

The complaint

Miss D complains about the decline of a commercial property insurance claim by AXA Insurance UK Plc ('AXA').

Some of Miss D's dissatisfaction is about the actions of AXA's appointed agents. As AXA have accepted responsibility for the actions of those agents, in my decision any reference to AXA should be interpreted as also covering the actions of their agents.

What happened

The background to this complaint is well known to Miss D and AXA. Rather than repeat in detail what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Miss D reported a claim under this commercial insurance policy on 19 December 2022 following an escape of water from a frozen pipe. AXA accepted the claim. Following a high number of claims due to cold weather, Miss D was advised to have a plumber carry out an initial fix of the damaged pipe and then provide three quotes for the further repair works needed to the property.

Miss D says her tenants abandoned the property shortly after, around 21 December 2022. Drying out couldn't start until Miss D's tenant's belongings were removed from the property. They were removed in March 2023. From April to June 2023, Miss D tried to get repair quotes from third party companies, but struggled to find companies that would undertake the work. In summer 2023, an agent acting on AXA's behalf later offered a settlement of around £20,000. A query was then raised by Miss D about damage to doors in the property. AXA then queried how the settlement figure had been reached and the overall circumstances of the claim, primarily the occupancy of the property at the time of the loss. After asking Miss D for further information, AXA ultimately declined the claim.

Miss D raised a complaint about the time taken and the service provided. AXA partially upheld the complaint and offered £150 to recognise service failings. Miss D remained unhappy and referred her complaint to our Service for an independent review. Our Investigator considered the complaint and recommended that it be partially upheld. As the dispute remains unresolved, it's been referred to me for a 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The claim decline

It's my role to determine if, on balance, AXA have fairly investigated the claim and considered the evidence before declining the claim in line with the relevant policy terms.

AXA, at one point, have referred to there being no cover arising from a dispute between Miss D and her lettings agent. In my opinion, Miss D being unable to obtain a copy of the tenancy agreement doesn't mean a dispute has occurred between her and the property management company. Therefore, it is unfair of AXA to try and rely on this term to decline the claim. The circumstances of this claim don't fit with the intention of the relevant term AXA have referred to.

It will no doubt have been very frustrating for Miss D to have her claim declined after a settlement had been offered. In this part of my decision, I'll only be considering whether the claim was fairly considered and ultimately declined in line with the policy terms. The impact of the decline will be considered later in the decision.

AXA relied mainly on the following exclusion to decline the claim:

"What is Not Covered

6. Loss or Damage caused while the Property is Unoccupied (Page 11)

For your reference, unoccupancy is defined as the following within your insurance policy:

Definitions

Unoccupied

(a) Insufficiently furnished for normal occupation, or

(b) Furnished for normal occupation but has not been lived in for more than 30 consecutive days (Page 8)"

Miss D has explained that the tenancy agreement is unavailable due to the actions of her management company. I do find it unusual that the property management company didn't retain electronic copies. I've then carefully considered the available evidence:

- Miss D has provided evidence that work had been carried out on the property with the tenants in situ at the end of October 2022, around seven weeks prior to the loss event. This supports that there were tenants in the property in the lead up to the loss event.
- On 10 January 2023, the property management company contacted a utility provider on Miss D's behalf to request that the account be put back into Miss D's name, backdated to 21 December 2022.

They also stated in an email that the property was occupied until 21 December 2022. I note that the owner of the property management company was previously willing to swear an oath, if required, that this information was accurate and AXA had been made aware of this.

- In addition, photos provided (dated after the discovery of the loss) support that the property was being lived in. It doesn't seem far-fetched to assume that given the intended legal proceedings related to the eviction process and the claim event that the tenants might choose to abandon the property.

Miss D has also referred to recent post being present in the property and evidence of bowls and glasses being used to collect leaking water to show the property was occupied at the time of the loss event. She's said: *"The tenants belongings were all in the property and they had moved back items from the walls, a carpet was rolled back and they had glasses and bowls along the back windows as if to catch the water."*

- It seems the tenancy agreement was shredded and a copy of inspection logs isn't available. Ultimately, a tenancy agreement won't prove that the property was occupied at the time of the loss event.
- Miss D has also shown evidence of part of the tenant's deposit being returned to her in April 2023, after they'd left the property. Bank statements also show continued deductions from the property lettings agency around the time and after the loss event.

