

The complaint

Miss C has complained about her property insurer AXA Insurance UK Plc in relation to a claim she made to it following water damage to her property from the flat above.

What happened

Miss C made a claim to AXA in November 2020 – there had been a leak from the flat above hers and damage had been caused. Miss C felt the owner of the flat above was negligent and didn't get the leak repaired quickly enough. When she made the claim she mentioned this to AXA and it said it had a recoveries team and liability would be considered.

The claim didn't progress as Miss C would have liked and, in July 2021, having completed work at the property in May and June 2021, AXA returned Miss C's keys to her and issued a final response. A complaint was made to this service and our Investigator felt AXA had caused some delays. He said AXA should pay £750 compensation. Both parties accepted that. But Miss C noted she then had further concerns, including in respect of the work that had been done.

In August 2021 Miss C said the work was poor and not up to standard. She listed the problems she had and provided photos. AXA felt the problems were not caused by its poor work – that they were pre-existing, in the case of the uneven floor, for example, or had been caused by further leaks occurring, eg regarding a stained ceiling. In September 2021 and then March 2022 AXA said that if Miss C wanted to progress this she could get expert reports on the damage for it to consider. Miss C obtained reports but did not submit them to AXA. She later told us that she did not submit them because she felt AXA's response meant it wasn't prepared to deal with her on this issue anymore.

Miss C was also unhappy that AXA hadn't sought to recover its claim outlay from the owner of the other flat. AXA told Miss C that it hadn't thought it had any viable chance of recovery but upon receipt of further evidence from Miss C, AXA agreed to refer the matter to its solicitor for review. Following that AXA again decided to not pursue recovery. Miss C said this had caused her financial loss because any future premium would now be increased and her £350 policy excess for the claim wouldn't be refunded. AXA felt that, overall, it had acted fairly regarding recovery.

Regarding future premiums Miss C was also concerned that AXA had chosen not to renew her cover. Her policy had been due to renew in September 2021 but AXA had told her it was not inviting her for renewal. Miss C asked AXA to tell her why but it would not. Following the complaint being made to our service AXA said it felt it had acted unfairly by not offering renewal to Miss C. It said it would offer £200 compensation to make up for that.

Our Investigator explained he could only look at what had happened since the work had been done – so at Miss C's concerns about the work and the additional issues of recovery and renewal. He felt that AXA had reasonably agreed to look at Miss C's reports and had acted fairly regarding recovery. He felt it should pay the £200 offered regarding renewal, but wasn't minded to make it pay any additional sum.

Miss C remained unhappy. She felt her complaint hadn't been properly considered. Her complaint was passed to me for an Ombudsman's consideration. I felt minded to partially uphold her complaint – that AXA needed to do more given its accepted error regarding renewal. But regarding the allegations of poor work and its refusal to pursue recovery action, I felt it had acted fairly and reasonably. So I issued a provisional decision to explain my views to both parties. My provisional findings were:

“Disputed work

At the start of August 2021 Miss C shared with AXA her concerns about the work that had been completed at her property. Miss C provided photos to evidence her concerns. AXA reviewed matters and spoke to its contractor. AXA was advised that, in the contractor's view, work had been completed in a like-for-like manner and to standard. As such, liability for the issues identified by Miss C was denied. AXA offered to have its surveyor attend the property and review the damage, but Miss C wasn't willing to agree to that – she felt the surveyor wasn't independent, and AXA wouldn't agree to paying for an independent assessment at that time. So it was left that Miss C had the option of letting it assess the work/damage, or submitting her own report on the issues for it to consider. I appreciate that Miss C will be disappointed with my view on this, but I don't think that was an unreasonable position for AXA to take.

Essentially the situation was that Miss C said the contractor hadn't done some work, or some of the work it had done, had been done poorly. And the contractor was disputing that. AXA's surveyor is not independent – but would have been able to give an expert view on the situation. The next step then might have been for an independent to become involved. But AXA offering its own surveyor's view in the first instance was reasonable. It was also reasonable for AXA to say that, as an alternative, Miss C could get her own report for it to consider. Whilst I know that Miss C has since obtained her own reports, she has confirmed she has not sent these to AXA. As AXA was happy to consider these, but has not been given the chance to do so, it would not be fair for me to do that. Miss C can send her reports to AXA, it can consider them and then provide its answer to her on the disputed repair/damage issues. If, to do that, AXA feels it needs to appoint a surveyor to view the work/damage alongside the reports, Miss C should cooperate with it to facilitate that.

Recovery

I know that, to Miss C, it is clear that the owner of the flat above hers negligently allowed the leak to occur and/or to continue, causing damage. I know that Miss C thinks that as that is so clearly the case, AXA was wrong to not pursue recovery of its own and her losses. AXA's surveyor initially felt there were no prospects for recovery, and later its solicitor also took that view. Having considered everything, I think AXA has acted and concluded on this aspect fairly and reasonably.

