

## The complaint

Ms A, with the support of her representative, complains that AXA Insurance UK Plc has unfairly declined a claim made on her commercial buildings insurance policy.

She feels it has failed to correctly apply the policy terms and she has lost out as a result of the damage caused by emergency services not being covered.

## What happened

Ms A owned a rental property which had been let and occupied by paying tenants. In April 2024, the property suffered extensive damage after a fire, which was believed to have started in the loft of the property.

The exact cause of the fire couldn't be determined. But the forensic specialist who attended the property said, the fire had started in the loft and there was evidence which suggested the tenant had been growing cannabis in the loft space. It was concluded that the fire was most likely caused by the activity of growing cannabis.

A complaint had been raised about the delay in the claim decision and in June 2024, the claim was declined by AXA. It sent a final response letter which said the claim had been declined because of an exclusion within the policy which excluded, "*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*". But AXA said there had been some delays in the claim process and it awarded Ms A £150 in recognition of this.

This complaint was brought to our Service and an ombudsman colleague of mine said they were satisfied the policy included a term which allowed AXA to decline cover for any loss caused by illegal acts of the tenants. They were persuaded that the tenants had been growing cannabis at the property and this was an illegal act, even if the tenants had not been prosecuted. They also felt the cannabis growing activity was likely the cause of the fire. So, they felt AXA had acted fairly when it relied on the policy term and declined cover.

Ms A and her representative felt AXA had failed to consider all of the policy terms and the cover set out within it. Specifically, it felt AXA should be providing cover for the damage caused by the emergency services who attended the property to put out the fire. There was a significant amount of water damage from the fire service who attended and used water to extinguish the flames.

AXA said it didn't think the damage caused by the emergency services should be covered as the exclusion previously relied on would be relevant. So it didn't accept the damage should be covered under the policy.

Our investigator looked at this complaint and said they felt AXA had acted fairly with the claim decision reached. They felt the illegal activity was the proximate cause to the events that happened. The fire was the result of the illegal activity and the emergency service response and actions were only needed as a result of the events that stemmed from the illegal activity. So based on this, they didn't think AXA had unfairly relied on the exclusion not

to provide cover for the damage caused by the actions of the emergency services.

Ms A and her representative disagreed with the outcome. They said the conclusion of the illegal activity being the proximate cause of the internal damage was incorrect and the application of this had meant there was an misinterpretation of the events.

They felt there was inconsistency with the initial assessment of this complaint by this Service and they felt the previous decision disregarded the principle of proximate cause by attributing the fire to an unproven illegal activity. And the previous decision disregarded information which was crucial to the outcome.

Our investigators opinion remained unchanged and the case was referred for 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 reviewed the information provided, I am not upholding this complaint, for much the same reasons as our investigator. I appreciate this will be disappointing for Ms A, but I'll explain why I think AXA has made a fair claim decision.

As I've set out in the background of this complaint, a previous complaint was brought to this Service and a decision issued by an ombudsman colleague. I am not revisiting the decision of this complaint as the decision is final and marks the end of our process. So, for clarity, my focus is on whether the claim decision made by AXA, to rely on its exclusion to decline the cover for the damage caused by the emergency services is fair and reasonable.

It is not disputed that Ms A's policy provides cover for damage caused by emergency services. Our investigator set out the details of this within their view and I won't repeat the wording again here. Nor is there any dispute that the policy excluded damage caused as the result of an illegal activity. But it is whether AXA is fairly applying its exclusion, to not cover damage caused as the result of an illegal activity which is to be determined.

Our investigator said they felt the illegal activity was the proximate cause of the damage to Ms A's property. In short, it was the event or significant factor in the chain of events that led to the loss.

Ms A and her representative have argued it is not the illegal activity but the fire itself which was the proximate cause which led to the emergency services being required. And because of this, AXA is unfairly relying on its exclusion.

I understand why Ms A feels the damage caused by the fire service when it attended the property to extinguish the fire, would be as a direct result of the fire. However, I don't think AXA has been unreasonable when it has said it considers the damage to be excluded as it relates to the illegal activity.

My ombudsman colleague previously considered the cause of the fire was most likely because of the cannabis growing activity which they considered to be an illegal activity and it is not my role to revisit a finding previously made.

When thinking about the chain of events and whether the illegal activity can fairly be said to be the proximate cause, I think it is fair to say this was a significant factor which could be said to set in motion, a chain of events which caused the damage. And it is reasonably foreseeable that if the illegal activity caused a fire, that emergency services would be

required to extinguish the fire.

I have not seen anything which shows a break in the chain of events which would mean it is reasonable to say the illegal activity is not the proximate cause of the damage now. With this, it follows that AXA is fairly relying on the exclusion within the policy.

I appreciate the damage to Ms A's property represents a significant loss to her with both the damage and repairs needed to the property and the loss of rent while the property is uninhabitable. However, I have not been presented with anything to show me AXA has acted unfairly when handling this claim. It has fairly relied on the exclusion of the policy to exclude damage caused as the result of an illegal activity and I am satisfied this is the significant factor in the chain of events that led to the loss and it is fair to say this is the proximate cause.

### **My final decision**

For the reasons I've set out above, I do not uphold Ms A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 13 June 2025.

Thomas Brissenden  
**Ombudsman**