

The complaint

Mrs K and Mr P complain that AXA Insurance UK Plc (“AXA”) unfairly declined their claim for malicious damage to their property.

What happened

Mrs K and Mr P held a homeprotect home insurance policy with AXA, covering a property they owned and rented out. In January 2024, Mrs K and Mr P discovered that the property was in the process of being used as a cannabis farm. The property had been altered in preparation for this.

Mrs K and Mr P made a claim under their policy. AXA declined the claim saying there was an exclusion in the policy which meant damage resulting from illegal activities, such as the cultivation of cannabis, wouldn’t be covered.

Mrs K and Mr P complained. They said they’d been misadvised and were given conflicting information about whether their claim was covered. They said they’d incurred substantial costs and had to borrow money to cover their losses. They also said they’d lost out on rent and paid the additional mortgage for the property out of their own funds.

AXA didn’t initially agree that it had misadvised Mrs K and Mr P. It said their claim wasn’t accepted because while malicious damage was covered in some situations, any malicious damage involving illegal activity wasn’t covered as this was specifically excluded in the policy terms.

Mrs K and Mr P didn’t accept AXA’s response and referred their complaint to this service. Our Investigator considered the complaint and upheld it, recommending AXA cover Mrs K and Mr P’s repair costs and cleaning costs, with interest, and also recommending AXA pay Mrs K and Mr P compensation for the inconvenience caused to them.

AXA didn’t agree with our Investigator’s assessment. It said whilst it did quote incorrect policy terms in its final response letter (as these terms were only applicable to the section of the policy entitled “Liability to the public”), the terms excluding criminal activity were consistent throughout the policy. It said the property had been deliberately converted into a cannabis farm by the tenants, who had rented the property through estate agents, and the damage was therefore caused by individuals who were authorised to be at the property and were living there.

It didn’t agree with our Investigator’s view that there wasn’t enough evidence about the true identity of the tenants or any evidence that the property had been damaged by people that Mrs K and Mr P had authorised to be at the property, or who were living there.

As AXA didn’t accept our Investigator’s assessment, the complaint has now been passed to me 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.

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mrs K, Mr P and AXA have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm upholding this complaint. I'll explain why.

When making a claim on an insurance policy, it is for the insured – so in this case Mrs K and Mr P – to demonstrate they've suffered a loss covered by the policy. If they can do so, then AXA would need to accept the claim unless it can show it can fairly rely on a valid exclusion to decline it.

I've checked the terms and conditions of Mrs K and Mr P's policy carefully. These say that malicious damage is covered by the policy. AXA has said that the modifications made to the property weren't "malicious" because the intention wasn't to damage the property, but to use it for illegal activity. However, the policy doesn't define "malicious damage", so I've applied the everyday meaning of this term when considering the cover the policy provides. The ordinary dictionary definition of "malicious" is "intended to harm". So I'm satisfied the claim can be considered under the malicious damage peril, because in order to set up the cannabis farm, the individuals deliberately damaged the property. I think their intent to harm it was therefore clear.

And as far as I can see, there are no relevant exclusions that would mean AXA could fairly decline the claim under that peril. So I'm satisfied Mrs K and Mr P have shown they have a valid claim under the policy. The onus is therefore on AXA to show there is an applicable exclusion to cover.

AXA has said that there are general exclusions in the policy which apply to all claims, including that the policy won't provide cover 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."

As Mrs K and Mr P have shown that malicious damage occurred, I've considered carefully the circumstances and the likely causes of that damage, to determine whether AXA can fairly and reasonably rely on this exclusion in this case.

There's no indication that Mrs K and Mr P caused the damage themselves or allowed it to be caused. The emails between Mrs K and the police show that the individuals used fake names whilst posing as tenants, so I don't consider Mrs K and Mr P allowed the damage to be caused, in light of the deception tactics that were used. So I've considered whether the damage was caused (or allowed to be caused) by guests, or anyone living at the insured property.

