

The complaint

Mr and Mrs H complain about AXA Insurance UK Plc declining their home insurance (buildings) claim.

AXA are the underwriters (insurers) of this policy. Some of this complaint concerns the actions of AXA's appointed agents. As AXA accept they are accountable for the actions of their agents, in my decision, any reference to AXA should be interpreted as also covering the actions of their appointed agents.

What happened

The background to this complaint is well known to both Mr H, Mrs H and AXA. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr and Mrs H had a home insurance policy with AXA. In 2022 a heating engineer found a leaking waste pipe in Mr and Mrs H's property. Mr and Mrs H registered a claim with AXA to have the damage repaired. AXA arranged for a surveyor to visit the property and they ultimately declined the claim. They said that the damage was gradual and happened over a period of time, pre-policy inception.

Mr and Mrs H complained to AXA. They didn't uphold their main complaint (the declined claim) but did offer a total of £100 in recognition that they could've handled the claim better.

As they remained unhappy, Mr and Mrs H referred their complaint to our Service for an independent review. Our investigator most recently recommended that the complaint not be upheld. Mr and Mrs H didn't accept and the complaint was referred to me for a decision. I recently sent both parties a copy of my provisional, intended findings.

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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our Service. For example, both parties are already aware that these events have been going on for an extensive amount of time – over a number of years and I've only summarised the key points of the background earlier in my decision.

Both parties acknowledged receiving my provisional decision and I can issue the final decision prior to the deadline set. As no material new evidence has been provided, I find no fair or reasonable reason to deviate from my provisional findings.

The test I'm applying in this decision is: *'have AXA fairly and reasonably considered this claim in line with the policy terms before declining it?'.* This is important as I know Mr and Mrs H want our Service to make a definitive finding on what has caused the damage. But

that's not the role of our Service here. I'll be looking at whether AXA's position taken (to decline the claim) is fair in light of the available evidence.

AXA declined this claim as they said (in summary) that the overall damage being claimed for wasn't solely caused by the waste pipe leaking water for an indefinite period of time - but by general damp issues within the property that appeared to have been ongoing for a number of years, possibly pre-policy inception and could be related to the construction of the property.

It's not in dispute that there were two leaks here. The 2019 bathroom leak and the kitchen waste pipe leak. I've disregarded the boiler/heating leak as being related to the damage being claimed for given what Mr H has said about the very low volume of water related to this. I agree with him that it's irrelevant.

What's at the heart of this complaint is whether or not the kitchen waste pipe leak is the proximate cause of the overall damage Mr and Mrs H are claiming for here.

In support of their position, AXA pointed to a call recording from 2019 when Mr H tried to make a claim for damage at his property. In that call, Mr H explained that when having a new bathroom fitted it was discovered that a pipe had possibly been leaking for a few years and it had caused damp issues under the flooring (amongst other damage). It was explained to Mr H that he only had contents cover and the call ended. Mr H later added buildings cover.

Mr and Mrs H have said that the issues with damage from that problem had been fixed in 2019. In an email to AXA they stated:

"We had to pay for a dehumidifier for a few days just to dry out the floor and the wall, extra labour and materials to pay for the additional work on the floor and extra work to rectify the situation as this was not in our original quote."

AXA also referred to their surveyor's visit to Mr and Mrs H's property when they were told that problems with damp started around four years previously. Mr and Mrs H dispute this and have explained that the reference to four years was in relation to when they think they first noticed paint flaking on their spare bedroom wall. They say they considered it a minor issue and it wasn't until their heating engineer discovered a leaking pipe behind a cavity wall that they realised it was a symptom, possibly related to a more serious issue. That engineer said that the waste pipe from the kitchen sink/dishwasher had completely separated, causing water to run out and damage the shower stud wall, block wall and the floor between the shower wall.

I've then considered AXA's surveyor's report. Their ultimate conclusion was that the wider damage being claimed for wasn't consistent with the claim circumstances. I've included some relevant comments below:

"The damage to other areas is an ongoing hereditary damp issue and is not consistent with the leaking pipe as there are no wet areas in between on the floor of around the edges, as per my on-site findings.... you would expect the floor in the boiler room to be saturated and severely damaged with it being below the alleged leak but not the case."

Importantly here, based on this evidence, the level of moisture in the flooring is not consistent with a considerable leak, possibly over a period of time.

I note Mr and Mrs H's comments about the water building up behind the wall and I understand AXA's view point that they might have expected to see much greater water

damage to the flooring if this was the case, as a result of water seeping out over time. Again, what I've seen is evidence of a general damp problem within their property across multiple areas of the house.

Mr H has provided another opinion from a damp proofing expert who added that they felt there had been water underneath the flooring and the damp issues in the hallway are directly related to the kitchen waste pipe leak (through condensation). But I'm not sufficiently persuaded that this opinion overrides the counter evidence in this complaint.

However, whilst I find that AXA have largely fairly considered this claim, it remains that a secondary escape of water has occurred here and the policy hasn't responded at all. I find AXA have not sufficiently shown that the secondary escape took place prior to policy inception. I note after our Investigator's initial assessment, AXA made an offer to arrange a further site visit from an experienced loss adjuster. Given the complexities of this claim, I find this to be a positive offer and in my opinion is the best opportunity to achieve a fair outcome for both parties here.

I need to temper Mr H's expectations here as I'm not directing AXA to settle any claim. I've found that AXA have done enough to show that the proximate cause of wider issues with his property wasn't caused by this second escape of water. But as I've said above, it remains that some damage will have been attributable to the secondary escape of water - given the relatively high level of water that's been described by Mr H and the drying out that's occurred naturally since the leak was stopped.

Service issues

I find the previous offer of £100 that AXA made to Mr and Mrs H in recognition of how they'd handled this claim to be broadly fair, reasonable and proportionate.

Summary

Having considered the evidence as a whole, I find that AXA's position that the majority of the damage began because of a loss prior to policy inception to be reasonable.

The kitchen pipe leak may well have made some contribution to the wider damage to Mr and Mrs H's property, but I find that AXA have fairly concluded that it's not the proximate cause for the wider damage being claimed for. However, as outlined the policy hasn't responded at all to a secondary escape of water event here and I find that further investigation is needed before AXA could fairly, fully decline the claim.

The fairest way forward here is for AXA to arrange a final appropriately experienced loss adjuster to visit Mr H's property. Once this has been completed, AXA should reconsider any damage directly attributable to the kitchen waste pipe leak in line with the remaining policy terms. I understand that Mr H recently had some repair works carried out and this should be taken into consideration by AXA – dependent on their findings.

Putting things right

AXA Insurance UK Plc need to arrange with Mr H to send out an appropriately experienced loss adjuster to his property.

Should they fairly conclude that there is damage directly attributable to the second escape of water (the kitchen waste pipe), they will need to reconsider this in line with the remaining policy terms.

My final decision

My final decision is that I partially uphold this complaint and direct AXA Insurance UK Plc to follow my direction as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 18 December 2023.

Daniel O'Shea
Ombudsman