said he hadn't seen evidence of any accidental breakage of drains and pipes, so there was no insured event, and he was satisfied the policy didn't provide cover for damage caused whilst clearing blockages.

AXA had set out to our investigator it was considering if clearing of the waste (sewage) is something it can consider elsewhere in the policy. Our investigator said the policy doesn't say this isn't covered, but AXA would need to assess whether it was.

Regarding loss of rent and AA, our investigator was satisfied the policy covered loss of rent or alternative accommodation – not both. He said he was satisfied AXA had adhered to the terms and conditions of the policy in making a payment of loss of rent.

Mr H didn't agree with our investigator's findings.

In summary he said:

- The policy provides cover for loss of rent or the cost of AA. But AXA said it does not cover AA for the occupants, just the landlord. As it would not pay AA he could only claim for loss of rent, but his actual loss was the cost of AA – which cost more than the loss of rent. He said he would expect AXA to pay for AA less what they have already paid for the loss of rent.
- He understood accidental damage wasn't covered under the section of the policy quoted by our investigator. But this was for underground services, and he wasn't claiming for this type of damage.

My provisional decision

I issued a provisional decision on 28 November 2024. In my provisional findings, I said:

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

Having done so, I intend to uphold the complaint. I'll explain why.

Buildings Cover

- *It doesn't appear to be in dispute the damage caused has occurred in the way Mr H has said. However, AXA have said damage caused by attempting to remove a blockage isn't covered.*
- *I've considered the exclusion quoted by AXA. This can be found under 'damage to underground services'. Under 'what is covered' it says this relates to accidental breakage of drains and pipes used to provide services to and from the building. But I've not seen anything that suggests Mr H is claiming for any damage or breakage to a pipe.*
- *Mr H is claiming for the damage caused by sewage entering the property – while I acknowledge this happened while trying to remove a blockage, I think the intention of*

this exclusion is regarding damage that could be caused to a pipe by attempting to remove a blockage.

- As the escape of waste has occurred inside the property, I don't think AXA can reasonably apply the exclusion it has. The policy sets out it covers all other accidental damage to the buildings providing an exclusion doesn't apply (and having reviewed all the information provided, I've not seen anything that persuades me another exclusion applies).*
- I see AXA has said it needed to consider where under the policy an escape of waste might be covered, but I think it had the opportunity to do so and hasn't. So, in light of the above, I think it should meet the claim for the buildings damage.*

Loss of rent

- It doesn't appear to be in dispute the property was uninhabitable (and I can see from photos of the damage, large amounts of waste covered multiple areas of the property).*
- The policy does set out that it covers loss of rent or AA (my emphasis). However here Mr H has provided information to AXA to show rent had already been paid by Mrs H's tenants and the financial loss she has suffered is for AA (which was at a higher cost than the rent). The spirit of a policy is to put the policyholder back in the position it would've been before the loss occurred, and I don't think AXA's proposal regarding loss of rent does this. I think AXA should meet the difference in cost, subject to any limits in the policy for the cost of AA.*

Compensation and delays

AXA has acknowledged it caused some delays earlier in the complaint, in particular in its interpretation of the policy and whether certain parts of the claim would be covered. I also think it reasonably should've recognised it could provide cover under the buildings section of the policy sooner.

While it's clear this matter has been frustrating for Mr H to deal with on a personal level, I can't specifically consider an award of compensation for him personally, as he is not the eligible complainant here, Mrs H is. And as Mr H has been handling the claim on Mrs H's behalf, I consider this has lessened the inconvenience she has suffered as a result.

In the circumstances, I think a compensation award of £150 is fairly reflects the distress and inconvenience caused to Mrs H by AXA's actions.

Putting things right

To put things right AXA should:

- Meet the claim related costs to Mrs H for damage under the buildings section of the policy. AXA can request proof, such as invoices, should it require it.*
- 8% simple interest should be added to this amount from the date of the invoice to the date AXA makes payment to Mrs H.*
- AXA should meet the difference in cost between the loss of rent payment and the cost Mrs H has incurred for AA, subject to any limits in the policy or restrictions on the amount. Again, AXA can request proof, such as invoices if required.*
- 8% simple interest should be paid on the remaining amount after any deductions. This should be from the date of the invoice to the date it makes payment to Mrs H.*
- Pay Mrs H £150 compensation."*

Responses to my provisional decision

AXA didn't provide any further response to my provisional decision.

Mrs H confirmed she accepted my provisional findings.

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 see no reason to change my findings. Therefore, my decision, and reasoning, remain as set out in my provisional decision.

Putting things right

To put things right, I direct AXA to:

- Meet the claim related costs to Mrs H for damage under the buildings section of the policy. AXA can request proof, such as invoices, should it require it.
- 8% simple interest should be added to this amount from the date of the invoice to the date AXA makes payment to Mrs H.
- AXA should meet the difference in cost between the loss of rent payment and the cost Mrs H has incurred for AA, subject to any limits in the policy or restrictions on the amount. Again, AXA can request proof, such as invoices if required.
- 8% simple interest should be paid on the remaining amount after any deductions. This should be from the date of the invoice to the date it makes payment to Mrs H.
- Pay Mrs H £150 compensation.

My final decision

My final decision is that I uphold Mrs H's complaint.

To put things right I direct AXA Insurance UK Plc to do as I've set out above Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 January 2025.

Michael Baronti
Ombudsman