There's no suggestion the damage was caused by guests, so this leaves those "living at the Insured Address". The key requirement is therefore that the responsible individual/s had to be *living* at the property or had to have been given access by those living there. But from what I've seen, I don't consider AXA has shown that anyone was living at the property. I've examined the photos provided, and it doesn't appear from these that the property was being lived in. I accept AXA's contention that someone had to be at the property in order to make the modifications, but this doesn't mean the person who made those modifications was *living*

there – which is what the remaining part of the exclusion requires.

Whilst AXA has suggested it's enough for there to have been a tenancy agreement in place, indicating that the tenant caused the damage (and that the tenant was considered to have been living there), I don't agree and don't consider this to be sufficient to show that the exclusion has been applied fairly in this case. Whilst it's clear to me that AXA intended to exclude damage caused by those who had rented the property and were physically present at the property, this intention isn't supported by its chosen policy wording. The policy says damage caused by someone *living* at the property is excluded. But AXA seems to have merely assumed the perpetrators were residing at the property when there's no evidence of this. It hasn't been able to demonstrate that the damage wasn't caused by those who had rented the property out to use it as a cannabis farm, whilst actually living elsewhere.

AXA has said it hasn't seen evidence that no one was living at the property. But it's AXA's obligation to show that the exclusion applies. So whilst legal access may have been granted to those who caused the damage, AXA would've needed to show that those individuals met the criteria set out in the policy exclusion – which requires the damage to be caused by those living at the property – in order to demonstrate that the exclusion had been fairly and reasonably applied here.

Mrs K and Mr P have said that AXA gave them conflicting information about whether their claim was covered. AXA has denied this and said that at no point were Mrs K and Mr P told their claim would be covered.

I've seen the correspondence between the parties and I can see that Mrs K and Mr P first made their claim in January 2024, and whilst I've been sent some call recordings and claim notes, it's clear I haven't received all the recordings and notes of calls that were made. I say this because Mrs K and Mr P have told us about other calls they made to AXA, and their testimony has been plausible and persuasive. There is also a call recording from August 2024 which isn't mentioned in the documents provided. So it's possible there are details of other calls missing too. Mrs K and Mr P say they were misadvised in some of the undocumented calls. Since we don't have those call recordings or notes, and Mrs K and Mr P have provided a consistent and credible account, I've no reason to doubt what they've said about this.

It's not in dispute that AXA gave Mrs K and Mr P incorrect information in its final response letter dated 29 August 2024. It said in this letter that damage resulting from illegal activities was specifically excluded under the policy terms and that this was the reason it was declining the claim. And AXA has accepted that the incorrect policy wording was used to decline the claim initially. But it maintains that the exclusions relating to criminal activity are consistent through both the buildings cover and the liability section of the policy.

However, as I've said, I don't consider AXA declined the claim fairly because it hasn't been able to show that it's fairly and reasonably relied on a valid policy exclusion. Mrs K and Mr P were also sent emails including someone else's contact details, which I think was worrying for them as this would've likely made them question whether their data was safe and whether their claim was being handled competently. So I think the incorrect information AXA gave and its unfair decline of the claim had a detrimental impact on Mrs K and Mr P, for which they should be compensated.

I'm satisfied that £200 adequately reflects the impact of AXA providing conflicting information and declining the claim unfairly, as this caused Mrs K and Mr P distress and inconvenience over a period of several weeks.

It follows therefore that I'll require AXA to take steps to put things right for Mrs K and Mr P in

settlement of this complaint.

Putting things right

AXA Insurance UK Plc should do the following:

- Pay Mrs K and Mr P £3,880.03 to cover the cost of the repairs to their property following the malicious damage.
- Add to the above payment 8% simple interest per annum from the date AXA first declined the claim until the date of settlement.
- Pay Mrs K and Mr P £200 compensation for distress and inconvenience.

My final decision

My final decision is that I uphold this complaint and I direct AXA Insurance UK Plc to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr P to accept or reject my decision before 28 May 2025.

Ifrah Malik
Ombudsman