

## The complaint

Mr P complains that AXA Insurance UK Plc has refused to cover his loss of rental income after a claim was made under a property insurance policy.

## What happened

Mr P owns a leasehold flat that was rented out. The management company held a property insurance policy with AXA which covered a block of flats, including Mr P's.

An escape of water caused damage to Mr P's flat. The claim for damage to the flat was accepted by AXA, but Mr P also wanted AXA to cover his loss of rental income after his tenant moved out. AXA said there wasn't cover for loss of rent for leaseholders under the policy. Unhappy with this, Mr P brought a complaint to this Service.

Our investigator ultimately recommended the complaint be upheld. She thought the policy wasn't clear as it didn't specifically exclude loss of rent for leaseholders. She recommended that AXA consider Mr P's loss of rent claim.

I issued a provisional decision on 21 November 2023. Here's what I said:

*'I haven't commented on every point that Mr P has made, as this reflects that this Service is informal. But I'd like to reassure him that I have considered all the points he's raised.'*

*The policy says:*

*'We will cover **you** for loss of **rental income** if the **property** insured under the Buildings section is **damaged** during the **period of insurance** and as a result **your business** is interrupted or interfered with.'*

*Words in bold are specifically defined within the policy.*

*The policy defines 'you/your' as:*

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

*The policy schedule names the management company as the insured.*

*The policy defines 'business' as:*

- 'The business described in your schedule including*
- 1 the management and upkeep of your property and land at the same address*
  - 2 providing and managing facilities primarily used for fire prevention, safety or security at your property*
  - 3 private work completed with your prior consent by an employed person for your directors, partners or officers*
  - 4 the sale or disposal of business assets'*

*The policy schedule says the insured's business description is 'property management'.*

*Under the buildings section of the policy (not the rental income section), it says the interest of the leaseholders in the individual portions of the property is noted and should be advised to AXA in the event of a claim. That means any leaseholders may have an interest in a claim made under the buildings section of the policy, but it doesn't mean they are the insured.*

*I'm satisfied the policy is clear that only the management company as the named insured is covered for any loss of rental income, in the event their property management business is impacted. Mr P is not a named insured and so he cannot claim for this.*

*I appreciate the management company doesn't rent out any of the property and so they wouldn't be able to make a claim for this. If the management company thought the policy included loss of rent cover for those leaseholders who chose to rent out their properties, they would need to raise any concerns about this directly with their broker who arranged the policy. But I'm satisfied this wasn't the risk that AXA took on.*

*Mr P has referred to the policy's failure of third-party insurances cover. It seems to me this only applies if the lessee or freeholder has failed to arrange or maintain insurance to comply with the terms of the lease. Mr P has provided a copy of the lease, and I can't see that he was required to take out loss of rent cover. So I don't agree with him that this section applies.*

*I sympathise with the situation Mr P found himself, but I think it was reasonable for AXA to say the policy doesn't cover him for loss of rental income.'*

I asked both parties for any further comments they wished to make before I made a final decision.

Mr P responded with the following main points:

- There is no basis under the policy for AXA to accept liability under the Buildings section, and then refuse liability under the rental income section.
- Any interest that is acknowledged under the Buildings section of the policy, is also a relevant interest under the rental income section. Mr P says that's because the rental income section protects the same interest that has a valid claim under the Buildings section.
- If AXA's liability was intended to be severable under each section, then this should have been set out at the beginning of the policy.
- Where there is damage to property under the Buildings section, and that damage has resulted in a loss of rental income, then the rental income section applies to that claim.
- My provisional decision rejected his complaint under the failure of third-party insurance cover, on the basis that he didn't have any obligation to take out loss of rent cover under the lease. He says the special conditions applicable sets out the opposite requirement as a condition of coverage, as it says the cover will only be effective if AXA is the sole provider of buildings insurance and where the management company have an obligation to arrange such insurance. Mr P thinks these are contradictory, and any ambiguity should be interpreted in his favour.

