

## The complaint

Mr D complains about how his insurer, AXA Insurance UK Plc (AXA), handled a claim under his home insurance policy for damage to his property from an escape of water.

References to AXA include their agents who handle claims.

## What happened

In March 2022 there was an escape of water at Mr D's property, which Mr D thought came from a leak behind the tiles in a downstairs bathroom (possibly from a shower mixer). Mr D contacted AXA to tell them of the incident and lodge a claim. AXA asked him to engage a contractor to fix the leak and provide a report on the cause of damage. Mr D found a plumber, who quoted £1,782 to trace and fix the leak, and provide a cause of damage report.

The plumber visited and concluded there was likely to be a leak behind the tiles, but this could only be confirmed by removing the tiles to inspect behind them. The plumber did this, identified the source of the leak and fixed it. He also prepared a cause of damage report and subsequently an estimate of the cost of repairing the damage, except for the cost of replacing the tiles removed to identify and fix the leak (£1,942 plus VAT).

Mr D then obtained estimates from contractors for the repair work needed to reinstate the bathroom (including stripping and drying out; reinstatement of the bathroom, tiles and replacement shower tray and vanity unit). In total, the estimates came to £6,204 (including VAT). AXA considered the estimates and produced their own scope of works for the repair and reinstatement work, which they costed at £2,768. Deducting the policy excess of £500, this meant a cash settlement offer of £2,268 (plus VAT).

Unhappy at the significant difference between AXA's offer and the estimates he'd provided, Mr D complained to AXA. He said the cash settlement offer meant he wouldn't be able to carry out the repair and reinstatement work. He'd also been without a functioning shower for several months while the claim was assessed, in a property that was in disrepair. This caused him and his family significant stress.

AXA upheld the complaint. In their final response they referred to the policy terms and conditions stating payments made (including cash settlements) would reflect any discounts they would have received (had they used their own contractors to carry out the work), which was standard practice in the insurance industry. AXA noted they'd held a video conference with Mr D to discuss the estimates he'd provided and to discuss the damage and complete their scope of work. AXA also said some items included in Mr D's estimates weren't needed to restore his property to its pre-incident condition and could be re-used (shower tray). AXA also noted Mr D's estimates included redecoration of the living room, which they thought hadn't been damaged in the incident.

Taking these points into account, AXA increased their offer to £3,978 (net of the £500 policy excess). To which they would make an additional payment for VAT on production of VAT invoices once any repair and reinstatement work had been carried out. AXA also recognised the inconvenience Mr D had suffered, awarding £150 in compensation.

Mr D then complained to this service, unhappy at AXA's handling of his claim and that it wasn't settled some seven months after the incident. This caused significant stress to him and his family, as they'd been unable to use their shower and live in a property with damp. He thought AXA should have used their own loss adjuster and contractors to prepare an estimate of the work needed to repair the damage. He wanted AXA to cover the costs of the repair work and put him back in the position he was before the incident. He also wanted compensation for the significant stress and time his property had been in disrepair.

Our investigator upheld the complaint. She didn't think AXA had provided a reason for why they hadn't accepted the estimates provided by Mr D, nor was he given the option of using AXA contractors to carry out the work. She didn't think there was unnecessary work in the estimates provided by Mr D. She thought the evidence indicated it wouldn't be practical to remove and refit the shower tray, so a new tray would be needed. She thought AXA should reimburse Mr D for all the costs he'd incurred to date. She thought AXA should either settle the claim based on new (updated) estimates provide by Mr D or use their own contractors to complete the repair and reinstatement work. She also thought AXA should pay Mr D £200 for the inconvenience he'd suffered.

AXA disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. They said Mr D included items in his estimates that shouldn't be covered under the claim (a new shower tray and sink) which they thought wouldn't have been damaged by the escape of water. AXA also said the estimates included an element of 'betterment.'<sup>1</sup>

In my findings I concluded AXA had the choice how to settle a claim, including whether to use their approved contractors; make a cash settlement; or to use a contractor nominated by the policyholder. I also thought AXA reviewing the estimates from contractors approached by Mr D and then having a video conference to discuss them and the work needed was unfair or unreasonable. I also thought it reasonable for AXA to base payments (including cash settlements) at the cost AXA would have incurred had they used their contractors. I thought this likely to explain (at least in part) the difference between the estimates obtained by Mr D and the cash settlement offered by AXA.

I also thought there were elements between AXA's cash settlement and Mr D's contractor estimate that were likely to explain the difference in the respective figures, including treatment of VAT, the policy excess, inclusion of the cost of a shower tray and the point about AXA contractor rates likely to be lower than those for Mr D's contractors. But I did conclude AXA should include the estimated cost of a replacement shower tray in their cash settlement offer.

