

The complaint

Mr and Mrs P are unhappy with the decision by AXA Insurance UK Plc to decline their home insurance claims for flood damage and cracking of lintels in their property.

What happened

In March 2019 Mr and Mrs P made a claim to AXA, this was following some particularly bad winter weather which had caused their basement to flood. It was continuing to do so especially during bad weather. At the same time they made a claim concerning lintels on the first floor which had started to crack. They had a survey done which recommended carrying out work to the lintels by applying strengthening helibars and advised that the pointing was in a poor condition.

AXA arranged for a leak detection survey to take place. This said that the rising water was likely to be mains water, but was also coming into the property via the pointing. It said the drains were likely to be blocked. It also said that it appeared the property didn't have a damp proof course (DPC) which would have added to the problems. Although AXA subsequently told Mr and Mrs P that the leaks were traced to the cracking in the lintels, its report didn't say that. But it did highlight the problem with the pointing and the DPC and said the damage wasn't covered. With regard to the lintels, it didn't inspect them but, following its review of Mr and Mrs P's survey report, said that they weren't covered under the policy. This was because it said the damage was due to wear and tear, and/or lack of maintenance and the lintels had come to the end of their natural life.

Mr and Mrs P objected to this, they had the water board test for whether it was mains water. Its report was inconclusive but said it was likely not mains water. The drains were clear.

On referral to this service our investigator said initially that AXA didn't have to take any further action. Mr and Mrs P then said they had had their property repointed and they had established that there were two DPCs in place, one installed quite recently. But the water ingress had continued, even during periods of dry weather. They had been advised it was likely to be rising groundwater. They provided a letter from their original surveyor, suggesting the cracks in the lintels were connected to earthquakes which had happened in the area at the time. They put this further evidence to this service. Our investigator reviewed the matter and advised that she thought there had been a flood as defined by the policy, so AXA should deal with the claim under the remaining terms and conditions of the policy. She didn't think it needed to take any further action in respect of the lintels.

I issued a provisional decision. In it I said that I thought that AXA should be given the opportunity to reinvestigate the matter and reconsider the claim. I said that on present evidence rising groundwater didn't come within the definition of flood in the policy, since it wasn't a sudden release or a rapid build-up of water.

AXA hasn't commented on my provisional decision.

Mr and Mrs P disagreed. They said that AXA had carried out an inadequate investigation in the first place. They were reluctant to allow AXA to reconsider the claim further as it had already given various excuses as to why it wouldn't cover the claim.

In respect of the water Mr and Mrs P believed that it was building up rapidly and sent in evidence by way of two videos to show this and the water level.

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 following were my provisional findings:

"Mr and Mrs P's complaints concern two matters, the flooding in the basement and the cracked lintels.

flooding

Flood is defined in the policy as:

"Sudden release or rapid build-up of water from outside the Home or Outbuildings entering into the Home or Outbuildings."

AXA has said that if the likely cause of the water coming in is rising groundwater, as this isn't sudden or rapid, it's unlikely to be covered. I note that its initial survey said the defective pointing was a likely cause, it now appears that it was only a small contributory cause. It also said that there was a possible leak from the mains water or there were blocked drains and a lack of a DPC. The building has been repointed, and the other possible causes ruled out. But the water continues to come in, even as I understand it, during periods of dry weather.

Mr and Mrs P moved to the property in mid-2018. Mr P said in his complaint to us that after some particularly bad winter weather in 2018-2019 they suffered extreme flooding in the basement. I don't know what the cause of that was – if the groundwater built up rapidly then the initial flooding might be covered. But I would observe that the leak detection survey did identify water coming in through the defective pointing and if that were the cause then it wouldn't be covered. As for the continuing flooding, it's difficult to understand how that could have been caused by the initial flood, especially if, as Mr P says, the water continues to come in during periods of dry weather. I don't think rising groundwater comes within the definition of flood as set out above, since it's not a sudden release or rapid build-up of water.

AXA hasn't investigated the matter again following Mr and Mrs P having the property repointed and having ruled out a leak from the mains and blocked drains. I don't think it would be fair at this stage for me to make a judgment, without any expert evidence, as to the cause of the water continuing to come into the property. Whilst I understand Mr and Mrs P would like this matter to be sorted out, I think AXA must be given the opportunity to reinvestigate the matter and to decide whether the cause of the water coming in does come under the relevant policy term.

AXA should also reconsider its liability for the initial water coming in and also decide whether this and the continuing water ingress are linked. I will require AXA to reconsider the claim, which means that if Mr and Mrs P are dissatisfied with its response they will still have the opportunity to pursue a further complaint.

lintels

The cracks in the lintels were deemed to be wear and tear, as the lintels were coming to the end of their natural life. Mr and Mrs P's surveyor's updated report. has suggested that the cracks are getting worse because of lateral movement, not covered under the policy. It also suggested that the cracks may have been exacerbated by the ground movements that happened when earthquakes struck the area. I would need to see more persuasive evidence to show earthquakes had a role in the damage here – I've not noted that any other damage was alleged to have occurred. Cracking of lintels or brickwork could be due to a number of causes, So I'm not convinced that there is any cover under the policy for the damage seen here.

compensation

I appreciate that Mr and Mrs P have had to wait a long time to get this matter resolved. I know that the damaged lintels weren't linked to the water coming in (they are on a different side of the property). But AXA's initial report did find, after carrying out dye tests that there was water coming in through the defective pointing. Mr and Mrs P have had this repaired and unfortunately it hasn't cured the problem. But I think AXA was reasonable in its first diagnosis, so I won't require it to pay compensation for trouble and upset."

Mr and Mrs P have criticised AXA's survey of the likely cause of the water coming in, saying that "*Whilst we have 1000's of litres of water entering in through the floor from below ground, a small drip was observed on the inside wall after using a high pressure jet directed at the outside wall for 30 minutes.*" The survey didn't actually say that the problem was solely due to the pointing, but highlighted other possible causes such as mains water, blocked drains and lack of a DPC. And I understand that these issues have now been ruled out.

But the main issue here is whether, as seems likely, the water coming in is due to rising groundwater, and whether that comes within the definition of flood in the policy. I appreciate that Mr and Mrs P believe that there is a rapid build-up of water which accords with the definition. They have shown us a video of water coming in quite rapidly. But I think the video can only be understood if it's seen alongside an on-site inspection. And as it's further evidence Mr and Mrs P will need to share it with AXA. I have to bear in mind that since AXA's initial survey there has been no further expert report. Whilst I appreciate that Mr and Mrs P feel that AXA will just decline the claim again, I don't think, without expert input, that I can make a finding that there is a flood as set out in the policy definition of flood. A further survey would need to investigate and measure whether the water is coming in rapidly. I have to bear in mind also that the policy covers damage *caused by* flood, and that liability for preventative work (eg installation of a damp proofing system) would need to be considered if that was an essential part of the repair process.

My conclusion is that AXA needs to carry out further investigations, as it has offered to do, before any policy liability can be established.

Neither party has commented any further on the lintels or compensation issues. My provisional findings, as set out above now form part of this final decision.

My final decision

I uphold the complaint and require AXA Insurance UK Plc to reinvestigate and reconsider Mr and Mrs P's claim for flood damage both in relation to the initial water coming in and to the continuing water ingress.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 2 February 2021.

Ray Lawley
Ombudsman