

## **The complaint**

Mr B complains about the way AXA Insurance UK PLC handled a claim he made on his commercial insurance policy following a fire.

Mr B has been represented in bringing the complaint, but for ease, I've referred to all comments and actions as being those of Mr B.

## **What happened**

There was a fire in the shop of the property owned by Mr B in November 2020. Mr B made a claim for damage to both the shop and the flat located above the shop.

AXA accepted the claim and appointed its contractors to carry out the reinstatement works, but Mr B was concerned about the progress of the repairs, and he says he raised these concerns on a number of occasions throughout the claim.

AXA responded to several complaints made by Mr B in 2022 and 2023 and made some offers of compensation. And in June 2024, Mr B received a further complaint final response letter (FRL). That responded to a complaint about loss of rent for the flat not being paid, and about the repairs to the shop front. Whilst AXA didn't agree to change its position on either of those matters, it accepted its service had been poor and offered £200 compensation.

Mr B referred that complaint to this Service. As a resolution he wanted to AXA to pay loss of rent for the flat between November 2020 and November 2021, when he says the tenant moved back in. He also wanted AXA to agree to fix the shop front door, which he said hadn't been done properly and as a result, was difficult to close. He also wanted compensation for the unnecessary distress and inconvenience AXA had caused in unfairly refusing the loss of rent payment.

Our Investigator ultimately didn't think AXA had acted unfairly in refusing to pay for loss of rental income for the flat. He said he'd seen an enforcement notice, issued by the fire brigade after the fire in 2020. He thought, based on the enforcement notice, the reason for the loss of rent was because the fire brigade had said the flat couldn't be lived in until the fire safety concerns identified had been rectified. And because none of those concerns were caused by the fire, he said the resultant loss or rental income wasn't due to insured damage, and as such wasn't covered by the policy.

However, our Investigator didn't think AXA had acted fairly in relation to the repairs to the shop front, he recommended AXA revisit the property to assess the damage to the shop front and carry out any necessary repairs.

He also recommended AXA pay an additional £200 compensation (making the compensation £400 in total including AXA's offer) to resolve the complaint.

AXA asked for an Ombudsman to review matters and said as evidence relating to the shop front had been provided after its complaint response, it hadn't had chance to consider it. So it said it shouldn't be considered as part of this complaint.

Mr B also asked for an Ombudsman to consider matters. He said AXA had given several different reasons for declining to reimburse the lost rental income and changed its reason each time Mr B disproved its previous reason was valid.

## 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.

There are three aspects of this complaint to consider, the loss of rent payment, the repair of the shop front and compensation. I've considered those in turn. However, in keeping with the informal nature of this Service, I'll only focus on the key reasons for reaching the decision I have.

### Loss of rent

Mr B's policy covers him for loss of rental income if his business is interrupted as a result of damage caused by one of the insured perils on the policy, one of which being fire.

However, AXA's position is that the only reason Mr B had a loss of rental income from the flat was because the fire brigade had issued an enforcement notice and said the property couldn't be occupied until remedial works required by the notice were completed. It said those fire safety issues included in the notice were not caused by the fire, they had existed before the fire in the shop. As such the loss of rental income was due to fire safety breaches, which is not something the policy provides cover for.

Mr B's position is that the flat was damaged, and the fire brigade said it couldn't be occupied owing to the fire. And as works were carried out on the flat by AXA, including electrical work, the lost rental income should be covered.

Having reviewed the enforcement notice issued by the fire brigade to Mr B, I do agree with AXA that the enforcement notice was issued owing to fire safety breaches in Mr B's flat, rather than because of the fire in the shop. Whilst the flat was only assessed by the fire brigade because of the fire in the shop, that doesn't mean the cause of the enforcement notice being issued was the fire. The notice was issued because the fire brigade had concerns over a number of aspects, including a lack of fire doors between the shop and the flat, and inadequate emergency exits. There's nothing in the enforcement notice that comments on any damage to the flat caused by the fire, or that any fire damage has rendered the flat unsafe in any way.

The enforcement notice is silent on whether the flat could be occupied by the tenant or not before the necessary fire safety requirements were implemented. However, I do note that in April 2021, when Mr B asked the fire brigade for an extension to complete the works (due to his builders having to self-isolate and the covid-19 pandemic) the fire officer replied to say that he'd first need to check the flat to ensure it wasn't being lived in, before agreeing any extension. So I'm persuaded the fire officer was not expecting Mr B's tenant to be residing in the flat until the fire safety works were carried out. So, because this lost rental income, then, wasn't caused due to "damage caused by one of the insured perils" I'm not persuaded it would be reasonable to ask AXA to pay a loss of rent claim.

