

The complaint

Mr B has complained that AXA Insurance UK Plc ('AXA') declined his claim for water damage under his home insurance policy

What happened

Mr B had a home insurance policy with AXA from January 2021 and an insurance policy with a different insurer prior to that date. Mr B contacted AXA to make a claim in early September 2021. Mr B said that his shower started leaking. The shower tray was removed in August 2021 and this revealed significant water damage under the floor which extended to the bathroom, hall, and separate WC. The shower tray had recently dropped as the floor and joists were rotten. AXA instructed loss adjusters to attend the property to assess the damage.

Mr B had arranged to fix the flooring and joists in the meantime as access to bedrooms wasn't possible once the damage was uncovered. Four separate leaks were also identified and rectified by Mr B's plumber.

Mr B explained that in November 2020, shower tiles had been removed as there appeared to be water damage and this included damage to a stud wall. The repairs were paid for by Mr B. During the middle of 2021 however, Mr B noticed that sealant had come loose and that the shower tray was moving slightly to create a gap between the sealant and shower panel. This allowed water to get behind the tiles.

Both AXA and Mr B's previous insurers declined the claim. AXA said that the known cause of the damage was the water ingress problem identified in November 2020 which pre-dated its policy. Mr B considered that AXA was responsible for the claim however, as there were no signs of the significant joist and floor damage during the previous policy period.

AXA paid Mr B compensation of £75 as Mr B hadn't received a copy of the loss adjusters' report promptly and it also agreed that an e-mail from its representative could have been better worded. AXA apologised and provided feedback to its representatives. Mr B remained unhappy with AXA's response and referred the matter to our service.

Our investigator upheld Mr B's complaint. She said that when water damage occurs over two policies periods, our service has a standard approach and she thought that AXA, as the latest insurer, should take the lead on claims-handling. She accepted that the shower tray had dropped due to water sitting on the joists and flooring and that the cause of damage took place prior to AXA's period of cover.

Our investigator thought that further damage also occurred during AXA's period of cover and acknowledged that AXA might not be responsible for the whole claim. That would depend on the terms, conditions, and exclusions of the AXA policy.

AXA didn't accept our investigator's view and the case has been referred to me to make a final decision in my role as Ombudsman.

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 key issue for me to determine is whether it was unfair or unreasonable for AXA to have declined Mr B's claim and to lead on the matter. I've concluded that AXA didn't act in a fair and reasonable way in all respects and I'll explain why.

My starting point is to look at the terms and conditions of Mr B's AXA policy. For damage caused by an escape of water, it includes cover for *'loss or damage caused by water leaking from...a fixed...water installation.'* Standard exclusions apply regarding loss or damage caused gradually.

Mr B's underlying concern is that neither insurer has taken the lead in handling the claim; - *'we have done nothing wrong and yet no-one seems to want to accept liability for what is a totally valid insurance claim.'* He'd had to cash in part of his pension and use all his other savings to pay the contractors to pay for the repairs. He made it clear that if the serious problem had been discovered in 2020, he would have dealt with the matter immediately and made an insurance claim at the time. He was adamant that the under-floor damage wasn't visible at that stage. He was also frank in saying that he'd been carrying out other renovations at his own cost until the significant amount of damage was discovered and, at that point, he decided to make an insurance claim.

Mr B also acknowledged that the problem started with a bathroom renovation carried out in 2014; *'When the tiles were replaced in November 2020 it was then discovered that the original contractor has not used the correct plasterboard and has just used standard boards but this was unknown to me.'* He considered that the pipe leaks which were also uncovered were very minor and hadn't been responsible for the damage. He said that they were slow-dripping and falling onto concrete so that; *'All of the damage has been caused by water soaking into the walls when the shower was used.'*

Mr B thought AXA should settle his claim in full and then liaise with the previous insurers and seek an appropriate contribution towards the claim. He said that AXA's own loss adjuster stated that Mr B had a valid claim, although confirmed that the loss occurred prior to inception of AXA's policy. The loss adjuster also thought that Mr B had done everything he could to mitigate any loss.

