

The complaint

Mr N has complained about the time it has taken for AXA Insurance UK Plc ('AXA') to progress a claim made for damage to his flat caused by a water leak from the flat directly above.

What happened

Mr N is the owner of a leasehold flat within a building covered by a block building insurance policy.

The exact date of the loss is unknown so has been set as the month the leaseholder of the flat above Mr N's flat, first became aware of a leak in her flat, that is, January 2022.

Around that time, Mr N first noticed signs of damage to his flat likely caused by a leak from the flat above his ('flat 6'). He said that photos had been provided and an engineer had come out to the flat. Mr N asked the management company for the building, (who I'll refer to as 'E') to take control of the matter, investigate what had happened, resolve the issue and keep him updated on progress.

On 14 March 2022, Mr N informed E, that the damage to his flat had worsened over the weeks and the leak hadn't been fixed. He said that he'd noticed new water stains on the wall that morning.

On 13 April 2022, E notified AXA of Mr N's claim for damage caused to his flat by a water leak. AXA acknowledged the claim two days later and asked for confirmation that the leak had been fixed. However, E notified AXA, on 12 May 2022, that the leak from flat 6 appeared to be ongoing.

AXA's loss adjuster, (who I will refer to as 'Q') attended the property on 21 June 2022 and submitted their preliminary report on the claim on 27 June 2022.

Q emailed Mr N on 8 July 2022, with a brief update to say that until the significant schedule of works had been undertaken in flat 6 (which had been authorised) Q couldn't be definitive about what would be found and what works may be required to resolve the leak. Q explained that once the works were complete, a period of abeyance would be left to see whether any leaks or issue which were discovered had resolved the ingress of water into Mr N's flat. If the source of the leak was resolved, then Q said it would then contact Mr N to review costs for the works required to repair the damage to his flat.

Trace and access works were carried out in flat 6, and on 8 August 2022, the owner of flat 6 confirmed to Q that the leak repair work had been completed.

On 22 August 2022, Mr N contacted Q and E to report that during the recent heatwaves the exterior wall appeared to be drying out. However, following the previous and current week of rain, the exterior wall was water drenched indicating the leak remained unresolved. Mr N said it was starting to cause the exterior wall to flake and cause discolouration on the inside wall of his flat, close to the lighting system.

During the four months that followed, interim payments were requested by Mr N and authorised by Q.

On 17 October 2022, the owner of flat 6 emailed Mr N to say that a maintenance team sent by E had attended her flat twice in the week commencing 3 October 2022, to investigate a further escape of water. While no signs of active leaks were found, a number of tests were set up which they would return to follow up on in the week of 31 October 2022. Those tests didn't find any new active leaks.

On 17 November 2022, Q reported that some repairs to Mr N's flat had commenced but were not fully completed as Mr N had reported further damage, which was under investigation by E, resulting in the claim being placed on hold.

On 12 December 2022, E informed Mr N that Q had appointed a drying company to attend his flat and speed up the drying process. Once the drying equipment was installed, the contractor would monitor the situation, carry out tests and provide a certificate confirming the area was fully dried out. Following that the remedial works could be completed, including in relation to the damage to Mr N's front door.

In an email to Mr N, on 19 December 2022, Q explained that his claim for compensation wouldn't fall within AXA's liability as it hadn't caused any of the delays; the claim was accepted and all payments agreed had been requested for reimbursement. With regard to Mr N's claim for loss of rent, Q explained that it must be demonstrated that the claim has resulted in a loss of rental income to him. But Q said it was their understanding that Mr N was an 'owner/occupier' and he was intending to sell the flat.

P, the drying contractors completed a report following their site visit on 11 January 2023, setting out their recommendations for two weeks of drying to be undertaken.

On 20 January 2023, Q informed Mr N that from a claim perspective, they had agreed all works and costs presented and were awaiting the final invoice for payment. On confirmation that the ceiling of Mr N's hallway / porch was dry, then the final works could be undertaken and the final invoice presented for settlement. Q said that the insurers had not at any point declined or challenged the costs presented for his flat with regard to the buildings damage claim.

On 1 March 2023, P said that the plaster needed to be removed from Mr N's flat so drying equipment could be installed, which was due to be done three weeks later.

However, following heavy rain, further damage to Mr N's flat was reported by Q to E.

The drying equipment wasn't installed as planned. After reviewing the photos and videos taken of the damage in March 2023, Q concluded that the ongoing issues did not appear to be directly connected to the prior leak from the flat above. Without evidence of that, Q couldn't include the ongoing matter as part of the previous claim.

Mr N indicated that the position internally worsened following periods of rainfall, which indicated external defects were providing the source of the water ingress. Q therefore recommended that after P had reviewed the evidence, a site meeting should be arranged with Mr N to discuss how to rectify the defects highlighted and proceed to resolve the matter.

P inspected the flat and said there was a huge amount of condensation on the windows, door and render, and the floor matting was saturated in front of the door. The concrete timber underneath the floor matting was visibly wet, which P said was likely due to the flood bar on the external of the door not being fit for purpose. Due to these issues and concerns, P

said that installing drying equipment didn't seem to be the next appropriate step.

P also advised that with the brickwork being so high in moisture it could take 6 or more weeks to dry and if there were still unresolved issues allowing for water ingress during that time they would not be achieving anything, other than frustrating Mr N with the extra electricity costs and the area still being wet in several weeks' time.

So, the drying equipment was not installed and Q concluded there was no direct connection to the previous claim, or any new claim, so was limited on what he could advise further.