On the issue of how AXA handled the claim, including the time to accept the claim and offer a settlement, I thought it wasn't unreasonable for AXA to want to review the scope of the work contained in the estimates (and the costs) before confirming their cash settlement offer. It was also reasonable to reconsider the offer (and revise it) in the context of considering Mr D's challenge and complaint. I concluded AXA hadn't taken an unreasonable time in making a settlement offer, reviewing it (and Mr D's contractor estimates) before revising their offer.

On the question of compensation, having considered the circumstances of the case, I thought £200 was fair and reasonable.

Because I reached different conclusions in some respect to our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

*What I've provisionally decided – and why*

*I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*My role here is to decide whether AXA have acted fairly towards Mr D.*

*In considering the complaint, the key issue is whether AXA have acted fairly in their offer of a cash settlement for the repair work due to damage from the leak. Mr D says the settlement (being less than the estimates from his contractors) means he can't carry out all the repair work needed. He also wants the repair and reinstatement work carried out by AXA contractors, to return his bathroom to its condition before the incident. AXA say their settlement is fair, reflecting the work required to repair the damage from the leak (but not other items). A second issue is the time taken for AXA to assess the claim, which Mr D says has caused him (and his family) considerable stress from being in a property without a functioning shower and state of disrepair.*

*On the first issue, the cash settlement, I've carefully considered the information and evidence available, including the estimates provided by Mr D's contractors. However, AXA haven't provided a copy of their scope of work (despite this being requested as part of my consideration of the complaint). AXA say their scope reflects the estimates provided by Mr D's contractors, and in the absence of their scope of works I've taken this to be the case. I'll consider separately the issue of whether there are items (as AXA maintain) that are included in Mr D's estimates that weren't damaged in the incident (or could be reused or constitute 'betterment').*

*In terms of Mr D's concern that the value of the cash settlement is significantly less than the estimates he provided, I've looked at what the policy terms and conditions say about the settlement of claims. Under the heading "What happens when a claim is notified" it states:*

- "...We will choose the most suitable option for you when repairing or replacing damaged items..."*
- We use approved suppliers to settle claims. If We agree to use a supplier of Your choice or where We settle directly with You, any payments(s) will take into account any discount We would have received."*

*Taking these terms and conditions together, it's AXA's choice how to settle a claim, including whether to use their approved contractors; make a cash settlement; or to use a contractor nominated by the policyholder. So, while they asked Mr D to provide estimates for the repair and reinstatement work, this doesn't mean they're obliged to accept the estimates and settle the claim on the figures provided. It's standard practice for insurers to assess the cost of estimates provided by contractors nominated by policyholders and compare them to a scope of work they prepare for what they assess is needed to repair and reinstate the damage caused by an incident. So, I don't think AXA reviewing the estimates and then having a video conference to discuss them and the work needed was unfair or unreasonable.*

*The policy terms and conditions also make it clear where AXA agree to use suppliers nominated by the policyholder or where they make a cash settlement to the policyholder, payments are at the cost AXA would have incurred had they used their contractors. Given the ability of insurers to negotiate discounted rates from contractors they work with (given the volume of work they place) these rates (and costs of repairs) are likely to be lower than those a policyholder can obtain. I think this likely to explain (at least in part) the difference between the estimates obtained by Mr D and the cash settlement offered by AXA. So, I don't think AXA's approach unfair or unreasonable.*

*I've also considered the difference between the figures provided by Mr D and AXA's cash settlement. The former came to a total of £6,204 (including VAT). AXA's revised cash settlement offer was £3,978 (after deduction of the policy excess of £500). As the policy excess would be deducted from the value of the claim, however it would be settled, then deducting £500 from Mr D's contractor estimate would mean a net figure of £5,704. AXA's offer is also exclusive of VAT (which they would reimburse on production at a VAT invoice for the completed works). I think it's therefore reasonable to add VAT to the cash settlement figure (before deduction of the policy excess). At a rate of 20% on a figure of £4,478, this would indicate an additional £895.60, taking the gross figure to £5,373.60. Deducting the £500 excess would mean a net settlement of £4,873.60. Compared to the net contractor estimate of £5,704 this suggests a difference of £830.40.*

*I've also considered the issue of whether – as AXA maintain – there are items in Mr D's contractor estimate that shouldn't be covered under the claim (a new shower tray and sink) which they thought wouldn't have been damaged by the escape of water. AXA also said the estimates included an element of 'betterment'.*

