

## The complaint

Dr B and Ms S have complained about the way a claim under their Property Investors Plan insurance policy for damage to the flat they own on a leasehold basis was handled by AXA Insurance UK Plc. And the fact AXA didn't pay anything to them for loss of rent.

## What happened

Dr B and Ms S's flat is covered as part of a block policy in the name of a company I'll refer to as D. It was damaged by a water leak and D submitted a claim under the policy. There were significant delays on the part of AXA and its loss adjuster in dealing with the claim. Dr B and Ms S complained and AXA issued its final response on their complaint on 29 September 2022. It said the estimate for the repairs to Dr B and Ms S's flat had now been approved and repairs would be progressed as soon as possible. And it awarded them £500 in compensation for the distress and inconvenience caused by the delays.

Dr B and Ms S weren't happy with AXA's final response and asked us to consider their complaint in December 2022. One of our investigators did this in May 2023. She said what AXA had awarded for distress and inconvenience was fair. However, she thought AXA should meet Dr B and Ms S's claim for loss of rent.

AXA didn't agree with the investigator. It said the policy does not provide loss of rent cover for leaseholders.

I issued a provisional decision on 11 December 2023 in which I set out what I'd provisionally decided and why 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 have only considered what happened up to the point AXA issued its final response letter, as I do not have any information about what happened after this. And Dr B and Ms S submitted their complaint to us following this letter. If there have been further delays Dr B and Ms S would need to make a new complaint about this.*

*I've noted what AXA has said in response to our investigators view. It seems odd to me, as its quoted terms that don't appear to be in Dr B and Ms S's policy. However, I've looked at their policy to see what it actually says about cover for loss of rent. And it says the following:*

*'What is covered*

*Loss of rental income cover*

*We will cover you for loss of rental income if the premises covered under Section 1 – buildings is damaged during the period of insurance and as a result your business is interrupted or interfered with.'*

*The policy also has the following definition of 'you'.*

*'You/your/yourself*

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

*The insured in this case is D, not Dr B and Ms S. And this means there is no cover under the policy for any rental income Dr B and Ms S lost as a result of damage to their flat. If they wanted cover for this they needed to take out a policy of their own to cover it. I appreciate AXA paid loss of rent to them on a previous claim, but it seems this was done in error and it does not mean they are entitled to receive it in respect of their more recent claim. So, I do not think AXA needs to pay Dr B and Ms S anything for loss of rent under the policy terms. This does not mean I think AXA doesn't need to pay them anything at all for loss of rent. This is because some of the rent they've lost is as a result of the delays caused by AXA and its loss adjuster on the claim. And I think it is fair for Dr B and Ms S to be compensated for this financial loss. I've looked through the time-line on the claim provided by AXA and I think there was a delay of around nine months caused by AXA and its loss adjuster. I say this because it seems they just didn't get on top of the trace and access issue or authorising repairs when they should have done. But I do not consider for the purposes of this decision I need to set out exactly where the delays were. I think the repairs really should have been approved and completed by the end of 2021 at the latest. This means that poor claim handling by AXA and its loss adjuster led to Dr B and Ms S not being able to rent their flat out for nine months longer than should have been the case. So, I consider it fair and reasonable for AXA to pay them nine months rental income, plus interest. I think the interest should be payable at 8% per annum simple from the date each rental payment would have been received, starting in January 2022 and ending in September 2022. For the sake of ease and because I have assumed it has been evidenced before, the monthly amount payable should be the same as AXA paid (in error) on their previous claim.*

*I have also considered the distress and inconvenience the poor claim handling caused Dr B and Ms S. And I'm satisfied the £500 AXA awarded for this is reasonable. I have assumed AXA has paid this amount to Dr B and Ms A already, but if it hasn't they should let us know in response to this provisional decision.*

I gave both parties until 3 January 2024 to provide further comments and evidence in response to my provisional decision.

Dr B and Ms S have responded and indicated they have no further comments or evidence to provide.

AXA has responded. It has said it agrees with my comment that there is no loss of rent cover under the policy. It also agrees any loss of rent as a result of delays on the part of it or its loss adjuster should be considered as a consequential loss. But it does not think this should be as much as nine months rental income. It's pointed out the trace and access report wasn't concluded until January 2022 and the timeline suggests the tenants left in May 2022.

### **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, including considering AXA's comments in response to my provisional decision, my view on the fair and reasonable outcome remains the same as set out in my provisional decision.

I've noted what AXA has said regarding the trace and access. But the notes and time-line I've seen suggest to me that some of the delay on this was due to a lack of action and

response by AXA's loss adjuster. It's also clear the loss adjuster and – to some extent – AXA caused further delays after this. I do not consider the time-line and notes I've seen suggest the tenants actually left in May 2022; although it is clear they had left by this point. However, this doesn't alter the fact that the flat was uninhabitable for nine months longer than should have been the case due to failings on the part of AXA and its loss adjuster. And Dr B and Ms S could not rent their flat out for this period of time. This is a consequential loss to Dr B and Ms S flowing from the failings of AXA and/or its agents and I think it is fair and reasonable for them to be compensated for this by a payment representing nine months loss of rent. And I think it is fair for this to be done by using the monthly figure for loss of rent on Dr B and Ms's previous claim, plus interest as set out in my provisional decision.

### **Putting things right**

For the reasons set out above and in my provisional decision, I've decided to uphold Dr B and Ms S's complaint and make AXA Insurance UK Plc do the following:

Pay Dr B and Ms S nine months rental income, plus interest. The interest should be payable at 8% per annum simple from the date each rental payment would have been received, starting in January 2022 and ending in September 2022<sup>1</sup>. The monthly amount should be the same as AXA paid on their previous claim.

### **My final decision**

I uphold Dr B and Ms S's complaint and order AXA Insurance Plc to do what I've set out above in the 'Putting things right' Section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms S to accept or reject my decision before 31 January 2024.

Robert Short  
**Ombudsman**

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<sup>1</sup> AXA must tell Dr B and Ms S if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Dr B and Ms S if asked to do so. This will allow Dr B and Ms S to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.