

The complaint

Mrs and Mr W complain about AXA Insurance UK Plc (AXA) declining their claim for damage to their property under their Commercial and Residential Landlords Insurance policy.

Any reference to AXA includes its agents.

What happened

Mrs and Mr W made a claim on their policy for damage to their property this excludes pet damage that Mrs and Mr W accept is not covered by the policy. Mrs and Mr W have compiled a list that AXA has had sight of.

AXA declined the claim because:

- The damage was caused by wear and tear or poor housekeeping by the tenants.
- The damage isn't malicious or accidental.
- Any damage that was malicious or accidental would fall under the £300 excess.
- The property wasn't inspected every 3 months as required by the policy.

Our Investigator investigated the complaint she agreed that some damage is due to wear and tear or general maintenance, but she also said:

- Mrs and Mr W say there were two instances of escapes of water causing damage to several items on the list. Our Investigator felt AXA had not explained why these items are not covered.
- The carpet in the main bedroom has burn marks and is ripped. Our Investigator said this is accidental damage if not malicious. AXA had failed to explain why the replacement carpet wasn't covered.
- Mrs and Mr W have listed around fifty items that were in the property when the tenants moved in but are now not there. The Policy covers theft. AXA has failed to explain why these items are not covered.

Our Investigator recommended that AXA re-assess all the damage being claimed for in the list and confirm if it is or isn't covered and why with as much detail as possible. Confirm to Mrs and Mr W if it is or isn't covering the loss of rent claim and why. Confirm to Mrs and Mr W if they have legal expenses cover and if so, how they can claim. And finally pay Mrs and Mr W £250 compensation for the distress and inconvenience it has caused.

AXA responded and in summary it said:

- Escape of water – there were no leaking pipes discovered or repaired by the Insured. The cause of water ingress was due to the gutters not being maintained – full of debris and plants growing. Also, not a single event but multiple incidents of rain which caused water ingress and damage to internals of the property.

- Accidental damage – accepts main bedroom carpet to be replaced and is happy to request an estimate.
- Theft – not been reported and it has not received a crime reference number. It thinks the tenants may have caused damage and disposed of items, this it considers would be poor housekeeping of the tenants rather than theft.
- Legal action – it now understands the Insured is looking to claim legal costs from AXA as Mrs and Mr W have taken the tenants to court. This it believes contradicts why the claim has been submitted as it thinks that Mrs and Mr W are trying to recover the costs from both tenants and Insurer.
- Overall, it says the property was not kept in good condition by the tenants and Mrs and Mr W should revert to the use of the tenancy deposit. It says the policy is not there to top up if a deposit doesn't cover the costs, as the policy doesn't cover poor housekeeping, gradual wear and tear and general maintenance to the property.
- It also thinks Mrs and Mr W are trying to recover costs from both the tenants and AXA. It says the only claimable event is the bedroom carpet due to accidental damage.

Our investigator replied to AXA as she felt AXA still needed to provide further information as to why they were not covering each item and gave an example of the broken power shower which appears to have been hit. So, AXA need to explain why this isn't covered.

She also noted AXA hadn't commented on the loss of rent claim, the legal expenses cover or the compensation. She asked it to respond. AXA reiterated that it doesn't think the property was kept in good condition by the tenants. Mrs and Mr W should revert to the tenancy deposit. The policy is not there to top up if a deposit doesn't cover the costs as the policy doesn't cover poor housekeeping, gradual wear and tear and general maintenance to the property.

I issued my provisional findings on the complaint on 23 January 2025. This is what I said:

What I've provisionally 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.

The policy covers loss or damage caused in specific ways only, known as 'insured events', subject to terms and conditions, including the excess. Relevant to this case, the insured events appear to fall under Accidental damage, Malicious damage and theft by tenants.

So, the focus for AXA should be whether any of the loss or damage has been caused by any of these insured events - not to introduce other labels like poor housekeeping etc. - and to do that it will need to consider each of the relevant insured events, and the various areas/items of damage in turn.

Mrs and Mr W should also note that Landlord Insurance doesn't cover all damage or loss that a landlord can experience to their property.