I accept Mr B's argument that AXA did carry out some works to the flat including to the electrics. But I'm not satisfied it would be fair and reasonable to require AXA to pay for any lost rental income for that period where any work was carried out. Because it seems to me that Mr B still wouldn't have been receiving rent from the tenant during that period anyway, because of the fire brigade's enforcement notice.

Mr B says the fire officer certified that the fire safety works had been carried out on 30 September 2021. However, Mr B says the tenant didn't return to the flat until 15 November 2021. Whilst Mr B has more recently said that was because AXA hadn't completed works, all of the correspondence I've seen refers to works to the shop being incomplete or below standard. I can't see anything which persuades me AXA should reasonably pay a loss of rent claim between 30 September and 15 November, because I'm not persuaded that its

actions in relation to the flat caused any delay in the tenant resuming his occupancy and therefore paying rental income.

I do accept Mr B's point that AXA has continually given differing reasons for not paying a loss of rent claim. It could and should have been clearer in its communication with Mr B at an earlier stage in the claim. I can see at one point in late 2021 (when the tenant had returned to the flat) Mr B was told a loss of rent claim could be considered – even though by that stage I think it ought to have known that loss wouldn't have been covered. AXA also appears to have asked Mr B to provide the same documents a number of times, despite them already being provided. I have factored this in when considering a compensation award later on in this decision.

### Repairs to the shop front

AXA now accepts that there are issues with the shop front, which it repaired, owing to the video provided by Mr B to this Service in response to our Investigator's findings. That video shows the shop front, including its door and attached windows, move in the frame of the shop when pressure is applied by a hand being placed on the frame. This is in the same area where AXA has carried out reinstatement works.

However, it disputes how this Service has proposed to put matters right. AXA has said it wants to attend the site and investigate further. It said when it issued its June 2024 complaint response it had used the information available to it, and as such this Service shouldn't consider Mr B's new evidence provided after the date of that final response under this complaint.

AXA did have an opportunity, prior to issuing its June 2024 complaint response, to reattend the site and inspect the door. I can't see that it asked to do so. Instead, its FRL said it was satisfied, based on an earlier surveyor's site visit that there were no issues with the door. I have asked AXA for a copy of this report, but it hasn't been received. As such I'm not satisfied it has shown it responded to this complaint point reasonably.

So I've already set out to AXA that it is fair and reasonable for this Service to consider this evidence now. I've also set out that if AXA, having assessed the shop front, agrees there's an issue owing to its repair, it will need to pay Mr B what it will cost him to have it repaired – if Mr B doesn't want AXA's contractors to carry out the works. Mr B has said he's reluctant for AXA to undertake any more works, I don't consider that an unreasonable position given the history of the claim.

### Compensation

It's clear that the claim has taken longer than it should have to be resolved, however I'm not considering all of the claim journey when considering a compensation award. I'm aware AXA has, as part of previous complaints, already made awards of compensation. What I'm considering here is whether AXA's actions in relation to its position on loss of rent and the shop front have caused any unnecessary distress and inconvenience to Mr B, above that would which would normally be expected throughout the course of the claim. I've ultimately been persuaded AXA's position on loss of rent is reasonable, so I can't award compensation for any distress caused in it not meeting that claim earlier. Although as set out above, I can see AXA's responses, often differing, would have caused frustration that I think could likely have been avoided.

I haven't been persuaded that the position AXA reached in relation to the door front is reasonable. And I consider issues with the shop front would have caused unnecessary distress and inconvenience to Mr B. Having regard to our compensation guidelines I consider a total award of £400 (including the £200 already offered by AXA) is fair and reasonable. As such that is what I'll direct AXA to pay. If AXA has already issued £200 to Mr B, it need only pay the remaining £200 to resolve matters.

## **My final decision**

My final decision is that I uphold the complaint in part, and I direct AXA Insurance UK PLC to:

- Assess the shop front, if it agrees there are issues owing to its repair it will need to pay Mr B what it will cost him to repair those issues, if he chooses not to use AXA to effect any repair.
- Pay a total of £400 compensation, less any amount already paid by AXA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 January 2026.

Michelle Henderson  
**Ombudsman**