

## The complaint

Miss and Mr J complain, via a loss assessor, about the decisions and poor handling of their claim for the damage caused by an escape of water under their building insurance policy with AXA Insurance UK Plc. I have just referred to Miss J in this decision and I've referred to her representative as a loss assessor to distinguish him from AXA's loss adjusters.

## What happened

I set out the background to the complaint within my provisional decision and also here.

*'In November 2019 Miss J's home suffered an escape of water and she claimed to AXA. AXA appointed a loss adjuster who agreed it was a leak and requested a quote for repairs. Miss J said he called his office and said the house was uninhabitable and AXA paid for the first month's alternative accommodation. She said when AXA saw the quote for the repairs it stopped paying for the alternative accommodation and requested a great deal of information.*

*Miss J engaged a loss assessor who said AXA used a new loss adjuster who advised there was no moisture present, but he had no equipment to confirm this and wasn't qualified to make this decision. Ms J engaged a firm to conduct a moisture survey, 'S' and they advised her that the property was still saturated and that there was clear evidence of mould. The loss assessor said instead of dealing with the claim, AXA investigated Miss J for fraud. AXA said Miss J made a claim in 2017 that she hadn't mentioned to its loss adjuster.*

*AXA said it settled Miss J's first claim on a cash in lieu of repairs basis as she wanted to undertake additional works on her home. During the work a second leak was found in a pipe on the heating system and a new claim was made for additional damage to the property. AXA investigated the claim and got Miss J to provide a statement. Miss J's loss assessor recorded a meeting with AXA's loss adjuster 15 months after the incident and said Ms J was forced to answer questions or AXA wouldn't consider the claim. He said she helped as far as possible but ended the meeting when it was obvious the loss adjuster had false information.*

*AXA declined liability for the second claim and Miss J complained. The loss assessor said they proved AXA was incorrect and got the decline of the claim overturned. He said Ms J was away from home for a year and carried out the repairs when AXA agreed to review her claim and paid her £1,500 compensation. The loss assessor said AXA then engaged solicitors and they requested documentation in respect of the repair work and then said there was no cover because the work had been completed without allowing AXA to inspect.*

*The loss assessor said AXA should accept it was wrong that there was no moisture present when it had evidence to the contrary and wrong to investigate Miss J making her prove the claim time and again despite it holding the relevant information. And also wrong to decline it and then say that as the work was complete, the claim couldn't be paid. He said AXA should apologise for leaving Miss J and her family homeless and financially distressed and pay her claim and alternative accommodation with interest and pay his fees as she wouldn't have been able to dispute this claim without assistance.*

*A number of complaints have been raised by Miss and Mr J since their claim and AXA has sent them several 'final response letters'. Our investigator said that as Miss and Mr J only referred their complaint to our service in November 2021, we can only consider matters pertaining to AXA's last response in June 2021. Miss J's loss assessor said the investigator was trying to separate the complaint from the claim, which wasn't possible. And AXA had stated it would review the claim so there was no need to bring the complaint earlier. He said the investigator was twisting words to support AXA as had it reconsidered the claim the complaint to us wouldn't have been required.*

*Our investigator maintained his view of what we can consider (delays in providing a decision following AXA's final response of January 2021 and the decline of the claim). He didn't recommend the complaint be upheld. The Investigator reviewed reports from the parties and said S reported damp within the concrete slab, but described this as a long-term issue from a slow leak. He said the report doesn't mention the joists being damaged, but does say there's mould behind the kitchen units and on furnishings. He said AXA's first loss adjusters reported the floor was rotten and the second loss adjusters reported on a slow leak with no visible damage as water went to the void below the floorboards.*

*The investigator said the photos of the testing are of the wall plaster and under the joists where the concrete was wet, and are in line with comments by all parties. He said photos show significant mould in the affected area and on the ceiling. He said the loss adjuster noted that Miss J was topping up the boiler weekly for about three years, though Miss J said she had checked the pressure weekly and topped up monthly. He said this was abnormal.*

*The investigator said a longstanding leak caused the damage and the policy excludes claims for damage due to gradual deterioration or maintenance. He said the boiler pressure and mould should have alerted Miss J to an issue with the boiler/heating system. He said that as damage caused by mould or lack of maintenance wouldn't be covered, AXA had reasonably declined the claim. He thought AXA's payment of £200 compensation for delaying its reassessment of the claim following its final response in January 2021, was reasonable.*

*Miss J's loss assessor said it's outrageous for the investigator to accept the leak was out of sight, but not covered because it's a gradual operating cause. He said he didn't have the energy to explain why this was incorrect. He said the investigator had gone against our own rulings where it states that if a leak is out of sight and there's no evidence of damage then the date of loss is the date of discovery. He said AXA's surveyor and drying firm didn't notice damage from the leak, but the investigator thinks Miss J should have noticed. He requested an ombudsman review the complaint and wanted a hearing.*