- The Buildings section includes alternative residential accommodation cover. AXA accepted this in respect of another leaseholder. When Mr P queried this with AXA, he was told that it only applies to tenants living in the property at the time. However, the policy doesn't say that tenants must be living in the property at the time. Mr P also questions why the policy doesn't specifically exclude cover where the property has been sub-let if that's what AXA intended.
- The policy includes inadvertent omission to insure cover. Mr P makes a few points about this, and says the policy doesn't require the management company to arrange insurance in respect of loss of rent specifically.
- Mr P refers to the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). Mr P says that CIDRA (and this Service's published guidance in respect of misrepresentation) puts the onus on an insurer to ask clear and specific questions. Mr P thinks my provisional decision ignores the law and this Service's own guidance and instead puts the onus on the insured party.

AXA responded to confirm it had no further comments to make.

### **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.

Mr P has provided a lengthy response to my provisional decision. I've only summarised his points above. Whilst I've carefully considered all of his submissions, again, I haven't responded to every point he's made. That's not meant as a discourtesy, it simply reflects the informal nature of this Service.

I don't agree with Mr P that AXA cannot accept liability under the Buildings section of the policy, and then refuse liability under the rental income section. I explained in my provisional decision that only the insured is covered for loss of rental income, and Mr P isn't named as an insured.

Mr P thinks the policy definition of 'you' is being selectively applied in the policy. He points out that under the Buildings section of the policy, it says that if any property is damaged by a listed cause, then AXA will pay 'you'. I appreciate AXA paid Mr P for the damage to the property, but this was only after it obtained the insured's permission to do so. I don't agree the policy definition of 'you' is being selectively applied.

As I said in my provisional decision, the Buildings section of the policy notes the interest of leaseholders in the individual portions of the property. Mr P argues this also extends to the rental income section. I don't agree, the policy doesn't cover loss of rental income for individual leaseholders.

It's common for an insurance policy to have different sections of cover, some of which may apply to a claim and some which do not. The policy wording for each section should be read to establish what is covered.

The special condition under the failure of third-party insurance cover says the cover will only take effect if AXA is the sole provider of Buildings insurance for the insured's properties and where the insured has an obligation to arrange such insurance. I don't see any ambiguity here. If, for example, Mr P were required under the lease to arrange loss of rent cover, then so long as AXA were the sole provider of Buildings insurance for the management

company's properties where they had an obligation to arrange buildings insurance, then the policy would respond if Mr P had failed to arrange or maintain that loss of rent insurance. I therefore remain satisfied this section doesn't apply.

The alternative residential accommodation cover says that AXA will pay the insured for costs of reasonable alternative accommodation for their tenants while the residential portion of the property can't be lived in. Under the lease, Mr P is the insured's tenant. But Mr P didn't need to find alternative accommodation as a result of the damage. So I think it was reasonable for AXA to say it didn't need to pay for this. I don't think AXA needed to specifically exclude sub-tenants.

I've looked at the 'inadvertent omission to insure cover' under the policy. This covers buildings, and rent receivable under the rental income section, in situations where the insured has an obligation to insure but which have inadvertently been left uninsured. The management company didn't have an obligation (under the lease or any other agreement) to insure loss of rent for leaseholders, and so this wasn't inadvertently left uninsured. I'm satisfied this cover doesn't therefore apply.

In my provisional decision, I said that if the management company thought the policy would include loss of rent cover for leaseholders who chose to rent out their properties, they would need to raise any concerns about this with their broker. Mr P has referred to CIDRA and says my provisional decision goes against this. CIDRA is the relevant law in cases when an insurer alleges that a consumer has made a misrepresentation when taking out an insurance policy. That isn't the case here, and so CIDRA isn't relevant.

I recognise my decision will disappoint Mr P, but I remain of the view that it was reasonable for AXA to say the policy doesn't cover him for loss of rent.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 January 2024.

Chantelle Hurn-Ryan  
**Ombudsman**