For damage to be covered under an escape of water it must be from any tank, apparatus, pipe, or sprinkler installation. However, from what I've seen there doesn't appear to have been an escape of water as set out in the policy terms. If there was Mrs and Mr W will need to provide the details and evidence to AXA for it to consider further. So currently I don't think AXA needs to cover this damage. But I did note from what I've seen there appears to be water ingress, from gutters that needed to be maintained. The policy does cover drains

clearance cover so I would expect AXA to consider if any part of their claim to recover costs falls under this.

For items to covered by theft by tenant – AXA has said it thinks it more likely that the tenants have caused damage to the items and disposed of them rather than theft. However, AXA has requested a crime reference number if this is provided as it has requested, I would expect AXA to reconsider this part of the claim.

For the damage claimed under Accidental or malicious damage, I don't think AXA have fairly considered the individual items contained within Mrs and Mr W's list and explained to them why it isn't covered. This is evident when it has agreed only after our Investigators view to accept the bedroom carpet as accidental damage. However, there are number of other items that don't appear to have been considered. So, I agree with our Investigator that AXA need to go back through each item and explain to Mrs and Mr W why this isn't covered under the policy and if on reflection it thinks there are items covered then proceed with that element of the claim.

However, AXA are aware that Mrs and Mr W have taken some legal action against the tenants, so it is fair for AXA to consider this when working out if any part of the claim is covered.

Mrs and Mr W also asked AXA if they were covered for legal expenses. From the policy documents and schedule that I've seen Mrs and Mr W don't have legal expense insurance cover under this policy. But it was poor for AXA to not have responded to their enquiry.

Mrs and Mr W have also made a claim for loss of rent. AXA hasn't responded to this element of their complaint from what I've seen. If AXA hasn't considered or provided its decision on this matter it needs to do so, and I remind AXA it has a duty to manage claims promptly and fairly. If Mrs and Mr W remain unsatisfied with the decision it can raise that as a separate complaint to AXA in the first instance and if they are unhappy with its final response, they can raise the complaint with our service.

I think this claim has been poorly managed by AXA. Mrs and Mr W have had to send multiple emails to get answers, and AXA hasn't responded to their emails on several occasions. So, I intend to tell it to pay Mrs and Mr W £250 compensation for the inconvenience.

My provisional decision

I intend to uphold this complaint and require AXA Insurance UK Plc to:

- Reassess all the damage being claimed under malicious and accidental damage. For each item on the list provided to AXA it should confirm if it is or isn't covered and why with as much detail as possible.*
- Accept the claim for the replacement of the carpet in the main bedroom.*
- Reconsider the items being claimed under theft if Mrs and Mr W provide a crime reference number.*
- Consider if Mrs and Mr W have any claim to recover costs under the drains clearance cover part of their policy.*
- Confirm if it is or isn't covering Mrs and Mr W's loss of rent claim and why.*
- Pay Mrs and Mr W £250 for the inconvenience caused by the poor handling of the claim.*

Responses to provisional decision.

AXA haven't responded to the provisional decision.

Mrs and Mr W have said in summary they did report the items that they say were stolen to the police and they did previously provide a crime reference number to AXA.

They don't agree with AXA's comments concerning trying to obtain costs from both AXA and the tenants from the court action they took. They felt they had no choice but to take court action when AXA refused any part of their claim under 'poor housekeeping.'

Mr and Mrs W have provided further information regarding the tenants and their behaviour. Including the drug use at the property and the clean-up that they had to do as they received no help from any third party, all this whilst Mrs W is dealing with a serious health condition.

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 empathise with the situation Mr and Mrs W have found themselves in, but I am unable to address the actions of the tenants, I can only look at the actions of the Insurer within this decision.

Taking everything into account, I'm satisfied that my provisional decision represents an outcome that's fair and reasonable.

Putting things right

So, I instruct AXA Insurance UK Plc to do the following:

- Reassess all the damage being claimed under malicious and accidental damage. For each item on the list provided to AXA it should confirm if it is or isn't covered and why with as much detail as possible.
- Accept the claim for the replacement of the carpet in the main bedroom.
- Reconsider the items being claimed under theft - Mrs and Mr W have provided a crime reference number (as requested by AXA), this will be provided again in the covering letter to AXA with this decision.
- Consider if Mrs and Mr W have any claim to recover costs under the drains clearance cover part of their policy.
- Confirm if it is or isn't covering Mrs and Mr W's loss of rent claim and why.
- Pay Mrs and Mr W £250 for the inconvenience caused by the poor handling of the claim.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 9 April 2025.

Angela Casey

Ombudsman