

## The complaint

Mr E and Ms F are complaining about the way AXA Insurance UK Plc has handled a claim they made on their commercial property insurance policy.

## What happened

In February 2022 Mr E and Ms F noticed some damp appearing on the walls of their property so they contacted AXA to claim for the damage on their commercial property insurance policy. AXA instructed a loss adjustor – who I shall refer to as G – to handle the claim on their behalf. G arranged for a leak detection reported to be carried out who identified the fault lay with the underfloor heating.

G discussed the situation with Mr E and Ms F and explained that it would have to remove some tiles to access the underfloor piping, but I understand it explained to Mr E and Ms F that the policy only covered replacing the damaged tiles. Mr E and Ms F didn't agree with this and wanted AXA to replace all the tiles in the area. So G referred this matter to AXA for its comments. It also asked Mr E and Ms F who installed the underfloor heating in the first instance and also details of their income for the property.

In June 2022 Mr E and Ms F complained to AXA that nothing had happened on the claim and they wanted to know why. In August 2022 AXA responded to Mr E and Ms F's complaint and acknowledged that nothing had happened and offered them £300 in compensation. Mr E and Ms F didn't think this was sufficient and referred their complaint to this Service.

I issued a provisional decision upholding this complaint and I said the following:

*"I should first set out that, I note Mr E and Ms F have also complained about the way AXA continued to handle their claim after it responded to their complaint in August 2022. But AXA's actions after August 2022 are being dealt with in a different complaint, so I won't comment on them in this decision.*

*I don't think there is any dispute AXA has delayed the handling of this claim. But Mr E and Ms F also need to recognise that there will be losses, distress and inconvenience in the handling of any insurance claim. So I need to distinguish between delays that AXA could have avoided and those that are a natural result of the type of claim Mr E and Ms F have made.*

*I can see that, shortly after Mr E and Ms F reported the claim to AXA, AXA instructed G to handle the claim. G visited the property with Mr E and Ms F to understand the damage. Following this, I can see it immediately arranged for a leak detection report. Around three days after this – on 14 March 2022 – it issued its preliminary report to*

*AXA explaining that the damage arose from the underfloor heating, but set out that there was a dispute around whether the policy covered replacing just the damaged tiles, or the entirety of them. And it asked for AXA's comments on this.*

*I haven't seen anything to show the claim was unreasonably delayed up to this point. But it appears, by the time AXA issued its response to Mr E and Ms F's complaint, it still hadn't responded to G. I think this is the reason why the claim didn't proceed and clearly was an avoidable delay. So, I think AXA had caused around five months of delays up to August 2022. I shall now think about how AXA should put this right.*

*Clearly this matter has caused Mr E and Ms F a lot of distress and inconvenience. They've had to wait months with no action, worry that the damage was getting worse and prolonged worry about the loss of, what I understand was, their sole form of income. The investigator recommended AXA increased its compensation to £600 and I think that's fair. AXA has also agreed to pay this.*

*The core issue for me to decide is what loss of rent AXA should pay. Firstly, I'm conscious the terms of the policy set out that AXA will cover the following:*

*"Loss of Rent: If a tenant can't live in the Home You let due to an Insured Loss, We [AXA] will pay loss of Rent You [Mr E and Ms F] would have received up to a maximum of £30,000 per claim on any contractually confirmed rental income or contractually confirmed short term lettings."*

*So I think the policy covers any rental that Mr E and Ms F had to cancel as a result of the damage and AXA had already agreed to cover this as part of the claim. But the issue for me to decide is whether AXA should cover any loss of potential income and, if so, during what period.*

*I understand that a dispute has later arisen around whether AXA was liable for the claim. I also don't think this would have been a quick repair. Further to this, I understand that AXA still hasn't determined whether the claim will be covered or not. Given this I can't reasonably say the claim would have been settled by August 2022 – when it responded to the complaint – had it not caused the delays it did. And I think it's unlikely it would have done. So, it seems to me that any financial losses that may have been incurred before August 2022 are as a result of the damage to the underfloor heating and Mr E and Ms F having to make a claim.*

*So I can't reasonably say AXA has caused these losses. It follows that I can't require AXA to pay for any lost rent during that period that isn't already covered under the terms of the insurance policy.*

*However, I am conscious that these delays will have meant that the claim is likely to take six months longer than it should have done. And I think this is where any potential financial loss Mr E and Ms F may incur sits. I recognise there. And I think I can only reasonably require AXA to pay for any lost rent if it settles the claim. But if it's required to settle the claim, it should pay Mr E and Ms F five months loss of rent based on what they can show is their average rental income."*

*AXA didn't respond to my provisional decision. Mr E and Ms F responded with a*

detailed response and a lot of correspondence to say why they didn't agree with my provisional decision. But, in summary, they said the following:

