

The complaint

Mr P complains that AXA Insurance UK Plc (AXA) declined his claim for damage caused by an infestation of mice, under his home buildings insurance policy.

What happened

Mr P says he noticed a damp patch on his kitchen ceiling. Upon investigation he found several leaks due to rodents chewing through pipework connecting his heating and hot water system. He found a further leak in his bathroom, again due to the rodents. Mr P made a claim to AXA, which it declined.

AXA told Mr P he has no cover under his policy for this loss. It says cover is provided under its 'full accidental damage' insurance. But Mr P didn't have this cover, so AXA declined to pay for the repairs.

Mr P says AXA's terms aren't clear. He says accidental damage is defined as unforeseen damage caused by him or his guests. Not damage caused by rodents. He says damage caused by rodents should reasonably be expected to be covered under a standard buildings insurance policy. Because he disagreed with AXA Mr P referred his complaint to our service.

Our investigator didn't uphold his complaint. He says cover for Mr P's loss is provided under AXA's 'full accidental damage' cover. Mr P didn't have this cover, so AXA fairly declined his claim. Our investigator says it was Mr P's responsibility to read his policy terms and conditions to ensure this met with his requirements.

Mr P disagreed with our investigator's findings and asked for an ombudsman to consider the matter.

It has been passed to me to decide.

I issued a provisional decision in October 2023 explaining that I was intending to uphold Mr P's complaint. Here's what I said:

provisional findings

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

Having done so my intention is to uphold this complaint. Let me explain.

I've read Mr P's policy terms and conditions to understand the cover he had in place. Under the heading, "Getting Started: Conditions and Limitations That Apply to Your Policy" the terms say:

"What is not covered

Your policy will not cover loss, damage, liability, costs or expenses for claims in the following

circumstances:

- *Damage caused by infestation (other than vermin), corrosion, damp, wet or dry rot or mould."*

The definitions section defines vermin as:

"Rats, mice, squirrels, wasps or hornets."

Damage caused by 'infestation' is excluded, but 'vermin', as a cause of damage, is specifically removed from this exclusion. I think a reasonable person would understand from this, that damage caused by vermin is covered by the policy. If AXA didn't intend for damage caused by vermin to be covered under Mr P's policy, it didn't make this clear.

There's no reference to vermin in the next section headed "Buildings Cover" where the insured causes are set out. This section describes the, "Trace and access" cover included in the event of an escape of water. Mr P says this is what caused much of the damage to his home. A further list of, "What is not covered" is set out in this section. It says:

"For any claim caused by escape of water, no cover is provided for:

- *Water escaping from anything other than fixed indoor; pipes, boilers, water tanks or toilets (i.e. these are covered);*
- *Water escaping from flexible hoses or attachments to kitchen appliances, or the appliances themselves (i.e. these aren't covered);*
- *Damage caused by a lack or failure of sealant or grout;*
- *Damage to boilers, where the water has escaped internally within the boiler;*
- *Any amount over £2,000 per claim for metered water bills where We've agreed to pay a claim."*

There is no reference to vermin, as an exclusion in the buildings cover section.

The next section of the policy booklet is headed, "Basic Accidental Damage to Buildings". This says, "What is not covered". Followed by, "Damage caused by Pets, animals, insects or Vermin".

This is followed by a section that is headed, "Full Accidental Damage to Buildings". This says, "Full Accidental Damage provides a comprehensive level of cover and is designed to protect your Home or Outbuildings for Accidental Damage caused by You, Your guests or Vermin".

Based on this, cover is provided for damage caused by vermin under the full accidental damage option but not the basic cover.

I note Mr P's comments that he chose not to pay for accidental damage cover. He says this isn't something he includes when he arranges his home buildings insurance in order to reduce the cost. Mr P says he didn't read the accidental damage sections as he didn't want this cover. I've also considered his comments that 'accidental damage' isn't something the average person would associate with damage caused by vermin. He says this cover would be expected as standard under the buildings policy.

We expect AXA's policy terms and conditions to clearly describe the cover provided including optional extras. I don't agree with Mr P that it's unreasonable for AXA to include vermin cover under accidental damage. But as discussed, I don't think AXA's terms are clear that vermin damage is excluded under the main buildings insurance policy. I think the opposite is implied.

If there is doubt about the meaning of a policy term, the interpretation most favourable to the consumer should be adopted, in accordance with the common law principle of contra proferentem. In this case Mr P understood his main building's policy covered damage caused by vermin. I think this was a reasonable assumption based on what the policy terms and conditions say. It's not for Mr P to interpret what AXA meant. The policy terms should be clear and unambiguous. I don't think they were, which means I don't think it's fair that AXA declined Mr P's claim.

Having considered all of this I don't think AXA treated Mr P fairly when declining his claim for the reasons it gave. My intention is to direct it to pay his claim in line with his policy terms and conditions, accepting cover is in place for damage caused by vermin. Mr P has paid for the damages to be repaired. On provision of the reasonable costs Mr P paid for the repairs, AXA can provide a refund plus 8% simple interest, calculated from the date he made the payment until this is refunded to him.

I said I was intending to uphold Mr P's complaint and AXA should:

- refund Mr P on receipt of proof of paying reasonable repair costs for the damage incurred; and
- pay 8% simple interest* on the repair cost from the date this was paid until it is refunded.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Both Mr P and AXA responded to say they accepted my provisional 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.

As neither party has made any further submissions or provided further evidence for me to consider, I see no reason to change my provisional findings.

So, my final decision is the same as my provisional decision and for the same reasons.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that AXA Insurance UK Plc should:

- refund Mr P on receipt of proof of paying reasonable repair costs for the damage incurred; and
- pay 8% simple interest* on the repair cost from the date this was paid until it is refunded.

*If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 December 2023.

Mike Waldron
Ombudsman