Summary

The starting point with any insurance claim is the insured (Miss D) must demonstrate that an insured event covered by the policy has occurred. If she can, the onus then passes to the insurer (AXA) to either accept the claim, or show that they can fairly decline the claim or their outlay by relying on a policy term or exclusion.

Here, an insured event (escape of water) is not disputed. The outstanding dispute centres on whether Miss D has sufficiently shown she didn't breach the 30-day policy unoccupancy terms. Had AXA carried out a proper investigation when first notified of the claim, it seems reasonable to assume the claim decline would've come at a much earlier point.

I find that Miss D has provided persuasive evidence that the property was occupied in October 2022 and in December 2022. I accept there are gaps in the evidence too, but the actions of her property management company have muddied the waters when it has come to proving her claim. On balance, I find that AXA have unfairly declined the claim based solely on the available evidence. AXA have placed too much weight on the lack of paperwork and not enough on the other evidence presented.

In their final response letter, AXA said:

"I would recommend submitting utility bills from the 16th December 2022 onwards to assist in confirming the occupancy of the property along with any information from the letting agency on letter-headed paper. Once this has occurred, your claim would be re-assessed. Please note that the re-assessment of your claim does not guarantee a change in its outcome."

Miss D has said both branches of the property management company have since closed. AXA should consider the evidence (such as emails) that she has already provided.

I have assumed that AXA want the utility bills to determine whether energy usage decreased following the tenants leaving the property. Given the time that's passed and that the previous account had accrued huge arrears and was in the tenants own names and not Miss D's - this information may prove very difficult to obtain.

Whilst I consider this (reassessing the claim) a reasonable way forward, AXA will need to apply a degree of pragmatism and common sense when reviewing the evidence available against the policy terms and limits.

AXA will now need to reconsider the claim in line with the remaining policy terms. Miss D

should note I'm not directing AXA to pay the claim, just to reconsider it. But I've already found they've unfairly declined it based on the available evidence.

The service provided

To be clear, AXA are entitled to consider a claim and - in certain circumstances, fairly change their position. But here, it took far too long for AXA to reach their claim decline position. This goes against the intention of ICOBS 8.1. Making an offer to settle the claim without properly investigating the claim will also have caused considerable and avoidable loss of expectation for Miss D. AXA have conceded this in internal notes. A note from 20 November 2023 stated: *"Full circs were never taken at FNOL"*.

AXA accept they let Miss D down with the service they provided whilst responding to this claim. Our Investigator recommended that AXA increase their offer to £500. Having carefully considered the evidence, I find this to be fair, reasonable and proportionate. When considering the impact on Miss D, I've kept in mind that although there were clearly delays which AXA must bear responsibility for, AXA were also awaiting information from Miss D for long periods of time.

Putting things right

AXA Insurance UK Plc will now need to:

- Reconsider the claim in line with the remaining policy terms and policy limits. Based on what I've seen the claim made to AXA was for damage following an escape of water event. If there are malicious damage (doors) or loss of rent claims, Miss D will need to discuss these with AXA.
- To prevent further issues, *if* this claim progresses to settlement, AXA will need to add 8% simple interest* per annum to any settlement. This is to be calculated from the date they originally made their cash settlement offer, until the date any settlement is paid to Miss D. Recently, Miss D has told us that some repair works have already been carried out. If this claim progresses to settlement, AXA should engage with Miss D on appropriate indemnity.
- Pay Miss D a total of £500 to recognise the avoidable distress and inconvenience caused by how they've handled this claim.

*If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss D how much it's taken off. It should also give Miss D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

My final decision is that I partially uphold this complaint.

Subject to Miss D accepting the decision before the deadline below, AXA Insurance UK Plc will need to follow my direction as set out under the heading *'Putting things right'*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 1 July 2025.

Daniel O'Shea

Ombudsman