

## The complaint

S has complained that AXA Insurance UK Plc has declined a claim for loss of rent.

## What happened

The background to this complaint is well known to the parties so it serves no purpose for me to repeat all the details here. In summary, in July 2023 there was a fire at the insured property. A claim was made under the policy – the Property Investors Protection Plan. The policyholder here is the freeholder of a building – I'll refer to the freeholder as W. S is a leaseholder of an apartment in the building and made a claim following the fire for loss of rent.

AXA declined the claim. It said that rental income had not been selected and wasn't insured. However it said that under Section 1 (Buildings) there was alternative residential accommodation cover, but this didn't extend to loss of rental income.

Unhappy S referred its complaint to our service. S is represented but for simplicity I shall just refer to the representations as being made by S.

There was some confusion over the date of the fire, but ultimately our investigator didn't conclude that the claim for loss of rent was covered under the policy that was in force at the time.

S appealed. In summary it said Section 1 (Buildings) covers reasonable alternative accommodation for tenants and temporary storage of tenant's furniture whilst the residential portion cannot be lived in. S argued that AXA should assess and meet a claim for alternative accommodation in line with this clause.

S acknowledged that the relevant policy document did not list long term leaseholders under the definition of 'you' (as did the 2023 edition). It argued that this is a buildings-package policy that insures the building fabric and contemplates landlord/tenant relationships throughout. It treats rental income as an adjacent section with its own conditions – underscoring that Section 1 is a separate protection intended to keep residential occupiers housed when damage makes the dwelling uninhabitable.

As no agreement has been reached the matter was passed to me to determine. I issued a provisional decision saying as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I'd like to reassure S that whilst I've summarised the background to this complaint, I've carefully considered all the submissions made. In this decision though I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts.*

*There is no dispute that under Section 2 (Rental Income) loss of rent, wasn't selected but*

that the policy does cover alternative accommodation under Section 1. The correct policy version is 2021 – but this doesn't differ in material respects from the 2019 policy. Section 1 provides (as far as relevant here):

### **Alternative residential accommodation cover**

*We will cover **you** for costs of reasonable alternative accommodation for **your** tenants and temporary storage of **your** tenants furniture while the residential portion of the **buildings** cannot be lived in or access is denied as a result of **damage**. This cover will only apply where we have made a payment or accepted liability under this section.*

*The most **we** will pay for this cover is 33.3% of the sum insured on the **building** that has been **damaged** for a maximum period of 24 months from the date of **damage**. Provided that this cover is not insured elsewhere.*

*AXA has accepted liability for the fire, so the cover applies. I find it matters not whether the original claim was for loss of rent or alternative accommodation. AXA would be bound to meet a valid claim. However, the issue here for S is the policy definition of 'you'. This is:*

### **You/your/yourself**

*The person(s), firm company or organisation shown in your schedule as the insured.*

*I have seen the policy certificate for the relevant year; this shows W is the insured. However AXA has recently advised that its insured is not W but another entity whom I will refer to as LBM. Clarification can be given in response to the provisional decision.*

*In any event S is a separate legal person to W, the policyholder. Usually it would be the policyholder who may be in a position to make a valid claim for alternative accommodation under the policy, rather than S. However it may well be that there is some agreement between S and W (whom it would seem is the leaseholder and the freeholder) in circumstances such as this which doesn't prevent S sub-letting the property. But this is evidence that would need to be presented to AXA for a claim for alternative accommodation to be considered. Together with evidence of AA costs by the tenant.*

*S argues that Section 1 of the policy contemplates landlord/tenant relationships throughout, and I find that is a fair point - the policy was taken out at least in part for the benefit of the leaseholders. I agree too that it would be unfair to leave an insured out of pocket where a fire claim has been accepted. But on the evidence before me at present, there is no basis I could fairly require AXA to assess a claim for S under Section 1 of the policy.*

*So I didn't uphold the complaint on the basis of the evidence I had seen.*

*S's representative appealed – again I shall refer to those representations as being made by S.*

*S submitted the lease (a 99 year term from March 1984) – it said that it was apparent from this that the policy was taken out on behalf of and for the benefit of the leaseholders. S argued that this, together with its contractual obligation under the insurance contract, meant that AXA must deal with the claim under Section 1 – Buildings. S said that as AXA had accepted liability for the fire, liability was engaged. However, it said that S had chosen not to re-house its tenants, which would have generated alternative accommodation costs recoverable under Section 1, but mitigated the loss by accepting a loss of rent for the period in which the flat was uninhabitable. S argued that it would be unfair for AXA to pay nothing merely because S had chosen a cheaper mitigation route. It referred to a previous decision*

from this Service and asked that AXA now be directed to accept S's claim for loss of rent under Section 1, arising from the fire damage, with interest.

AXA didn't respond to my provisional 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 done so, I'm not persuaded to change my provisional findings, which I adopt here. I should explain that this is not because I don't find merit in S's arguments. But I am considering the complaint which was raised here following a final response letter issued by AXA in December 2024. This was concerned with AXA's decline of a claim for loss of rental income.

I have explained why I agree that on the basis of the evidence before me loss of rental income isn't covered. So I don't uphold the complaint that was originally made.

However AXA agreed it would consider a claim for alternative accommodation if it had sight of an agreement in place between the policyholder and the leaseholder regarding sub-letting.

S has now submitted further evidence (the lease) and arguments as to why the claim should be assessed for loss of rent in lieu of alternative accommodation under Section 1.

This is a matter for AXA to consider – it hasn't had the opportunity to see the lease or to assess the evidence now presented. The request for loss of rent to be paid under Section 1 instead of alternative accommodation is also something that it has not yet considered – the argument having only been made to this Service. If it were willing to accept this argument AXA would need evidence of loss of rent.

For completeness I should add that AXA *has* considered a claim for loss of rent and declined it on the basis that this cover wasn't specifically selected and there is no cover under Section 1 of the policy for loss of rent. And as indicated I agree with this conclusion – but AXA has agreed to consider the further evidence in order to see if it would pay an alternative accommodation claim to S. I think this was fair and may lead to a better outcome for the leaseholder consumer, S.

S can now present this evidence (and its argument for loss of rent instead of alternative accommodation) to AXA for its consideration. I do appreciate that this may seem to be a long process and I'm sorry that my decision doesn't bring S welcome news.

### **My final decision**

For the reasons given my final decision is that I don't uphold this complaint.

Lindsey Woloski  
**Ombudsman**