

The complaint

Ms C's complaint is about a claim she made on her AXA XL Insurance Company UK Limited ('AXA') asset protection insurance policy, which AXA declined.

Ms C says she was treated unfairly and wants AXA to accept her claim for £15,000.

Ms C's complaint is brought by a representative, but I shall refer to all submissions as being her own for ease of reference.

In this decision all references to AXA include their claims handlers.

What happened

Ms C contacted AXA to notify them of a potential claim on the asset protection policy she held with them. AXA asked her for some further information, which she supplied. In response to that AXA declined cover under the policy.

Ms C is unhappy with AXA's position. Whilst she accepts that an insured event hasn't strictly arisen, she feels it's unfair for AXA not to cover her claim on the basis that the circumstances in which it has arisen have meant that she is potentially saving AXA considerable sums if the claim had been made in a different situation.

AXA's position is that an insured event hasn't arisen under the policy for which cover is available but apart from that Ms C's actions have prejudiced their position.

Our investigator considered Ms C's complaint but didn't think it should be upheld. Ms C doesn't agree so the matter has been passed to me to determine.

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, I don't uphold Ms C's complaint for broadly the same reasons set out by the investigator. Before I explain why, I wish to acknowledge the volume and detailed nature of the submissions made by Ms C in this complaint. Whilst I have read everything she's said and considered it all, I won't be addressing each and every point. That's not intended to be disrespectful, rather it's representative of the informal nature of the Financial Ombudsman Service. Instead I'll focus on the crux of Ms C's complaint, namely whether it was fair for AXA to take the position they have in respect of her claim.

The starting point is the policy terms. They provide indemnity for loss or damage caused by an *"Insured Event"*. The relevant *"Insured Event"* in this case is for loss or damage caused in relation to leases and restrictive covenants if:

"Your Property has been altered in a way that is not compliant with restrictive covenants contained in the lease of the Property and your landlord tried to enforce these covenants."

It's not in dispute that Ms C's property was altered in ways that were not compliant with the restrictive covenants within her lease. It's clear from the way in which the claim arose that Ms C's landlord was not seeking to enforce those covenants at the time Ms C contacted AXA. At that time Ms C had contacted her landlord with a view to obtaining a lease extension. In response to this her landlord offered her the extension at a premium of £15,000 which was intended to reflect the unlicensed alterations they became aware had taken place at the property. That is the sum that Ms C is seeking from AXA in this case.

It's not in any doubt there is no insured event here that is capable of cover. Ms C's landlord was not seeking to enforce the covenants against her. Rather the position was that the lease extension offered to her was contingent on her paying a sum in respect of the unlicensed alterations. That's not the same thing as a straightforward claim for enforcement of the covenants, which is what the policy is intended to cover. For that reason, I don't think it was unreasonable for AXA to decline cover based on the policy terms.

But as the investigator said, we can also consider whether it was fair and reasonable for AXA to accept the claim based on Ms C's specific circumstances if we think it was right for them to do so. In this case however, I'm not satisfied that such a position arises. When reaching that conclusion, I appreciate that Ms C's landlord's offer was time sensitive and that she was told enforcement action could follow if the terms put to her were not accepted. But that doesn't mean that enforcement was imminent. The position Ms C found herself in was a negotiation that incorporated something she wanted to achieve- a lease extension and something the landlord wanted to be compensated for- the alterations to the property. Whilst I accept that one was incumbent on the other, I'm not persuaded that anything resembling an insured event was triggered here.

I say so because the sum being claimed by the landlord was, by their own account, intended to reflect the increased value of the property, rather than the remedy they would be seeking by virtue of enforcement action. This would have been for the property to be put back to its former condition. I appreciate that Ms C does not agree that the sum charged necessarily represents that as represented to her by the landlord, but given her landlord confirmed to this Service that the sum of £15,000 was based on the increased value of the property, I'm more persuaded that is what it represents. Because of this I think what is being sought by Ms C from AXA is recompense for a financial transaction that the policy was not intended to cover, nor would cover even if an insured event had been triggered.

For those reasons, I don't think her complaint should be upheld and the remaining points that Ms C has made make no difference to the outcome of her complaint. As such I won't be addressing them in this decision in the same way the investigator has.

My final decision

I don't uphold Ms C's complaint against AXA XL Insurance Company UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 8 July 2025.

Lale Hussein-Venn
Ombudsman