When Miss C made her claim she did ask about finding her neighbour liable for the loss, and she was told that AXA does have a recovery department. But that did not mean that AXA would seek to take action against Miss C's neighbour in this circumstance – or even if it did, that AXA would be successful in doing so. And this service would only expect an insurer to pursue action like this if the prospects for success were felt to be good. That is because pursuing this type of action is time consuming and costly.

Here I've seen the emails Miss C provided between her and her neighbour – and they show the neighbour, regardless of what the tenants may have said, was contesting that she was negligently liable for the leak and damage caused. The neighbour said the leak was fixed the same day it was notified and only finishing off work needed doing around eight days later. I think that, in itself, shows that whether the neighbour's negligence could have been successfully proven in court was far from clear. Any court claim would largely turn on her explanation against Miss C's belief. Furthermore, I know that AXA's surveyor's view was that

even if it had taken eight days for the leak to be fully stopped, with some damage on-going in the meantime, a court might well have found that an acceptable time period. I see that AXA's solicitor was also concerned about proving negligence – and that for the recovery action to have any chance of success, Miss C's full cooperation would be required. However, by this point, Miss C seemed unwilling to cooperate. I can understand AXA's view that its prospects for success weren't good. Overall, I don't think it was unreasonable that AXA did not progress with taking recovery action against Miss C's neighbour.

Renewal

Miss C is unhappy that AXA would not renew her policy. AXA ultimately said it felt it had acted unfairly in this respect and offered £200 compensation. That being the case it follows that AXA should reimburse any losses Miss C has had too. The compensation I think, fairly, and reasonably makes up for the distress and inconvenience Miss C was caused. But without knowing what cover Miss C took, and what the cost of it was, her financial loss on account of AXA's accepted error is not known. AXA has said the cost of cover with it would have been £347.86. Miss C should, therefore, submit details of her new policy to AXA, which show its cover, limits and cost. If the cover and limits are the same, but the price is more than what renewed cover with AXA would have cost, AXA will have to reimburse the difference, plus interest from the date of renewal until settlement is made.*

I'd add here that whilst many policies renew each year, some automatically, each renewal is a new contract of insurance – the fact that cover has been offered before is not a guarantee that cover will be offered again. Furthermore, whether or not to invite renewal is a commercial decision made by each insurer in each instance of cover. So AXA always had the option to decide what to do as Miss C's policy approached its renewal date. But an insurer shouldn't look to end providing cover in circumstances where it knows the policyholder will struggle to find alternate cover – which includes where there is an open claim. And I note that here, when AXA first told Miss C it wasn't going to offer her renewal, her claim was still open. Which would've made it difficult for her to find other cover. And when her claim closed she only had a short while to find a new policy before her old policy expired. As I said, choosing whether or not to invite renewal is a decision for an insurer to make, and here AXA's said it made a mistake by not inviting Miss C's renewal. So it's fair and reasonable that it compensates her for both the financial and non-financial loss caused.

Compensation

I know that this claim has been going on for a long time. My consideration of how AXA acted though begins with Miss C providing it with details of the problems she'd found at her home. That isn't to say that I've entirely disregarded what happened before and which led to this point – clearly I can't do that as the alleged poor work itself happened before my period of consideration, so I have to be aware of it. But for the upset caused by delay in the claim to the point of AXA's July final response, Miss C accepted £750 compensation in remedy. So I can't fairly go back over that and reconsider the issues or award.

Following AXA's July final response, AXA was waiting for details from Miss C of the problems that she had. AXA couldn't reasonably investigate allegations of poor work until it knew what the concerns about that work were. It was given that detail at the beginning of August. AXA made enquiries about the work and by September it had already issued a final response advising that Miss C could accept its offer to assess the damage, or provide her own reports. As I said above, I think those options were fair and reasonable. It was also in September that AXA said it would appoint its solicitor to review the recovery options. I can't fault the speed with which AXA dealt with these concerns. And, following Miss C complaining to us about the poor work, AXA issued a further final response on that issue in March 2022, reaffirming its September position. I think that was also reasonable of it. So, with the exception of what I've said above about renewal, I don't think AXA made errors or handled

things poorly. As such I'm currently satisfied that no further compensation is fairly or reasonably due."

AXA said it had no comment to make in reply to my findings. Miss C provided comment against my provisional decision document.

Miss C added detail against the background I had set out (the same background I have included above here). She said it was AXA's repair handling company that had disputed things, rather than AXA itself – but no evidence to support their views had been provided. She said she had clearly explained and shown that poor work had been done. Miss C added that she did not receive any contact from AXA in March 2022 and she wouldn't have expected to receive anything as it had "closed my account" in September 2021. And she doesn't agree AXA couldn't pursue recovery action.