*The investigator thought it most likely from the reported moisture levels, damp and mould the leak had been ongoing for some time. He thought this would have shown as a pressure loss on the boiler, meaning it would need to be filled more frequently than is recommended and the system should be checked for leaks or a fault by a qualified engineer.'*

## **My provisional findings and the parties' responses**

In my provisional findings I said I intended to uphold the complaint in part. I said Miss J and her loss assessor brought part of her complaint to us outside the time set for referrals by the Financial Conduct Authority. We don't have AXA's permission to ignore the time limit and so this means I could only consider the issues addressed by AXA within its final response letter of 22 January 2021. These were set out by our investigator, viz, the decline of the claim and delays in providing a decision following AXA's final response letter.

### AXA's decision to decline the claim

I said we consider if the terms AXA relied on to decline the claim are in line with the policy and are fair. I said the source of the leak, a broken pipe, was discovered when Miss J was having unrelated works carried out on her home. In this case AXA didn't decline the claim because the damage was pre-existing, but because it was a gradually operating cause.

Home insurance policies have standard exclusions for damage that occurs gradually, including damp and mould. These clauses mean that insurers don't have to accept liability for things that their policyholders have to do to ensure their homes function properly. The clauses have the effect of distinguishing an insurance policy, that covers one-off events such as storm, flood etc, from general maintenance that we all have to do from time-to-time.

Miss J's loss assessor said the damage to her home from the leak was hidden from view and so should be treated as an insured event from when it was discovered. I understood this point and we have seen cases where this approach has been applied, but not where there is evidence of damage occurring. In this case there appeared to have been a steady accumulation of mould and damp as reported on in the assessments of Miss J's home.

Miss J told AXA's loss adjuster that for over three years since she moved into her house in 2015, she had to top up her boiler. General advice is it shouldn't be necessary to regularly refill a boiler as it indicates a leak on a closed system. But Miss J did this for over three years before dealing with the escape of water.

I said the loss adjusters and 'S' found damage to the floorboards, laminate floor, wallpaper, skirtings and patch repairs to the ceiling and decorations, but found no damp to floor joists or pipework. S subsequently found widespread mould and damp which it described as 'long term'. Collectively, from the reports, photos and communications between the parties I could see why AXA and our investigator thought there were enough reasons for Miss J to have realised there was a leak a long time before she did. The investigator said that as the heating is a closed system water is maintained within the system and doesn't flow away. And so it would be reasonable to expect Miss J to have acted on detecting and dealing with the leak and its consequences a long time before the damage occurred or increased.

From my review of the evidence I provisionally concluded that it was fair for AXA to decide to decline the claim and that this was in accordance with the policy exclusion for gradually occurring damage.

#### Delays in AXA providing a decision

Miss J's loss assessor said AXA had all the evidence needed to reach a decision, but failed to do so in a reasonable time, taking about five months. I said AXA reached an initial decision to decline the claim but agreed this should be reviewed, and having done so it confirmed the decline of the claim. I thought AXA was entitled to take this action.

AXA said Miss J didn't respond to all its enquiries, which held up its initial investigation, but it acknowledged delay when it reconsidered its decision. AXA paid Miss J £200 compensation for this and the loss of expectations about her claim. I thought AXA had adopted different positions on the claim and by stating in its final response letter that it considered its decision on her claim to be incorrect, it allowed Miss J to anticipate that her claim would be paid.

Although I thought it was fair for AXA to decline the claim, the uncertainty and delay and the loss of Miss J's expectations caused her a lot of distress and inconvenience over a five-month period, and I thought the impact of this should be reflected by AXA paying her further compensation of £200.

I said there's no cover in Miss J's policy for her loss assessor's costs to be met. Our service is free and straightforward to use, and we wouldn't consider it fair to require an insurer to meet these costs unless the loss assessor had made a significant difference to the outcome of the complaint.

AXA agreed with the provisional decision for it to pay £200 further compensation.

Miss J's loss assessor responded on her behalf expressing their dissatisfaction with the provisional decision. He said I had missed the fraud investigation that Miss J was forced to endure and wanted to know why this was necessary and what information was collected.

Miss J's loss assessor said my references to mould at the back of kitchen units and the back of floors suggested these were visible, whereas it wasn't until the hole in the floor was made. He said I had constantly referred to a drop in the boiler pressure but, if true, why wasn't this noticed on the first claim, which involved the same area of damage. He said the insurance surveyor identified the proximate cause and areas of moisture damage, but it only became apparent there was another issue subsequently and investigations were undertaken.