When Q passed P's report on to E, on 3 February 2023 it said: *'Please see [P] report as discussed. The ongoing issues to which they refer all seem to be related to potential external defects and not the leak from flat 6 so I cannot see any liability for insurers in this respect'.*

Mr N complained to AXA about the way his claim was being handled on 14 April 2023. He claimed compensation for £20,000 for not being able to sell his flat due to the ongoing damage, an initial loss of rent of £16,000 for the period from July 2022 to February 2023, and £2,000 per month thereafter, together with £2,500 compensation for the distress and inconvenience that he'd been caused by the way the claim had been handled.

Following its review of Mr N's complaint, AXA concluded that the complaint should be partially upheld, in light of the delays in getting the work done, and £500 should be paid to Mr N as compensation for the impact of those delays on him. This was confirmed in a final response letter sent to Mr N dated 19 May 2023.

Unhappy with AXA's response to his complaint, Mr N referred his complaint to this service. He said that AXA had failed to repair the flat, more than 16 months after it was damaged by an escape of water from the flat above. Mr N said the contractors damaged his flat and had not rectified the damage and had left the flat in a state of disrepair with damp, mould and ongoing damage caused by an ongoing leak. Mr N also said he'd lost out on rental income as he was intending to rent out the flat and relocate elsewhere. To resolve his complaint Mr N said he was looking for AXA to fix the leak, restore his flat and compensate him for loss of rent and the distress and inconvenience he'd been caused by the way AXA handled his claim.

One of our investigators looked into Mr N's complaint and issued a view on the complaint in August 2023. She explained that since Mr N had referred his complaint to this service, AXA had made an offer to pay him £500 compensation for the distress and inconvenience he'd suffered in having to chase for updates on the claim. In our investigator's view, that offer was fair in the circumstances. She added that while the claim had gone on for longer than Mr N would like and the communications could have been better, she hadn't identified any significant avoidable delays caused by AXA. She said that as AXA had fairly offered to settle the claim she wouldn't be upholding the complaint or asking AXA to do anything differently.

Our investigator explained that she had considered all of the events up to 19 May 2023, so anything that happened after that date would need to be the subject of a new complaint.

Mr N didn't accept our investigator's view and requested that his complaint be escalated. So, the matter has been passed to me for a decision to be made.

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.

As Mr N's complaint is about delays that AXA is responsible for, regarding the progress of his claim, I've set out a detailed timeline in the background to this decision. I therefore won't repeat the sequence of events again here. In summary, having carefully considered the order of events I can see that the claim was notified to AXA, by E, on 13 March 2022. Investigations then followed to determine the cause of the leak from flat 6. On 21 June 2022, AXA appointed its loss adjuster, who provided their preliminary report on the claim, on 27 June 2022. The works to repair the leak to flat 6 were completed by 8 August 2022. During the following four months, interim payments were requested by Mr N and authorised by Q.

I think it was reasonable for AXA to wait for the cause of the leak to be resolved before commencing repair works on Mr N's flat. An insurer must deliver a lasting and effective repair when it responds to a claim for damage to a property. So, it was necessary for the cause of the damage to be first identified and resolved.

On 17 October 2022, the owner of flat 6 had further investigations carried out in her flat, with regard to a possible further escape of water.

On 17 November 2022, Q confirmed that while some repairs had started to Mr N's flat, he had reported further damage that E was investigating, resulting in the claim being placed on hold.

It appeared, following the initial investigations, that the water may be coming in from the exterior wall of the property, which was not covered by the policy. It's from this point that progress on the claim appears to have begun to stall. A drying company was appointed to assist with drying Mr N's flat. They attended the property in early January 2023 and recommended two weeks of drying be carried out. However, heavy rain in March resulted in further damage to Mr N's flat, and it was concluded that until the cause of the damage was established and addressed, (which looked to be due to issues with an external wall, which wasn't covered by the policy) installing drying equipment would be unlikely to effectively dry out the flat, while increasing Mr N's electricity costs. Understandably, Mr N was frustrated with the lack of resolution of the leak and repair to his flat, so he complained to AXA on 14 May 2023, and received its final response letter on 19 May 2023.

As our investigator explained, in considering Mr N's complaint, given AXA has only had the opportunity to consider what has happened up to 19 May 2023, I am also only able to consider events up to that time. Having done so, I agree with our investigator that while Mr N was undoubtedly impacted by the way the claim was dealt with, and it was clearly a very stressful and frustrating time for him, only some of that impact was due to AXA's actions. E was also responsible for how the claim progressed, and AXA is not responsible for E's actions. Also, the claim has been further complicated as it appears that part of the damage has been caused by an uninsured peril. I think it was reasonable for AXA to require the uninsured works to be completed before the internal repairs were carried out so that a lasting and effective repair could be achieved for Mr N.

Taking everything into account I think that AXA's offer of £500 compensation fairly compensates Mr N for the upset and inconvenience he's suffered as a result of its contribution to the way the claim has been progressed.

If Mr N is unhappy with how the claim has continued to be handled, after this time, then he can raise those concerns with AXA, and if unhappy with AXA's response, he may look to refer that complaint to this service. However, any concerns that Mr N has with E's involvement in his claim cannot be considered by this service, so he will need to take advice as to how he can seek resolution of those concerns.

With regard to Mr N's claim for loss of rent, again, I agree with the conclusion our investigator reached on this point.

The policy terms and conditions say, on page 29, under the heading: *'What is covered, Loss of rental income cover', 'We will cover you for loss of rental income if the premises covered under Section 1 – Buildings is damaged during the period of insurance and as a result your business is interrupted or interfered with.'*

As the property wasn't rented at the time of the claim, then cover for loss of rent would not be provided under the policy terms.

Putting things right

AXA has made an offer to pay Mr N £500 to settle the complaint and I think this offer is fair in all the circumstances.

My final decision

My final decision is that AXA should pay Mr N £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 23 April 2024.

Carolyn Harwood
Ombudsman