

The complaint

Mr and Mrs O have complained about AXA Insurance UK Plc's decision to turn down their claim under their Home Insurance policy for damage to their property.

What happened

Mr and Mrs O's property was rented out and they decided to sell it to the current tenants. They then discovered the previous tenants had removed five roof trusses and relocated them. The structural engineer Mr and Mrs O appointed said this appeared to be in an endeavour to make the roof space more user friendly/open plan.

Mr and Mrs O made a claim on their policy for the cost of putting right the damage, as their policy has an extension providing cover of £5,000 for malicious damage caused by tenants. AXA considered the claim, but turned it down on the basis that what the previous tenants had done in the roof space did not constitute malicious damage. Mr and Mrs O complained to AXA, but it would not alter its position. So, they asked us to consider their complaint.

One of our investigators considered Mr and Mrs O's complaint. She concluded AXA's decision to decline their claim was reasonable, as the damage the previous tenants had caused wasn't malicious. She also said it wasn't accidental damage, as defined by the policy, as it had happened gradually.

Mr and Mrs O do not agree with the investigator's view, so their complaint has been passed to me for a final decision. They've said that while the investigator had pointed to the fact the surveyor had said that the tenants had removed the joists to create more space there is no actual evidence that this is why they did it. They've also queried what evidence the investigator has to suggest the joists were not removed suddenly, as no-one knows whether they were removed gradually or in one go. As far as Mr and Mrs O are concerned the investigator's view is based on assumptions and not evidence.

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 should say first of all that I appreciate Mr and Mrs O's previous tenants have damaged their property by relocating some of the roof joists and that the cost of repairing this damage will be considerable. But, as I'm sure they understand, they need to show it is malicious or accidental damage and not caught by any of the policy exclusions for AXA to be required to pay anything in settlement of their claim.

I've first of all considered whether it is accidental damage as defined by the policy. This is defined in the policy as damage caused suddenly and unexpectedly by an outside force. I've noted Mr and Mrs O's comment that it is not possible to know whether it happened gradually or suddenly. And I agree with them on this point. In fact, I think it's most likely it happened suddenly. I say this because I think if the tenants had decided to remove some joists to create more space in the roof they'd have removed them all at the same time; even if it may

have been a little while before they relocated them. And I also think the damage was unexpected so far as Mr and Mrs O were concerned. I appreciate it was deliberate on the part of the tenants, as opposed to accidental, but, as I see it, the damage meets the policy definition of accidental damage. However, there is an exclusion under this section of cover for building renovations, alterations, extensions and repairs. And I think what the tenants did can be classed as a building alteration based on the everyday meaning of this. So I think this exclusion applies to defeat Mr and Mrs O's claim for accidental damage.

Turning now to malicious damage by tenants. Malicious damage is not defined in the policy. So, I think it needs to be given its normal everyday meaning. The everyday meaning of malicious says characterised by malice, intending or intended to do harm. And for me this means the tenants needed to have removed the trusses purely with the intention of causing harm. But I think it is most likely they did it for practical reasons, as suggested by Mr and Mrs O's surveyor. I appreciate we can't know this for sure. But I think this is the most likely explanation, i.e. that they wanted to make the loft space more usable for storage and easier to move around in. This means I don't think their removal of the trusses can be said to have been malicious damage. Therefore, I think AXA was right to decide it is not covered by Mr and Mrs O's policy as malicious damage.

I do of course appreciate Mr and Mrs O will be disappointed when they read this decision, but for the reasons set out above, I'm satisfied AXA's decision to decline their claim is in line with the terms of their policy and reasonable in the circumstances.

My final decision

For the reasons set out above, I do not uphold Mr and Mrs O's complaint about AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 24 December 2024.

Robert Short
Ombudsman