*On the shower tray (costed at £359.95 in Mr D's contractor estimate) AXA maintain it could be removed and refitted, so wouldn't need replacing. I've considered this issue, but on balance I'm not persuaded that in the circumstances of the case it would be possible to remove and refit the shower tray following its removal. So, I think an element for a replacement would be reasonable. In the absence of an alternative figure, I think the £359.95 figure in Mr D's contractor estimate should be added to AXA's cash settlement figure. Which would take the gross total to £5,733.55 (£5,233.55 net of the policy excess).*

*On the sink issue, I understand Mr D accepts this could be removed and refitted (on a replacement cupboard unit). That being the case, I don't think any adjustment to AXA's cash settlement figure would be needed (or reasonable).*

*Taking all these points into account, the adjusted difference (on a comparable basis) between Mr D's contractor estimate and AXA's cash settlement figure would be £471.45 (£5,704 less £5,233.55). As I've indicated above, AXA's rates are likely to be lower than those available to a policyholder because of the discounts they are able to secure from their contractors. And as I've said, this is likely to account for at least some of the difference between their cash settlement offer and the estimate from Mr D's contractor. In the circumstances, I think the difference of £471.45 (9.2%) is likely to be accounted for by this factor. On that basis, I think a revised cash settlement offer of £5,233.55 (to include an allowance for VAT and deduction of the policy excess) that includes an estimated cost of £359.95 for a replacement shower tray would be fair and reasonable.*

*Having reached this conclusion, I've gone on to consider the second issue, how AXA handled the claim, including the time to accept the claim and offer a settlement. Looking at the information and evidence available, following the incident Mr D engaged a plumber to identify and fix the leak. AXA subsequently accepted the claim (May 2022) and asked for estimates from contractors approached by Mr D (to include estimates on headed paper and include tile replacement). Mr D sent AXA the estimates in mid-July 2022 and the video call took place in late July, after which AXA made their initial cash settlement offer. Mr D challenged the offer and complained. AXA's revised cash settlement offer was made in late September, as part of their final response to Mr D's complaint.*

*I don't think it's unreasonable and for AXA to want to review the scope of the work contained in the estimates (and the costs) before confirming their cash settlement offer. It's also reasonable to reconsider the offer (and revise it) in the context of considering Mr D's challenge and complaint.*

*I appreciate Mr D feels the process took too long, leaving him in difficult circumstances at his property. But I don't think AXA took an unreasonable time in making a settlement offer, reviewing it (and Mr D's contractor estimates) before revising their offer.*

*On the issue of compensation, AXA awarded £150 for the inconvenience to Mr D from what had happened. Given my conclusion about AXA's handling of the claim, I've concluded Mr D has suffered distress and inconvenience from what has happened, and the way AXA have handled the claim. I recognise that the damage from the incident and the process of making a claim and the process by which it is assessed is inherently stressful. I've considered carefully what has happened and what Mr D has told us about the impact it's had on him in his circumstances. Taking all these factors into account I think £200 is fair and reasonable in the circumstances.*

#### *My provisional decision*

*For the reasons set out above, it's my provisional decision to uphold Mr D's complaint in part. I intend to require AXA Insurance UK Plc to:*

- Revise their cash settlement offer, to include an estimated cost of £359.95 for a replacement shower tray.*
- Pay Mr D £200 compensation for distress and inconvenience.*

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

Mr D provided a detailed response covering a range of issues and points. Using the sub-headings in his response, the key issues were, firstly, he'd always wanted AXA to use their own contractors to carry out the repair work – he didn't want a cash settlement. It was AXA who opted for a cash settlement, telling him the only other option was for him to obtain contractor quotes. Not accepting the contractor quotes and offering a [lower] cash settlement meant he wasn't being indemnified against the loss and wasn't being put back in the position he was in before the incident.

Secondly, there wasn't any evidence to support AXA's Statement of Works or basis for their cash settlement. AXA didn't send any contractors to his property and the video call was brief (and with someone with an administrative background). Mr D doubted whether a statement of work existed, so it couldn't be shown he'd been treated fairly. He thought AXA had based their cash settlement offer on the quotes from his contractors (rather than their own scope of work). He also questioned why AXA contacted him (in March 2023) asking if they could send round contractors.

Thirdly, he didn't believe his quote contained an element of betterment. Specifically with respect to the shower tray, sink and painting of the lounge.

Fourthly, the damage and damp at his property were now worse than when he lodged his claim and, combined with the effects of inflation, the cost to repair the damage will now be greater than it was. And the reason the damp and damage were worse was because AXA didn't make a reasonable settlement on a timely basis. And given the impact of inflation, the value of any settlement (or contractor quote) would have been diminished and the costs of repair have risen. Those costs should be borne by AXA as the process was the result of AXA's unfair treatment of him.

