

## **The complaint**

Mr C complains about the decline of his property owner's (commercial) property insurance claim by AXIS Specialty Europe SE ('AXIS').

AXIS have accepted responsibility for the actions of agents acting on their behalf. Therefore, in this decision, any reference to AXIS should be interpreted as also covering the actions of their appointed agents.

## **What happened**

The background to this complaint is well known to both parties. Mr C took out a property owner's insurance policy that covered a large number of properties in April 2022. The policy renewed in April 2023. In October 2023, Mr C contacted AXIS to make a claim on the policy, related to possible subsidence.

AXIS considered the claim but ultimately declined it for two main reasons. They said the property had been unoccupied for around 10 months prior to the claim and Mr C failed to make them aware of this change. AXIS also said had they been made aware of this material change in risk, cover would've reverted to fire, lightning, explosion and aircraft ('FLEA') and subsidence cover wouldn't have been covered under the policy for this property. In addition, they said that even where subsidence was covered, they concluded the damage being claimed for pre-dated the policy and wouldn't have been covered.

Mr C raised a complaint about the claim decline and service provided responding to the claim. AXIS didn't uphold the complaint and as he remained unhappy, Mr C referred the complaint to our Service for an independent review. Our Investigator considered the complaint but didn't recommend that it be upheld. As the dispute remains unresolved, it's been referred to me for a final 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 scope of this decision*

Our Investigator made enquiries with Mr C to establish if he was an eligible complainant. Mr C replied with the following declaration: *"I can confirm I do not have balance sheet or turnover that exceeds 2 million euro's nor do employ 10 or more full time employees."*

### *My key findings*

I don't uphold this complaint for the below main reasons.

I find AXIS' position that cover would've defaulted to FLEA had Mr C made them aware of the unoccupancy of the property to be reasonable. Mr C was required under policy term 1.17 to let AXIS know 'as soon as it is reasonably possible' of the unoccupancy.

I've weighed this up against Mr C's arguments regarding the nature of the unoccupancy (regular visits and in the process of selling). The policy definition of unoccupied:

*"Unoccupied shall mean any Building or part thereof that is:*

- i. not in active use; and/or*
- ii. untenanted; and/or*
- iii. empty, void, vacant or disused; and/or*
- iv. awaiting refurbishment, redevelopment, renovation or demolition"*

I've noted Mr C's interpretation of 'active use', but I'm satisfied that AXIS can fairly rely on the policy definition to deem the property was unoccupied. I say this because the terms don't refer to regular visits. The intention of the above term is the property is deemed occupied when tenants are living in it, or renovation/building works are planned.

As a commercial insurance customer, the relevant legislation here is the Insurance Act 2015. Mr C had an obligation to make a fair presentation of risk. In summary, that means he had a duty to disclose all material facts that a prudent underwriter would want to know. This duty started at policy application, applied at renewal and continued whilst the policy was live. The occupancy change took place *after* the first policy renewal and I'm satisfied this was material information that Mr C failed to make AXIS aware of. I'm satisfied the actions taken by AXIS (explaining they'd still have offered cover, but on reduced terms and not including subsidence) to be fair, as a remedy allowed under The Act.

I note Mr C strongly disagrees and argues it's not a proportionate remedy. However, it's one allowed under the legislation and I've also considered if any mitigation applies to ensure a fair and reasonable outcome - but I find no mitigation applies that would undermine AXIS' actions as being unfair.

For completeness (although I've found the actions taken by AXIS to be fair), I've carefully considered Mr C's comments about the unoccupied property being immaterial to the damage being claimed for. This is a hypothetical scenario – as subsidence cover wouldn't have been offered had AXIS been aware of the condition of the property, but I've also noted that AXIS have told our Service in an email dated 14 August 2025 that the claim was declined for failure to notify them of a material change *and* evidence of pre-existing damage.

On balance, I'm satisfied that the evidence supports AXIS' position that the damage being claimed for pre-dated policy renewal and inception. I've also noted that Mr C's own appointed surveyor agreed that some of the movement was long standing. I've considered external photos of the property available online that also support damage consistent with the conclusions AXIS have reached, going back many years.

#### *Other points raised by Mr C*

AXIS addressed a point in the final response letter related to costs Mr C had incurred as he was unhappy with the service provided when responding to this claim. Although it may have taken AXIS longer to reach their claim decision than either party would've liked, I'm satisfied that the claim was progressed in a reasonable manner, with ongoing enquiries and investigations responsible for the delays experienced – rather than these being clearly

avoidable delays. I don't find that AXIS need to reimburse any costs such as council tax that Mr C incurred during the period in question.

Mr C has said he wasn't made aware of the reduction in the cover provided. But I'm satisfied he was clearly notified once AXIS were made aware of the material change in risk.

In response to our Investigator's assessment, Mr C queried AXIS liaising with his broker to involve previous insurers. Mr C can speak to his broker if he believes any earlier policy would respond to the damage he's claiming for. However, I'd point out that with these types of policies there is usually an onus on the policy holder to make the insurer aware as soon as possible to mitigate against further damage occurring and claim costs.

My decision will no doubt disappoint Mr C, but it ends our Service's involvement in trying to informally resolve his dispute with AXIS.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 March 2026.

Daniel O'Shea  
**Ombudsman**