

The complaint

Ms S has complained that AXA Insurance UK Plc has unfairly refused to cover her claim for damage caused when tracing the source of a leak beneath her floor.

What happened

There have been numerous parties involved in this claim and complaint, acting on behalf of either Ms S or AXA. But for ease of reference, I'll only refer to Ms S and AXA in this decision, even when referring to evidence or arguments put forward by their representatives.

The details of this complaint are well known to both parties, so I won't repeat them again in full detail here. But to briefly summarise, damage was caused to Ms S' flooring when locating the source of a leak. She wants AXA to cover the cost of repairing this damage under the trace and access cover provided within her home insurance policy.

AXA says the trace and access cover is conditional on there being damage caused by the leak. It says Ms S disposed of the allegedly damaged flooring, so it was unable to validate the loss. It also questions how the top layer of flooring became rotten when the layer of floorboard beneath it managed to dry naturally without damage – and the leak was discovered below the floorboards.

Our investigator thought the complaint should be upheld. She said Ms S had done enough to show that, on the balance of probabilities, the leak caused damage to her flooring. So, she said AXA should cover the cost of the damage caused in tracing the source of the leak, under the trace and access section of her policy.

AXA didn't agree with our investigator's opinion. So, as no agreement has been reached, the complaint has been passed to me to decide.

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 agree with the conclusions reached by the investigator. I'll explain why.

The dispute here centres on whether or not Ms S' home suffered damage as a result of the leak beneath her floor. This is because the policy terms for trace and access cover say:

“Cover 19 – Trace and access

What is covered

We will pay up to £5,000 for any one claim for necessary and reasonable costs that you incur in finding the source of damage to the home caused by:

1 escape of water from a fixed water, drainage or heating installation

2 escape of oil from a fixed oil fired heating installation

3 accidental damage to cables, pipes, underground drain pipes or tanks providing services to and from the home for which you are responsible.

This includes reinstating any wall floor ceiling drive fence or path removed or damaged during the search.”

Based on the above, I agree that there needs to be evidence of damage, from the escape of water, in order for the damage caused in locating the source of the leak to be covered under the above section.

Ms S has provided a video of the leak in action. This shows water was spraying upwards into the floorboards. She has also provided a photo of a soaked and damaged piece of the hardwood flooring.

AXA says the floorboards dried naturally, without damage, and that there was a layer of membrane between the floorboards and flooring which should have prevented moisture transferring from the floorboards to the flooring above. Based on this, it doesn't believe the flooring would have become as damaged as the piece in the photo, by the leak in question.

AXA has also questioned why Ms S would have needed to cut several holes in the floor to locate the leak, if there was a soaked and rotten piece of flooring, as this would have clearly shown the location of the leak. And it says the damaged flooring was disposed of, so it wasn't available for inspection by its surveyor meaning it was unable to validate the loss.

Ms S has explained that the wet flooring was beneath the sofa and so not immediately apparent. But once the sofa was moved, she says water damage was apparent and that's how her plumber (who is also her son) knew the right place to cut into the floor to fix the leak. Ms S has also explained that there were joints in the membrane which the water was penetrating through. She says the damaged flooring was available for inspection but had been stored in the garden, and AXA's surveyor didn't request to see it. She also says the surveyor didn't attend until around a week after the loss.

I've thought very carefully about everything both sides have said and provided. In cases like this, where the evidence is incomplete or contradictory, I'll reach my decision on the balance of probabilities. That is, what I think is more likely than not to have happened.

I can understand AXA's reluctance to accept the claim when it wasn't able to inspect the damaged piece of flooring (prior to it being left outside at the mercy of the elements). However, Ms S has provided numerous photos of the area at the time of the leak and a video of the leak in action. These show that water was spraying upwards at the floorboards and that the floorboards and joist appeared to be soaked. I do appreciate AXA's point about the floorboards drying naturally and about the membrane layer. But I think Ms S' explanation about the joints in the membrane is plausible, as is her explanation about why the location of the leak wasn't immediately apparent. And from my own research, it seems that a known difference between softwood (the floorboards) and hardwood (the flooring) is that softwood dries much more quickly than hardwood.

AXA has suggested that the flooring could have gotten wet in a different way or be from a different part of Ms S' house. But it hasn't supported this theory with any evidence beyond its concerns with Ms S' version of events. For example, I've seen nothing to suggest that another part of Ms S' flooring showed any signs of previous/alternative water damage.

Based on the available evidence, on the balance of probabilities, I find it more likely than not that the flooring was damaged by the escape of water which is the subject of this complaint. I say this because we know that there was a leak which sprayed water in the direction of the flooring. So, this seems to be a more likely explanation than some other non-specific potential cause coincidentally happening at the same time as said leak. Ultimately, AXA's numerous concerns with the circumstances, without additional evidence to support those, haven't persuaded me that there is a more likely cause of damage to the flooring than the version of events put forward by Ms S.

I also don't consider that AXA can fairly or reasonably refuse Ms S' claim based solely on the fact that it couldn't inspect the damaged piece of flooring. I say this because, in this case, I think AXA has enough contemporaneous photo and video evidence to reasonably validate the claim.

So, taking everything into account, I'm persuaded on balance that Ms S' property was damaged by the escape of water. It therefore follows that any damage caused in locating the leak should be covered under the terms of the trace and access cover – subject to the limit of cover applicable to that section.

My final decision

For the reasons set out above I've decided to uphold this complaint.

AXA Insurance UK Plc must accept and settle Ms S' claim for damage caused in finding the source of damage to her home, in line with the terms of her trace and access cover.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 5 January 2023.

Adam Golding
Ombudsman