Fifthly, while accepting AXA made a settlement offer relatively quickly after he provided contractor quotes, Mr D said it was an unfair offer he couldn't accept. Particularly as it took time for him to find contractors willing to provide quotes (and it wasn't his choice to do that). He would now want a cash settlement to enable him to engage local contractors to carry out the repair work.

Finally, on the issue of compensation, given the extent of the damage, stress and health risks caused by how AXA had handled his claim, he thought £300 compensation would be more reasonable.

AXA didn't respond by the deadline requested for comments.

### **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 role here is to decide whether AXA have acted fairly towards Mr D.

I'd first want to assure Mr D that I've considered all the points made in his response to my provisional decision, which I've summarised above.

On his first point, I accept Mr D would have preferred AXA to use their contractors to carry out the repair work (rather than have a cash settlement). And it's the case it was AXA who opted for a cash settlement, and the only other option was for him to obtain contractor quotes. But as I set out in my provisional decision, the terms and conditions of the policy mean it's AXA's choice how to settle a claim, including whether to use their approved contractors; make a cash settlement; or to use a contractor nominated by the policyholder. In this case, they asked Mr D to provide estimates for the repair and reinstatement work. But – to pick up Mr D's point about AXA not accepting the contractor quotes - this doesn't mean they're obliged to accept the estimates and settle the claim on the figures provided.

On the point that AXA offering a [lower] cash settlement meant Mr D wasn't being indemnified against the loss and wasn't being put back in the position he was in before the incident, as the provisional decision set out, the policy terms and conditions make it clear where AXA agree to use suppliers nominated by the policyholder or where they make a cash settlement to the policyholder, payments are at the cost AXA would have incurred had they used their contractors. With the ability of insurers to negotiate discounted rates, these are likely to be lower than a policyholder can obtain. As I said in the provisional decision, I think this likely to explain (at least in part) the difference between the estimates obtained by Mr D and the cash settlement offered by AXA. So, I haven't changed my view AXA's approach wasn't unfair or unreasonable.

On the second issue, about the evidence to support AXA's Statement of Works or basis for their cash settlement, there was evidence of a statement of work (based on the quotes provided by Mr D's contractors) even though AXA didn't provide it. But in the absence of this, I looked at the respective figures from Mr D's contractor quote and AXA's cash settlement, setting out a number of factors that I thought would explain the difference. Based on this, I concluded AXA's revised cash settlement offer of £5,233.55 (to include an allowance for VAT and deduction of the policy excess) that included an estimated cost of £359.95 for a replacement shower tray would be fair and reasonable.

So, I don't think Mr D's points about AXA not sending contractors to his property and that the video call was brief (and with someone with an administrative background) change that conclusion. And AXA have said they based their statement of works (and cash settlement)

on the quotes from his contractors. This isn't unreasonable, given the contractors had assessed the scope of work needed to repair the damage.

On the point about why AXA contacted him (in March 2023) asking if they could send round contractors, that's not something which would form part of this complaint (or this decision) and I've not been provided with a reason for this. It would properly be a matter for Mr D to take up directly with AXA.

On the third issue, that of betterment, I'd considered these issues in my provisional decision. On the issue of the shower tray, I thought an element for a replacement would be reasonable. And on the sink (which Mr D accepted could be removed and refitted) I didn't think any adjustment to AXA's cash settlement figure would be needed. And given my conclusion on the overall differences between the figures in Mr D's contractor quote and AXA's cash settlement, I don't think this issue affects my final decision.

On the fourth and fifth aspects, that the damage and damp at his property were now worse than when he lodged his claim, I recognise that may be the case. But as I've concluded AXA's revised settlement offer was fair and reasonable, and they made their revised offer in a reasonable timeframe, for the reasons set out above, it doesn't change my provisional decision. So, I can't say that AXA should bear any additional costs that may have arisen since their settlement offer.

On the compensation issue, I considered this carefully when reaching my provisional conclusion. I appreciate Mr D feels a higher figure is more reasonable, but given my final conclusions set out above, I haven't changed my view that £200 is fair and reasonable in the circumstances of the case.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr D's complaint in part. I require AXA Insurance UK Plc to:

- Revise their cash settlement offer, to include an estimated cost of £359.95 for a replacement shower tray.
- Pay Mr D £200 compensation for distress and inconvenience.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 June 2023.

Paul King  
**Ombudsman**

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<sup>i</sup> 'Betterment' is where a policyholder is put in a better position than at the time of the incident, for example where additional work is carried out to improve a property to a better condition than it was in at the time of the event that caused damage.