

The complaint

Mr Y complains about the settlement paid by AXA Insurance UK Plc under his landlord insurance claim.

What happened

Mr Y holds a landlord insurance policy with AXA that covers two properties he rents out. In late 2021, he became aware that one of the properties was being used for the cultivation of cannabis. The tenants left and there was damage to the property.

Mr Y arranged for his own contractor to carry out some repairs to the property. He later submitted a claim to AXA for the remaining repairs.

AXA assessed the claim, and this was eventually accepted in early 2023 under the cover for malicious damage. AXA estimated the repairs would cost around £43,000. However, the policy limit was £25,000, and so AXA paid this amount in settlement of the claim, less the £1,000 excess.

AXA said the policy excluded loss of rent arising from the tenants leaving the property without notice. It also said there was no tenancy agreement, so a loss of rent claim couldn't be considered.

After Mr Y complained to AXA about the settlement and its handling of the claim, it paid him £100 compensation for failing to be clear from the outset that his loss of rent claim wasn't covered. Unhappy with this, Mr Y brought a complaint to the Financial Ombudsman Service.

After the complaint came to us, AXA offered to pay Mr Y the £1,000 it had deducted from the settlement for the excess.

Our investigator then mediated with AXA about the loss of rent claim, and made it aware there had been a tenancy agreement in place. She didn't think the tenants had needed to give notice, as they were in the final month of their tenancy. AXA agreed to reconsider the loss of rent claim, and offered £200 compensation to Mr Y for its handling of this aspect of his claim.

Our investigator concluded that AXA's settlement payment for the malicious damage had been fair, taking into account that it had offered to return the excess. She also thought it was reasonable for AXA to reconsider Mr Y's claim for loss of rent, and agreed with its offer of compensation.

Mr Y didn't accept all our investigator's findings, and so the matter has been passed to me for a 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.

The policy covers malicious damage, but says that AXA will not pay more than £25,000 for all claims relating to malicious damage by a tenant. Based on the description of the damage caused by the tenant, I'm satisfied it was reasonable for AXA to consider that this was malicious damage, and to therefore apply the policy limit of £25,000 to the claim.

Mr Y is unhappy with the policy limit, and thinks it should have increased over the years in line with inflation. However, it's up to AXA what it wanted to cover, including any policy limits, so long as this was made clear in the policy. I think the policy did make this clear, and so I see nothing wrong with AXA applying the limit.

Mr Y says he thinks the policy was mis-sold because of the policy limit. If he has concerns about the way the policy was sold, he should contact the intermediary that sold him the policy in the first instance.

Mr Y also says the policy documents he received from the intermediary were the same, even though there were different insurers. It's not clear to me what Mr Y means by this. The buildings cover under the policy when the claim was made was underwritten by AXA. Though I haven't seen the statement of insurance as AXA didn't have a copy, so it may be that another section of the policy was underwritten by another insurer. If Mr Y means that another insurer underwrote the policy after it renewed, he should contact the intermediary that arranged the policy if he has any concerns about this.

Initially, AXA applied the policy limit of £25,000 and then deducted the £1,000 excess from this. So AXA paid Mr Y £24,000 in settlement of his claim. However, we usually say it isn't fair for an insurer to do this, as the full policy limit can't be paid. We usually say the excess should be deducted from the total cost of the claim, and then the policy limit applied.

AXA has recognised that it wasn't fair for it to have deducted the excess from the policy limit, and has now offered to pay Mr Y the further £1,000 so that he receives a total settlement of £25,000. I think that was reasonable, though I do require it to pay interest on this.

Mr Y is unhappy that AXA paid a cash settlement for the malicious damage. He thinks it ought to have offered to carry out a repair, with him making up the shortfall.

The policy says that AXA may repair or pay cash. Mr Y had already started repairs before he made the claim, and only contacted AXA when he'd run out of funds. The schedule of work estimated the total repair cost to be significantly more than £25,000. So I don't see anything wrong with AXA paying a cash settlement here rather than offering to repair with Mr Y making up the shortfall.

Mr Y also complained that AXA hadn't accepted his loss of rent claim. Our investigator thought AXA hadn't assessed this aspect of the claim properly, as she didn't think the exclusion it had relied on applied. She also noted that Mr Y did have a tenancy agreement in place with his tenants, even though AXA had said he didn't.

Matters have since moved on. AXA agreed with our investigator's recommendation to reconsider the loss of rent claim, and I understand this has since been accepted and the claim paid. So I no longer need to make a finding on this.

Mr Y is unhappy that AXA didn't accept his loss of rent claim from the outset. I agree that AXA handled this aspect of his claim poorly. AXA offered Mr Y £200 compensation to recognise it had made errors with this aspect of his claim. I also note it previously paid him £100 compensation – that was because it said it hadn't made it clear to Mr Y from the outset

that his loss of rent claim wasn't payable, though we now know that the claim was payable. In the round, I think total compensation of £300 is reasonable here for AXA's handling of the claim.

Mr Y has told us he thinks AXA ought to pay for emergency repairs to the property that were needed due to forced entry by the police. As our investigator has said, Mr Y should raise a complaint about this with AXA in the first instance before we can consider this.

Mr Y is also unhappy with the delay in AXA accepting his malicious damage claim. I've therefore considered this.

Mr Y didn't initially notify AXA of the loss, and arranged some of the repairs himself. He made a claim to AXA around five months after the damage was discovered.

I agree with our investigator that AXA was disadvantaged by Mr Y's actions, as it couldn't properly assess whether an insured event had happened due to the repairs already carried out. AXA therefore wanted to see other evidence to find out more information about what had happened. It asked Mr Y for information from his contractor who had carried out the repairs, as well as the energy provider and the police. I think that was reasonable.

Unfortunately, Mr Y couldn't provide information from his contractor. He was able to obtain information from the energy provider and the police which confirmed that the property had been used to cultivate cannabis – however, this was only received at the end of 2022/early 2023. AXA accepted the claim soon after.

I'm therefore satisfied that AXA wasn't responsible for the delays with this claim.

Finally, Mr Y says that he's had support from the loss adjuster's customer enhancement adviser, but this ought to have been offered to him from the outset.

I see that AXA asked its loss adjuster to give Mr Y some additional support once it realised how affected he was by the claim, and that he was vulnerable. I think that was reasonable. I wouldn't expect an insurer to offer additional support as a matter of course for everyone making a claim.

My final decision

My final decision is that I partly uphold this complaint. I require AXA Insurance UK Plc to do the following:

- Pay Mr Y the remaining £1,000 in settlement of the claim, if it hasn't already done so. Interest should be added at the rate of 8% simple per annum from the date the £24,000 was paid to the date of settlement.*
- Pay Mr Y total compensation of £300 (less any compensation already paid).**

* If AXA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr Y how much it's taken off. It should also give Mr Y a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**AXA must pay the compensation within 28 days of the date on which we tell it Mr Y accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

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

Chantelle Hurn-Ryan
Ombudsman