

## The complaint

Mrs M complains about how AXIS Specialty Europe SE ('AXIS') handled a claim made under a commercial (holiday home) buildings insurance policy.

AXIS are the underwriters (insurers) of this policy. A large part of this complaint relates to the actions of agents appointed by AXIS. As AXIS have accepted responsibility for the actions of their agents, any reference to AXIS in my decision should be interpreted as also covering the actions of those agents.

## What happened

The background to this complaint is well known to Mrs M and AXIS. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mrs M made a claim on a buildings insurance policy. The property was not her main home. The claim was for damage following an escape of water in December 2022. AXIS accepted the claim, but Mrs M later raised a complaint about how it had been handled and further damage she says was caused by AXIS' inaction at the start of the claim.

AXIS partially upheld the complaint and offered £150 compensation for delays. Mrs M remained unhappy and referred her complaint to our Service for an independent review. Our Investigator recommended that the complaint be upheld and as AXIS didn't accept, it was referred to me for a decision. I recently sent both parties a copy of my provisional, intended findings. As the deadline for responses has now passed, I've considered the complaint for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

### *The scope of my decision*

I note from AXIS' final response letter they offered £150:

*“Having completed a thorough review of the file, it is evident that **there were delays with resolving the** [redacted by Ombudsman] **queries and arranging the repairs.** [bold added for emphasis by Ombudsman] *Please accept our apologies for any frustration caused as a result of this. On this basis, I am upholding your complaint **in respect of the delays.*** [bold added for emphasis by Ombudsman] *As compensation and an offer of apology, we would like to offer you £150.00.”**

As there is an acceptance of delays to this claim, my decision will mainly focus on whether AXIS' actions have caused a loss to Mrs M and if they have done enough to put things right.

AXIS limited their claim settlement here because of underinsurance. In Mrs M's email to our Service (dated 17 January 2024), she has stated that she agrees she was underinsured. Therefore, I haven't considered that under insurance forms part of the complaint Mrs M has asked our Service to consider. The complaint referred to our Service primarily relates to secondary damage to Mrs M's property following alleged poor claims handling by AXIS.

To be clear, there is the initial escape of water which damaged some contents and for which AXIS have said Mrs M was underinsured. But regardless of whether there was underinsurance, I'll be considering if the actions of AXIS when initially responding to this claim contributed to a further consequential loss for Mrs M. If I do find so, I won't be directing AXIS to compensate Mrs M in line with the policy terms and limits - but instead, compensate her outside of the contract of insurance.

AXIS accepted some, but not all of our Investigator's recommendations. They told us:

*"...whilst we consider the FOS' comments regarding the secondary damage could be disputed further, we are mindful that the file correspondence with the Insured as well as Adjuster direction, should have been made far clearer in this instance, especially the potential mitigation costs impacting the already inadequate Sum Insured.*

*Handling delays and an initial lack of pro-activity have also hindered the position, albeit surge demands with Contractors in the area must in part be taken into account. Given the delays through the claim Insurers may therefore consider that the FOS adjudication needs to be applied in that the claim should extend to include items in areas of the building that in the view of the FOS were not initially damaged by the escape of water, although we would dispute this for reasons previously detailed.*

*Notwithstanding this, as part of the settlement consideration, the Insured needs to provide further clarity regarding their proposed claim, including a revised and detailed list together with supporting evidence (estimates and invoices for any items replaced to date), on the basis of which that an overall settlement figure is discussed on best terms. As noted earlier, we do consider that the intimated claim is overstated, and would be subject to significant adjustment in this instance, even if the Contents underinsurance was not an issue...."*

I've considered both parties responses to my provisional decision, but no new representations have been made that would materially change the outcome I'd intended to reach. Therefore, I find no fair or reasonable reason to deviate from my earlier findings.

Whilst I won't comment every point received in response, I will address the below specifically:

- I agree with Mrs M that it's unfair if she has to lose out because of a 'surge' event that places more strain on demand for contractors. I've recognised this in upholding this complaint.
- The evidence for claims validation (and electricity costs) can be shared with AXIS as they will be validating that part of the claim.

My key findings:

- On balance, I'm persuaded that further damage occurred to some of Mrs M's contents that had been unaffected by the initial loss event (the initial escape of water). I'm not persuaded by the argument AXIS have presented. The evidence supports that further damage did occur and I'm satisfied it primarily occurred due to the delays in AXIS' response to the initial loss event.

- No persuasive evidence or record of AXIS advising Mrs M to mitigate her losses (remove items) has been provided. Although AXIS have pointed to the testimony of their claims handler, this is disputed by Mrs M's testimony. Therefore, AXIS are liable for damage to the contents that occurred after the initial loss event and they can't fairly rely on any inaction by Mrs M to mitigate her losses. AXIS are the experts in this business relationship – not Mrs M.
- The position taken by AXIS regarding validating the items being claimed for is reasonable. My direction is a slight departure to the recommendation proposed as fair by our Investigator.

The Investigator said: *“Pay to replace the contents in the rooms that were initially unaffected by the escape of water – this payment is to compensate Mrs M [redacted by Ombudsman] for the loss caused by AXIS' actions.”*

- I find that AXIS do need to compensate Mrs M for those items damaged after the initial loss event, but it's reasonable that they request further validation of those items and their value. I've not ignored that Mrs M did communicate via email on a number of occasions with AXIS asking what they needed to validate those items. So, although a fair amount of time has passed and it could be argued that AXIS have had ample opportunity to clarify what they needed, I still don't find it unreasonable that AXIS want to validate this loss.
- AXIS offered £150 for service failings and our Investigator recommended £400. I increase this figure to £500. My primary reason for the increase is there were numerous, avoidable service failings over a long period of time.
- AXIS have offered to cover electricity running costs (subject to reasonable substantiation) and I find this to be fair.

### **Putting things right**

AXIS Specialty Europe SE now need to:

- Pay Mrs M a total of £500 compensation to recognise their failings when responding to this claim. Any previous amounts paid for trouble and upset caused can be deducted from this figure.
- Substantiate Mrs M's claim for electricity costs.
- Validate the consequential losses (contents damage) that Mrs M has suffered as a result of their response to the claim. They then need to compensate Mrs M outside of the contract of insurance and can't fairly rely on underinsurance to avoid paying for any (validated) items.

### **My final decision**

My final decision is that I uphold this complaint and direct AXIS Specialty Europe SE to follow my direction, as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 12 December 2024.

Daniel O'Shea  
**Ombudsman**