- They highlighted AXA's loss adjustor didn't respond to the loss assessor they appointed.
- They dispute G discussed removing some tiles to access the underfloor heating. They said the first they heard G wanted to do some work was on 17 March 2022. They said they're loss assessor emailed the loss adjustor to ensure the matching tile issue was resolving before works started.
- They said they were contacting AXA on a weekly basis to chase a response and advised AXA they were losing bookings and facing financial hardship, but AXA still did not respond.
- They said that industry standards state that the *"insurer has 21 days to acknowledge your Letter of Claim, and then they have three more months to investigate your claim. After that, they'll either accept liability– or deny responsibility"*.
- They highlighted AXA hasn't paid their lost earnings claim. They maintained AXA should cover all their lost earnings during that time because of its inactivity.
- They said AXA should have been aware that inactivity would result in further damage to the property.
- They think it's unfair I haven't required AXA to pay loss earnings throughout the claim process as it doesn't incentivise it to settle the claim promptly. They said the rental income equates to 50% of their income, so they can't reasonably accept something given they don't think AXA has taken any steps to mitigate their losses.
- They reiterated that there is an implied term of every contract of insurance that if the insured makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time.
- They said they'd been forced to remove their property from the rental platform they use to advertise the property.
- They highlighted other decisions where ombudsman had awarded lost earnings on similar sets of circumstances.

### **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.

I've considered Mr E and Ms F's additional comments, but I've come to the same conclusion as I did before.

I should first set out that, both in this decision and in my provisional decision, I acknowledge I've summarised Mr E and Ms F's complaint in a lot less detail than they have presented it – including their response to my provisional decision. Mr E and Ms F have raised a number of reasons about why they're unhappy with the way AXA and its agents have handled this matter. I've not commented on each and every point they've raised. Instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy by this, but it simply reflects the informal nature of this service. I assure Mr E and Ms F, however, that I have read and considered everything they've provided.

Mr E and Ms F have set out that they think regulations required AXA to decide an outcome on a claim within three months. But I don't agree. I think what they're referring to is in relation to pre-action protocols where a notice of legal action is issued. That's not relevant here. However, regulations do require insurers to treat customers fairly and to not unreasonably delay a claim. The regulations don't specify specific timeframes as it wouldn't be practical as every claim is different. But, as I said, insurers should act fairly and reasonably at all times and not cause unreasonable delays.

As I set out in my provisional decision, I agree with Mr E and Ms F that AXA have caused a lot of delays in the period of time I'm considering. I've seen sufficient evidence to persuade me that G contacted AXA looking for understanding of its position on the tiles, but AXA didn't respond. I note Mr E and Ms F say there's nothing to show that there was a discussion on the tiles. But it's for me to decide what is most likely to have happened and, as I said, I'm satisfied this did happen. But, regardless of whether G did look to discuss the issues of the tiles with AXA, I still think there was a five month delay whether G contacted AXA or not.

I note Mr E and Ms F have set out that the claim has still been ongoing for two years. But, as I said, I'm only considering AXA's actions up to August 2022. This Service is considering the handling of the claim after August 2022 in separate complaints. I note Mr E and Ms F want me to award the lost earnings during the time of the delays. But as I set out in my provisional decision, I have to think about what the *actual* losses are. I'm not persuaded that the claim would have been resolved by August 2022 even if everything had been handled as it should have done. So not being able to rent out the property up to this point is because of the damage to the property – not because of what AXA did wrong. The six months delay will have caused the claim to take longer than it should have done. So I remain of the opinion that the lost earnings should be the losses suffered at the end of the claim.

Mr E and Ms F have set out that, if AXA isn't required to pay lost earnings throughout the claim, there would be no incentive to settle the claim and it could just leave the claim to drift. But, as I said, industry regulations require insurers to not unreasonably delay the claim. It should also be noted that, in reciprocation, if insurers covered the lost rent throughout, it could similarly be argued that there would be no incentive on Mr E and Ms F to actively assist AXA resolve the claim as they'd be receiving income throughout without incurring the effort and expense to obtain it. I'm not saying this is what they are or would do, but I can't reasonably say AXA should pay lost earnings as an incentive to pursue the claim at pace.

Ultimately, AXA has caused around five months of delays in the period I'm reviewing in this decision. And I'm satisfied the redress I recommended in my provisional decision is fair.

### **My final decision**

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require AXA Insurance UK Plc to:

1. Cover any lost rental claim Mr E and Ms F may have under the terms of the

insurance policy.

2. Pay 8% simple interest on this loss from 15 August 2022 (the date of letter) until it pays it.\*
3. If it's required to settle the claim, it should pay Mr E and Ms F five months loss of rent based on what they can show is their average rental income.\*
4. Increase its compensation to £600 to reflect the avoidable distress and inconvenience Mr E and Ms F incurred up to August 2022.

\* If it thinks it's required by HM Revenue & Customs to deduct income tax from this, it should tell Mr E and Ms F how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax if appropriate.

I don't award anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Ms F to accept or reject my decision before 15 April 2024.

Guy Mitchell

**Ombudsman**