The loss assessor said I had failed to understand that the insurer found damage to the floorboards, laminate floor, wallpaper and skirting boards, post loss. He said the insurer's own surveyor had missed these problems only weeks before the second loss was discovered. He said I was stating that the problems were missed yet they were all pre-existing and fall under gradually operating causes.

The loss assessor said my appraisal is completely flawed because I don't have an accurate timeline of events and he requested information that I had relied on. He said I had failed to consider the possibility that the second leak may have occurred after the first leak was discovered and repaired. He said that the leak could have been ongoing for a week which could be why it was not noticed previously. And that the leak, and the associated damage was out of Miss J's view until the strip out works in the adjoining room were completed. He said the insurer could have run a pressure test on the boiler for the first claim or the second claim, but they have not requested or arranged one.

The loss assessor said AXA should have engaged its own drying and restoration firm instead of appointing a loss adjuster whose sole intention was to reduce liability. This would have identified the second leak and may have avoided the mould.

### **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.

Miss J's loss assessor commented that I had missed the 'fraud investigation' part of her complaint. I set out the limitations on what we can consider within the provisional decision, as follows, *'I can only consider the issues addressed by AXA within its final response letter of 22 January 2021. These were set out by our investigator, viz, the decline of the claim and delays in providing a decision following AXA's final response letter'*.

Miss J's loss assessor said that they failed to see how she could be expected to notice pre-existing damage when AXA's loss adjuster had been in the property but did not notice any mould. He said none of the damage was visible prior to the loss occurring and the loss adjuster didn't notice any damage following the first claim. From the record of the claim, I can see that the insurer's surveyor said Miss J made the claim because she noticed damp.

Miss J's loss assessor asks why the boiler pressure wasn't noticed on the first claim. In my provisional decision I said, *'Miss J said this was an ongoing problem since she moved into her house in 2015. That means she had been topping up the boiler for over three years before dealing with the escape of water.'* I think this was a clear indication that the boiler wasn't functioning properly.

In declining Miss J's claim AXA has relied upon the exclusion clause in her policy for damage that occurs gradually, including damp and mould. Miss J's loss assessor said the damage to her home from the leak was hidden from view and so should be treated as an insured event from when it was discovered.

I've considered the possibility that the second leak occurred after the first leak was repaired, but from the evidence I've seen, I think it very unlikely. The reason is that the loss adjusters and 'S' found damage to the floorboards, laminate floor, wallpaper, skirtings and patch repairs to the ceiling and decorations. S subsequently found widespread mould and damp which it described as 'long term'. From the reports, photos and communications between the parties I can see why AXA and our investigator thought there were enough reasons for Miss J to have realised there was a leak a long time before she acted.

Additionally, Miss J's heating is a closed system and so water is maintained within the system and doesn't flow away. Miss J told AXA's loss adjuster that for over three years since she moved into her house, she had to top up her boiler. General advice is it shouldn't be necessary to regularly refill a boiler as it indicates a leak on a closed system. And so it would be reasonable to expect Miss J to have acted on detecting and dealing with the leak and its consequences a long time before the damage occurred or increased.

I think there was evidence of damage occurring before it was dealt with including a steady accumulation of mould and damp as reported on in the assessments of Miss J's home. From my review of the evidence I think it was fair for AXA to decide to decline the claim and that this was in accordance with the policy exclusion for gradually occurring damage.

I've thought again about the delays that AXA caused in its reconsideration of Miss J's claim. Miss J's loss assessor said AXA had all the evidence needed to reach a decision, but failed to do so in a reasonable time. I agree with this, and I think AXA taking five months to decide was far too long. AXA paid Miss J £200 compensation for its delay and the loss of expectations about her claim. I remain of the view that AXA adopted different positions on the claim and by stating in its final response letter that it considered its decision on her claim to be incorrect, it allowed Miss J to anticipate that her claim would be paid.

I can see that the uncertainty and delay and the loss of Miss J's expectations caused her a lot of distress and inconvenience over a five-month period, and I think the impact of this should be reflected by AXA paying her further compensation of £200. I'm pleased AXA has agreed to this. I recommend that Miss and Mr J accept this award. However, I can see that Miss J and her representative strongly disagree with my conclusions, and so if she rejects this decision, it will be of no legal effect, and she can pursue her complaint by other means.

I was sorry to learn about the impact on Miss J and her family of the prolonged handling of her claim. However, I still think AXA's decline of Miss J's claim was fair taking all of the circumstances into account and was in accordance with the policy exclusion for gradually occurring damage.

**My final decision**

For the reasons I have given above and in my provisional decision the complaint is upheld in part. I require AXA Insurance UK Plc to pay Miss J and Mr J further compensation of £200 for the distress and inconvenience they have been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J and Mr J to accept or reject my decision before 7 February 2023.

Andrew Fraser  
**Ombudsman**