

## **The complaint**

Mr G and Mr M are complaining that AXA Insurance UK Plc hasn't covered a claim they made on a block commercial property insurance policy for rent they've lost after a flat they own the leasehold on was damaged.

## **What happened**

In June 2022 a fire caused damage to a flat Mr G and Mr M own the leasehold on and had rented out. The fire also damaged the building. A claim was made on the block commercial property insurance policy provided by AXA. Mr G and Mr M made a claim for rent they've lost as their tenant had to move out. AXA initially covered the first three months rental, but then said that there wasn't cover for their lost rent. So AXA declined to cover any further lost rent. Mr G and Mr M didn't think this was fair and referred their complaint to this Service.

I issued a provisional decision not upholding this complaint and I said the following:

*"I should first set out that I acknowledge I've summarised Mr G and Mr M's complaint in a lot less detail than they've presented it. Mr G and Mr M have raised a number of reasons about why they're unhappy with the way AXA has handled this matter. I've not commented on each and every point they've raised but, instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure Mr G and Mr M, however, that I have read and considered everything they've provided."*

*Mr G and Mr M are unhappy that AXA has declined to cover the claim for their loss of rent. AXA says the policy doesn't cover it. I've first thought about what the terms of the policy say:*

### ***"Rent – The Basis of Settlement of Claims***

*the insurer(s) will pay in respect of buildings which have suffered damage*

*a) the loss of rent being*

*the actual amount of the reduction in the rent receivable by the insured during the indemnity period solely in consequence of the damage."*

*So the policy covers rent that "the insured" would have received, but for the damage suffered during the time the building was being repaired. So the question for me to decide is whether Mr G and Mr M fall within the definition of "the insured".*

*The terms and conditions don't specifically define "the insured" but I think they should be read alongside the schedule and certificate of insurance. And, in fact, the terms do say:*

### ***"The Insurer(s) Liability***

*If the Insured described in the Schedule comprises more than one insured party each operating as a separate and distinct entity then cover hereunder shall apply in the same*

*manner and to the same extent as if individual policies had been issued to each Insured party”.*

*I think a reasonable interpretation of this is that “the insured” is to be those set out to be “the insured” on the schedule of insurance. And these specifically say the insured is the freeholder of the building – who I shall refer to as C. I’m also conscious that the policy sets out the following:*

#### **“5. Other Interests**

*The interest of any freeholders lessors lessees licencees underlessees assignees mortgagees financiers lenders receivers tenants and occupiers are noted in this Policy it being understood that the details of such parties will be notified as soon as reasonably practicable to the Insurer(s) in the event of any claim arising under this Policy.”*

*Mr G and Mr M are a lessee of the freeholder in that they own the leasehold of the flat. But the terms of the policy specifically notes that they have an interest in the claim – in that they may be impacted by any claim the insured party may make. But this doesn’t mean they would be considered to be “the insured” on the policy and I think the language of this clause is such that it sets out that they aren’t. And there isn’t anything to say that any party, other than C, would be considered “the insured” under the policy.*

*Ultimately, this insurance is intended to cover C’s risks and potential losses – namely damage to the building and any losses C may incur. It’s not intended to cover any financial losses, other than damage to their flat, Mr G and Mr M, other than damage to their flat, may incur. This isn’t unusual for such a policy.*

*Regarding loss of rent, the policy essentially covers any loss of rent C may incur – such as loss of ground rent. I can’t reasonably conclude that the way the policy is written could reasonably be read that the policy covers rent that all leaseholders may incur.*

*I naturally sympathise with the situation Mr G and Mr M have found themselves in and it’s clear they have lost out significantly as a result of what’s happened. But, as I don’t think I can reasonably say it was unfair for AXA to say the policy doesn’t cover Mr G and Mr M’s loss of rent.”*

Mr G and Mr M didn’t agree with my provisional decision. They said, given that AXA made an initial payment of three months rent, it could be argued that it admitted liability for loss of rent under the insurance claim. And they asked if I would consider awarding a further payment as a goodwill payment. They said the property was uninhabitable for 10 months as a result of the fire for ten months but they’ve only been paid three months rent. They said AXA took a significant amount of time (around six months) before contractors started on the reinstatement works.

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.

I note Mr G and Mr M’s comments, but I’ve come to the same conclusion as I did in my provisional decision. They’ve asked that I award a goodwill gesture given they’ve lost out significantly due to the property being unoccupied. I recognise they’ve lost out significantly because of the fire and I sympathise with this. But I can only reasonably require AXA to

cover any losses they've incurred if they're covered under the terms of the policy or are due to something AXA did wrong. And I also have to recognise that they received three months rent at the start that they weren't entitled to under the terms of the insurance policy.

Mr G and Mr M have suggested that AXA paying loss of rent at first means it's admitted liability towards covering their lost rent. But paying the rent was a mistake AXA made and doesn't change the terms of the insurance policy. Ultimately, the policy doesn't cover loss of rent for leaseholders, which isn't unusual for this type of policy. And I can't reasonably require AXA to pay anything further.

Finally, I note that they've commented it took AXA around six months before repair works were started. But they haven't previously raised concerns about the way AXA has handled the actual damage claim as part of this complaint. So I can't consider this in this decision and they'll need to raise this with AXA directly if they want to take this further.

### **My final decision**

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mr M to accept or reject my decision before 18 December 2023.

Guy Mitchell

**Ombudsman**