

## **The complaint**

Ms A has complained about her let property insurer AXA Insurance UK Plc because it declined her claim made when a fire destroyed the roof of her property.

## **What happened**

Ms A owned a property and let it to tenants. In April 2024 she was contacted by police who advised there had been a substantial fire at the property the night before. The fire had all but destroyed the loft area of the property, with a significant portion of the roof, including the supporting timbers, having been destroyed. The fire had spread to the upper floor of the property and a significant amount of water had been used by the attending fire brigade to put out the fire.

A claim was made to AXA and a forensic specialist attended the property on 2 May 2024. He recorded extensive fire damage in the loft, such that he felt it was impossible to conclusively determine exactly what had started the fire. However, he was satisfied that the loft had been in use by the tenant for growing cannabis and that the fire had started in the loft. He concluded that the fire was most likely caused by the activity of growing cannabis.

In June 2024, having considered the forensic specialist's report, AXA decline the claim. Having received a complaint from Ms A about the delay of the claim, it noted she was also dissatisfied about its decline. AXA issued a final response letter on 19 June 2024. It confirmed it had declined the claim on the basis of an exclusion for "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". It accepted there had been some delays after receipt of the specialist's report. It said it would pay Ms A £150 compensation.

Ms A had appointed a loss assessor to deal with matters on her behalf. The loss assessor made a complaint to the Financial Ombudsman Service, detailing why it was felt AXA had acted unfairly in relying on the policy exclusion to decline the claim.

Our Investigator noted the forensic report and considered the wording of the policy exclusion. She felt that AXA had applied the exclusion fairly in the circumstances. She was satisfied the £150 compensation paid by AXA was fair and reasonable to account for upset caused by its delays.

The loss assessor said they disagreed with the outcome. They said the forensic report specifically said that the cause of the fire could not be determined. They said the police made no arrests, so it wasn't fair to say the tenants had done anything illegal. The assessor said the tenants did not deliberately or recklessly start the fire. They said lights are often installed in lofts so it's by no means clear that the electrical installation in the loft was the cause of the fire. They maintained that the proximate cause of the loss was the fire, so there should be cover on the policy. The loss assessor also said AXA had not given a claim answer about damage done by emergency services.

Our Investigator, regarding the emergency services query, noted that the loss assessor had enquired about coverage for this on 10 June 2024 and that AXA hadn't answered the

enquiry. She noted though that no complaint had been raised about this. She said that meant that this is something we couldn't consider as part of this complaint – Ms A would need to complain to AXA in the first instance.

The complaint about decline and delay was referred for an Ombudsman's 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.

Having done so, with regret for the disappointment I know this will cause Ms A, I find my view is the same as our Investigator. I've set out my findings on the complaint below and trust my explanation will help Ms A understand the outcome even if she can't agree with it. I haven't referenced or set out in detail every piece of evidence received or even every argument put forward. I can assure the parties though that I have read and understood everything before setting out to present this decision based on what I see as key to the complaint in question.

There is no doubt here that there was a fire. And a fire which caused substantial damage to Ms A's property. It is also clear that the policy Ms A held with AXA offers her cover for damage caused by fire. However, like most policies, the cover Ms A has contains exclusions which an insurer might decide to rely on to decline liability for a claim. That is what AXA has done here.

This Service though takes a view that it is up to the insurer to show that reliance on an exclusion to defeat its liability for a claim is justified. What that will mean in practice will depend upon the circumstances of each claim and complaint. However, on many occasions it will be important for an insurer, wanting to rely on an exclusion in this way, to show that the thing that was excluded was most likely material to the loss which occurred. In other words, 'but for' the thing excluded, would the loss have occurred either at all or to the same extent?

It has to be noted here that it is not clear, due to the devastating extent of the fire, what caused the fire. AXA did have a forensic specialist investigate and I acknowledge that he concludes: "I am unable to definitively identify the exact fault mechanism which led to this fire". I also acknowledge that the police did not make any arrests. But it has long been the approach of this Service to think about what is most likely to have occurred, rather than having to be definitely, 100% satisfied. And whilst what the police might find in a situation like this can be of relevance, I bear in mind that the criminal justice system works to a higher standard of proof – they have to be satisfied beyond reasonable doubt.

In terms of expert evidence regarding the cause of the fire, there is only the one forensic report. Noting the specialist can't be "definitive" he made the following findings which I'm satisfied are relevant here:

- A shed at the property contained black bags full of the remains of cannabis plants.
- The property's electricity meter had been tampered with – consistent with growing cannabis.
- Remains of cannabis growing equipment and materials were found in the loft;
  - A block of six double sockets. Each socket contained a plug.
  - Numerous fire damaged conductors routed to and from the sockets and plugs.
  - Several light ballasts.
  - Two large extraction fans.
  - High wattage light bulbs, fans, and heaters.
  - Peat growing medium and plants.
- "In my opinion the fire originated within the loft".

- The most severe fire damage had occurred within the loft space and to the roof.
- The debris in the loft suggested several possible causes of ignition – electrical fault, faulty equipment and/or a heat source igniting combustible materials.
- “In my opinion the most likely cause was the related to the production cannabis plants within the loft space [sic]”.

I’m satisfied, based on the expert’s findings and opinion, that it’s most likely the fire was caused because of the cannabis growing activity occurring in the loft. As I have said, the evidence does not have to establish ‘beyond doubt’ what the cause was. I’m also satisfied that growing cannabis is an illegal activity – it seems that is most likely what was occurring. So I’m not persuaded it’s relevant whether or not the criminal charges were brought. After all an act doesn’t only become illegal if someone is facing criminal charges because of what they did.

I’m mindful that the loss assessor hasn’t sought to contest that the tenants were involved in growing cannabis. The assessor’s focus has been on arguing that they did not act deliberately to start the fire, emphasizing the evidence shows they also made significant attempts to stop the fire. I bear in mind that despite the activity in the loft, this was clearly the tenants’ home and was full of their contents and belongings. I note they left the property on the night of the fire and that the police have been unable to trace them. I think it’s fair to say the tenants were involved in the cannabis growing which was occurring in the loft of their home.

I’ve set out above the exclusion which AXA relied upon. The exclusion means AXA won’t be liable for any loss caused by illegal acts of the tenants. I’ve explained that the forensic report persuades me that cannabis was being grown at the property and that this activity, which is illegal, was most likely what caused the fire. I’ve said I’m also satisfied the tenants were involved in that illegal activity. Given all of that I’m satisfied that AXA acted fairly and reasonably when it relied on the policy exclusion to decline the claim.

I note that AXA declined the claim within two months of the fire occurring. But it has acknowledged that there was an avoidable delay, seemingly likely of a few weeks, after the forensic report was received. Its paid £150 compensation for the upset caused by that delay. I’m satisfied that is fair and reasonable in the circumstances.

I’m aware that the loss assessor thinks AXA has missed an area of cover offered by the policy but I can’t consider that concern as part of this complaint. An enquiry about this area of cover was made to AXA before its final response letter was issued on the decline and delay complaint. I can’t see though that any complaint was made to AXA about the additional area of cover, including that AXA had not provided any answer to the enquiry which had been made. If Ms A remains unhappy about this, she will have to raise a complaint to AXA in the first instance.

### **My final decision**

I don’t uphold this complaint. I don’t make any award against AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms A to accept or reject my decision before 20 February 2025.

Fiona Robinson  
**Ombudsman**