In respect of my findings about disputed work Miss C said:

- AXA didn't review the matter itself.
- It took an opportunity to deny liability based on what the contractor said even in spite of her evidence and argument to the contrary.
- No evidence in support of the contractor's view was provided.
- AXA offered to check her property, not assess the work done.
- It's unlikely AXA's surveyor could have given an expert view as during the claim there'd been a constant lack of competence.
- AXA would not have been prepared to consider her report had she provided it.
- She'd followed advice that to have a report done would waste time and money.

Regarding recovery Miss C said:

- She provided lots of evidence showing negligence.
- All necessary elements, from a legal point of view, necessary for showing negligence, were present.
- AXA had overlooked evidence in this respect.
- AXA's solicitor's view is incorrect.
- It was our Investigator, considering her previous complaint, who had advised her to make a further complaint – he'd seemingly had no doubt AXA had acted unreasonably.
- AXA's decision is unfair because it leaves her out of pocket and will affect her getting cover for a number of years.

Miss C made no comment against what I'd said about renewal. Regarding compensation she said:

- She'd asked for our assistance in December 2021 but had stated some concerns to us in August 2021 – she expected everything to be carefully considered.
- The poor work she had concerns about was evidenced and the compensation settlement agreed for her previous complaint was not linked to that.
- She hadn't received guarantees she'd been promised for work.
- AXA should have independently reviewed her concerns – not referred them to those responsible for doing the work.
- She'd reasonably asked for an independent inspection.
- AXA did make three clear failings, two regarding recovery and one by not handling her claim with reasonable care and skill.

Miss C requested that I review matters thoroughly. She asked that I make further awards.

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.

My background detail is a summary of what happened to bring the complaint to the decision stage of the process. It naturally cannot include or record everything. It also doesn't include any assessment of or findings by me on the details set out. So I thank Miss C for the further detail she's provided. And I can assure her that it is all detail of which I was aware and took into account when setting out my background summary in my provisional decision. I'm satisfied by what I said in my background provisionally, and I've re-produced it here as part of this final decision.

Disputed work

AXA, like many insurers, used a company to arrange and manage the repairs. It wasn't unreasonable that AXA reverted to it when Miss C made it aware of her concerns. And it was acting for AXA. Essentially Miss C had taken photos of what she felt was poor and/or non like-for-like work. AXA's agents considered those and gave their opinion. It wasn't unreasonable, in my view, for AXA to prefer that opinion to Miss C's.

I know things had gone wrong in the past for Miss C. But that did not mean that in this new phase of the claim, and in respect of different circumstances, things were going to go wrong again. AXA's final response confirmed that its decision on the poor work allegations could be reviewed further during a meeting at the property, or by Miss C submitting a report of her own. Either, in my view, would have enabled matters to progress, with the work at the heart of Miss C's concerns being discussed further. They were, in my view, reasonable proposals for progressing the claim and the concerns about the work that had been raised.

Recovery

I appreciate Miss C sharing her view on the legal position in this respect. But AXA's solicitors are experts in the likely outcome of cases – they have a good understanding of what the courts will look for and how, given the legal points in question, the courts are likely to respond. AXA's solicitors, having seen all the available evidence, clearly did not agree with Miss C that this was a clearcut situation, where the prospects for AXA being successful were likely good. I appreciate that Miss C had expected a different outcome when making this further complaint. But based on what I've seen, I can't fault AXA for not pursuing recovery action in respect of this claim.

Compensation

I appreciate that Miss C is viewing my section on compensation from her perspective of disagreeing with my findings about how AXA handled her claim, including its decision on recovery. I appreciate what she says about not having received guarantees for work and that the work done was poor. But what I've seen, as I've said, is that she presented evidence which was considered and refuted – she then received options for progressing her concerns in that respect. AXA also acted to review its decision in respect of recovery by appointing solicitors. All of which took place quite quickly. I think AXA acted fairly and reasonably.

In Summary

I appreciate that Miss C feels my findings don't go far enough and that I should be making further awards. However, and whilst I can assure her that I have carefully considered matters, I'm not minded to change my view on her complaint. As such my provisional findings, along with my additional comments set out here, now form the findings of this, my final decision.

Putting things right

I require AXA to pay Miss C:

- £200 compensation.
- The difference between what it cost her for new cover and what it would have cost to renew with AXA, plus interest*. Where Miss C paid more for new cover which was the same as that AXA would have provided. This is subject to Miss C providing detail to AXA of her new cover.
- If Miss C takes more than 14 days after she accepts my final decision (if it remains the same and she does) to provide that detail, the application of interest will cease temporarily at the end of that 14 day period, resuming again once AXA receives the detail, ceasing finally when payment is made (if a payment is felt to be due).

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires AXA to take off tax from this interest. If asked, it must give Miss C a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require AXA Insurance UK Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 3 April 2023.

Fiona Robinson
Ombudsman