In AXA's opinion, the damage resulted from the leak which commenced in 2014 and was then identified in November 2020. It concluded that the damage was too widespread and extensive to have occurred in the eight months during which it insured the home. Given the defective plasterboard was installed in 2014, and was only discovered to be inadequate in 2020, AXA considered it likely that the leak had been ongoing during the intervening period. It said that its expert had identified the damage to floor and joists as being connected to the problem identified in November 2020 so that the loss therefore pre-dated its period of cover.

AXA stated that it accepted our service's approach regarding water damage claims where damage has been concealed and the date of loss is unknown. However, it considered that this approach should only apply where it wasn't possible to confirm the date of loss, similar to subsidence claims. It was confident that the date of loss here pre-dated its period of cover as the cause occurred, was identified and was rectified before its policy started. It said that; *'the repair requirements, and costs are no different to what they would have been in 2020'.*

In summary, AXA disagreed that it had acted in an unfair or unreasonable manner. It said that the customer was on cover with it, *'for a matter of months and not to the extent noted*

would almost certainly have occurred prior to inception, the shower tray has merely dropped out of position due to a loss of support from the rotten joists'. Due to the widespread and advanced state of rot in the joists, it considered that this damage would have occurred over a very long time and it wasn't possible for this to have occurred during AXA's period of cover.

Turning to the report of AXA's loss adjusters, it referred to the work carried out in November 2020 and noted that *'a few months later in april [Mr B] noticed that the floor and shower tray was dropping [and] discovered that the joist has rotten.'* It reported the damage to the affected areas as being pre-inception and that there was no policy cover. It also reported that some joists had rot and the rest had been renewed as they'd been *'suffering from old age'*.

In reaching this decision, I've considered all information, evidence and submissions produced by Mr B and by AXA. Mr B has been candid in explaining the historical issues affecting the shower and that he was carrying out further renovation work in any event. I also acknowledge that Mr B and his family have suffered considerable disruption and have incurred substantial financial outlay in identifying and resolving these issues. The issue for me to determine at this stage however is limited to the question of whether AXA should take the lead and consider the claim in the first instance. I note that neither insurer has come forward to lead on claims-handling to date and this has no doubt added to inconvenience for Mr B and his family.

In short, this is a matter where it's claimed that damage straddles two insurance periods. When that is the case, (where the damage has been concealed and the date of loss is unknown), then our service's usual approach would normally apply. In such a case AXA, as the most recent insurer would be expected to lead on claims-handling, even though it wouldn't necessarily be responsible for the whole claim. I agree however with our investigator, that it's difficult to distinguish which insurer is responsible for what damage and that its often impractical or impossible to allocate an exact responsibility split.

Both AXA and Mr B appear to agree that the cause of the problem was the use of the wrong sort of plasterboard in 2014. They also appear to agree that the problems identified in 2020 and 2021 were all caused by the original issue. I'm also satisfied on the evidence that Mr B had no knowledge of the more extensive damage which was only revealed following removal of the shower tray. When works were carried out in November 2020, workmen didn't identify any further significant damage either.

AXA accepts the principle that the current insurer should usually take the lead in such cases, however it seeks to argue that the circumstances here are slightly different. It states that the whole purpose of the usual approach is to protect customers from being *'stuck between insurers'* and agrees that this was the case for Mr B. It considers it's impossible to say when damage first started or how much damage occurred during each policy period.

I'm not satisfied however that the date of the loss for the damage discovered following AXA's policy inception can be pinpointed, and its likely damage occurred during AXA's period of cover as well as before. I conclude that AXA should lead on the claim as the most recent insurer and review the claim in line with the terms and conditions of Mr B's policy.

Whilst I have sympathy for Mr B and his family as to the expense and disruption that they've suffered (which will be additional to any expense and disruption during recent renovations), I don't propose to award further compensation. I accept that the circumstances are unusual here, as it's likely that most of the damage occurred before AXA's period of insurance and AXA has provided reasonable arguments why it shouldn't shoulder the bulk of the

responsibility. I see however that AXA apologised and compensated £75 in total for certain service failings and I consider that this was a fair and reasonable response to those failings.

My final decision

For the reasons given above, I uphold Mr B's claim and require AXA Insurance UK Plc to consider Mr B's claim and assess it in line with the terms and conditions of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 June 2022.

Claire Jones
Ombudsman