

The complaint

Mrs D and Mr D complain that AXA Insurance UK Plc (AXA) has unfairly declined a claim on their contents policy following vermin damage. They want the claim paid and compensation for the delay and inconvenience.

What happened

Mrs D and Mr D say they hadn't noticed any problems in their living room, with Mrs D using it daily for home working due to the corona virus pandemic from March 2020. Mr D says on 26 April 2021, they noticed unusual insects on their corner sofa unit. On investigating they found *"extensive damage"* to the base of the sofa, otherwise not visible unless the unit was separated. This appeared to have been chewed as did a small section of the carpet in the area. There were some droppings which they thought were from a rat. There was no other damage and no sign of how any animal had been able to enter the room. Mrs D and Mr D took photographs of the damage and contacted AXA.

AXA provided an APP to enable a video call which took place a few days later. During this Mr D and the call handler agreed the damage appeared to have been caused by vermin and it was unusual for it to be so localised. AXA said it could source a replacement sofa or they could check for replacements themselves. But a few days later AXA called to say it wasn't accepting the claim as it didn't consider it had been caused by a sudden one-off event. It confirmed this in writing. Mrs D and Mr D say they undertook some research about vermin damage and decided to complain about AXA's decision.

AXA rejected their complaint. It said the damage was *"too substantial to be the result of a one off event"* and as the damage was *"gradual"* it was not covered by the policy. Mrs D and Mr D referred their complaint to our service, saying Mrs D suffered from poor health and this was making things worse.

Our investigator looked into the complaint, but she didn't uphold it.

She said the policy offered accidental damage cover and this included damage caused by vermin. But the terms and conditions (T&C's) defined accident damage as a: *"Sudden, unexpected and unforeseen event that causes visible damage"*. She said it didn't appear that the damage had occurred suddenly. So, it wasn't covered as the policy didn't:

"cover losses caused by poor maintenance or damage which happens gradually"

Mrs D and Mr D disagreed and provided further information about the damage rats can cause. AXA then advised that it would reconsider the claim and that it would waive the policy excess of £350 in view of the inconvenience caused. But it hasn't responded further.

As Mrs D and Mr D don't agree it has come to me to decide.

My provisional decision

I issued my provisional decision on 11 May 2022; I explained the reasons why I was planning to uphold the complaint. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I'm planning to uphold it.

Having looked at the evidence and AXA's offer to reconsider the claim made in November 2021 (after its original decision had been reviewed by its external quality control consultants), I was surprised that nothing further seemed to have been done. So, I asked AXA to review the claim, but it still hasn't done so. I think Mrs D and Mr D have been waiting too long for their claim to be reconsidered. So, I've decided to issue a provisional decision upholding their complaint.

Based on what I've seen so far, I think the claim should be paid. I don't think the evidence suggests a longer-term infestation of rats or similar vermin. But rather a singular, one-off event, which is covered by the policy.

I think this because the area of damage is very localised, as noted by AXA's claims handler during the video call. The photographs also show only a small number of droppings. And Mrs D and Mr D haven't reported any other damage to their property or possessions and rats and mice are well known to be very attracted to plastic pipes and cables for example. I think a longer-term problem would mean more and wider spread damage. And as the room was in constant use any ongoing issue would have been readily apparent which I think Mrs D and Mr D would have promptly responded too.

So, I think AXA should settle the claim and pay Mrs D and Mr D the current replacement cost for their sofa. If the sofa is part of a matching suite the policy doesn't provide for the whole suite to be replaced. However, AXA will be familiar with our service's long-standing approach here. Which is that Mrs D and Mr D should be compensated for any loss of match that may occur. So, if there is also a loss of match, I think it's fair that AXA also pay 50% of the cost of replacing any undamaged part of the suite.

There was also damage to the carpet which doesn't appear to have been addressed by AXA to date. I understand that Mrs D and Mr D rent their home. It may be that the carpet is the landlord's responsibility. But if Mrs D and Mr D are responsible for any replacement or repair costs in respect of the carpet, I think it fair that this should also be covered under the "Accidental Damage" or "Tenant building liability" clauses of the policy.

I also think Mrs D and Mr D have suffered inconvenience due to not having use of a sofa for over a year and the additional frustration of being advised AXA would reconsider the claim without it doing so. So, I think it's fair that AXA should waive the £350 policy excess as it previously offered, and pay Mrs D and Mr D a further £100 in compensation for the trouble and upset they have been caused.

I asked both parties to let me have any further information or comments they wanted me to consider.

Response to provisional decision

Mrs D and Mr D said they agreed with my provisional decision. They confirmed that they were responsible for the carpet in their home and that the damaged sofa has a matching storage footstool, so is part of a matching set. They asked how arrangements would be

made for replacing the sofa and carpet. And, they also asked that considering AXA's failed promises to reconsider their claim, whether my decision will be binding on it.

AXA acknowledged receipt of my provisional decision and said it would reply further but hasn't done so.

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.

Having done so, I've decided to uphold the complaint.

In answer to Mrs D and Mr D's last question, my final decision given below is legally binding on AXA. In the unlikely event that AXA didn't comply with my decision then Mrs D and Mr D could enforce it through a similar process to enforcing a judgement where a case has been heard in court.

As set out in my provisional decision I don't think AXA has treated Mrs D and Mr D fairly by rejecting their claim and it has caused them additional inconvenience and frustration by advising, on several occasions, that it would reconsider matters without then doing so.

I'm satisfied that the damage to the sofa and carpet was caused by a one-off event of the type covered by the policy and I think AXA should settle the claim by paying the current replacement cost of the damaged items.

Putting things right

AXA originally offered to help source a replacement sofa. But in view of the delays I think it's reasonable that Mrs D and Mr D make their own arrangements here and provide AXA with a quotation for replacement with an equivalent quality sofa. As the sofa is part of a matching set AXA should also pay 50% of the cost of replacing the storage footstool as compensation for the loss of match.

Likewise, I think the fairest outcome in respect of the carpet is for it to be replaced with one of equivalent quality including fitting, subject to the policy limit of £750.

If Mrs D and Mr D can obtain quotations for the sofa, footstool and replacement of the carpet and provide these to AXA, it should then settle the claim promptly, so that Mrs D and Mr D can replace their damaged items without further delay.

I also think Mrs D and Mr D have suffered trouble and upset due to the unfair handling of the claim over an extended period. So, I think it's fair that AXA should waive the policy excess of £350 and pay a further £100 to Mrs D and Mr D in compensation for this.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against AXA Insurance UK Plc.

I direct AXA Insurance UK Plc to:

- settle the claim by paying the replacement cost of the sofa and 50% of the cost of the matching storage footstool, and,

- pay the replacement and fitting cost for the damaged carpet up to the policy limit of £750 subject to proof from Mrs D and Mr D that they are liable for the replacement costs,
- pay these settlements, promptly within 28 days of receiving the quotations,
- waive the policy excess of £350 in compensation for the trouble and upset caused,
- pay a further £100 in compensation for the trouble and upset caused.

AXA Insurance UK Plc must pay the compensation within 28 days of the date on which we tell it Mrs D and Mr D accept my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If AXA Insurance UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs D and Mr D how much it's taken off. It should also give a certificate showing this if Mrs D and Mr D ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 8 July 2022.

Nigel Bracken
Ombudsman