

The complaint

Mr B's complaint is about a claim he made on his AXA Insurance UK Plc ('AXA') business protection insurance policy for loss of rent.

Mr B is unhappy that AXA turned down this claim.

What happened

Mr B says his property was damaged by his tenant. As a result, he made a claim on his AXA business protection insurance policy. The claim that's the subject of this specific complaint is for loss of rent.

It is not for other matters I'm aware Mr B has complained about, including the policy excesses AXA applied to other claims under the policy, or the amount AXA offered him in respect of a damaged piano. Those are being considered separately by the Financial Ombudsman Service.

AXA declined to cover Mr B's loss of rent claim because they said the policy didn't cover loss of rent when the property was untenanted unless at the time of the incident giving rise to the damage, there was a signed tenancy agreement to confirm future occupation. AXA said this didn't apply here. They did however pay Mr B £25 for the time they took to consider his complaint, which they said was outside of the regulatory timescale applicable.

Unhappy, Mr B referred his complaint to the Financial Ombudsman Service. He said he was entitled to be paid a loss of rents claim, that AXA's loss adjuster had gotten the date of loss wrong, and the property wasn't habitable until the damage had been made good.

Our investigator considered Mr B's complaint and concluded it shouldn't be upheld. Mr B 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 won't be upholding Mr B's complaint. This is why.

The starting point is the policy terms. They say AXA will cover loss of rent and the cost of alternative accommodation if the property is damaged by the insured causes and events. I won't set those out here because they don't form any of the terms in issue between the parties. The term that AXA have relied on to decline Mr B's claim is the following exclusion:

"any loss when the property was untenanted unless at the time of the incident giving rise to the damage, there was a signed tenancy agreement to confirm future occupation, once the damaged part of the property is habitable and where the damage was caused by the tenant intentionally."

The damage took place at different times before 9 December 2020. Mr B's tenant was due to

leave the property in accordance with their tenancy agreement on 10 December 2020. The rent was paid up to date and there was no future occupation agreed with anyone else beyond this. I appreciate that Mr B feels that it wasn't possible for the property to be occupied beyond the tenant vacating, because it wasn't inhabitable, but that doesn't mean the policy would engage in this case. That's because Mr B had no proven loss to protect with the cover. He wasn't losing out on rent because there was no agreement in place for a future tenancy that he might otherwise have lost out on because of the nature of the repairs needed.

Mr B says that as there was a signed tenancy agreement in place when the damage was caused, this means the policy would engage and loss of rents were payable. I don't agree. The terms are clear that a signed tenancy agreement for future occupation needed to be in place. That can't possibly apply in this case because there's no loss of rent claim for the remainder of the term occupied by the existing tenant- that's because they were paid up until the end of their term. The applicable exclusion means that he couldn't claim for loss of rents because there was no signed tenancy agreement to confirm future occupation beyond the tenancy coming to an end, which is when Mr B's only potential loss would arise, as he wasn't receiving any rent from anyone.

Mr B is unhappy that AXA's loss adjuster referred to the wrong date of loss in relation to his claim. I've thought about this, but like the investigator, I take the view that this makes no difference to the outcome of this complaint because the only loss date Mr B could claim from is when he stopped receiving rent. And because there was no signed future tenancy in place at that time, the policy didn't engage anyway. So, the date the loss adjuster applied is immaterial in the circumstances.

I know Mr B feels strongly that the property wasn't habitable after his outgoing tenant left and that he was trying to get tradesman and the letting agent to make the property fit for reletting. And from what Mr B has said, I imagine that would have been less straightforward during the Covid-19 pandemic, but I don't think that changes anything with regard to the cover offered by the policy. It makes no difference whether the property was uninhabitable if there was no signed agreement to confirm future occupation by a tenant. The fact that the state of the property might be the reason why a signed agreement for future occupation wasn't possible also makes no difference. The term provides for that scenario by excluding it because the property would always have been vacant at that time, so Mr B hasn't lost out on a guaranteed tenant as a result and that is what the loss of rent term was in place to cover.

Finally, from what I've seen AXA have paid Mr B £25 for the delay in replying to his complaint. I think that's reasonable in the circumstances. I won't be directing AXA to make any further awards beyond this amount.

My final decision

For the reasons set out above, I don't uphold Mr B's complaint against AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 December 2023.

Lale Hussein-Venn
Ombudsman