

The complaint

Mr E and Ms F are complaining about the way AXA Insurance UK Plc has continued to handle 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. This Service has considered that complaint in a different complaint reference.

In September 2022, AXA arranged for a different one of G's loss adjustors to take over the claim. He called Mr E, but Mr E said he was about to get on a flight to go on holiday. In October 2022, the loss adjustor contacted Mr E and Ms F again, but they said they were still unhappy with the way the claim was being handled and raised a further complaint. And they raised the following:

- AXA took a further two months to contact them following on from its final response letter in August 2022. And then a further month to contact them again.
- They think it's unfair AXA was delaying making a decision on whether it would settle the claim.
- They think it's unreasonable AXA appointed a loss adjustor who lived 370 miles away from them. They think AXA should have arranged for a local loss adjustor to handle the claim.
- After 12 months, AXA still hadn't started work on the house. They said AXA was aware there was water damage and the delays were making the house worse. They think AXA should have taken steps to mitigate the losses.
- They've asked AXA numerous questions, but it hasn't answered them. So they

said they couldn't make decisions on the claim without this.

AXA agreed it should have contacted Mr E and Ms F sooner than it did in September 2022. And offered £150 in compensation for that. But it didn't think it was responsible for the delays after that. It said Mr E and Ms F had asked to put the claim on hold while AXA reviewed their complaint. It also said G had said Mr E and Ms F wouldn't engage with him or enable him to progress the claim. And it said this was the reason the claim hadn't proceeded.

Mr E and Ms F didn't agree they were delaying the claim and maintained all the delays were down to the way AXA and G were handling the claim.

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

"Mr E and Ms F have raised a number of complaints about a variety of issues they've had with AXA. In this decision, I'm only considering AXA's actions between 15 August 2022 and 3 January 2023. This Service is considering Mr E and Ms F's other concerns under different complaint references.

I intend to uphold this complaint and I'll now explain why.

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. 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 about 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.

All parties agree AXA or G didn't contact Mr E and Ms F until 29 September 2022, which was around two months after its final response letter in August 2022. When G spoke with Mr E on 29 September 2022, Mr E said he couldn't speak then as he was going on holiday. I understand it was left that Mr E would contact G again. But I haven't seen anything to show that G sent anything in writing to Mr E and Ms F to confirm this. G then didn't contact Mr E and Ms F for a further one month. I would have expected G to have been more pro-active in this time. And I think AXA and G has caused around a three month delay here.

However, while I recognise Mr E and Ms F were unhappy with the way AXA and G were handling the claim, I can't say it was reasonable for them to delay AXA's ability to progress the claim. I note they've said they didn't want to use AXA's contractors and they wanted AXA to allow them to appoint their own contractors to investigate the works and complete the damage. But, while their concerns about AXA's actions up to October 2022 were justified, it doesn't change the terms of the insurance policy. If Mr E and Ms F want AXA to cover the losses under the insurance policy, they have to agree to be bound by all the policy terms. AXA, like all insurers, have the right and will want to use its own contractors to enable it to have control of its costs. I can't say this is unreasonable.

I'm satisfied that AXA and G have been trying to progress the claim by wanting to arrange to inspect the property to identify the cause of the water damage, but I think they've been prevented from doing so. As I said, I understand Mr E and Ms F's unhappiness with AXA and G's actions, but I can't say it was reasonable for them to not allow AXA to investigate the claim. And I find that this is the primary reason why the claim hasn't progressed. I can't reasonably hold AXA responsible for this.

So I now need to decide whether £150 is fair compensation or not. The investigator didn't think AXA should pay for additional lost rent because he thought the claim would still be in the same situation it would be in, had the initial delays not occurred because of Mr E and Ms F's actions in not enabling AXA to progress the claim. And I don't think this is without merit. But I also have to take into account that Mr E and Ms F's actions ultimately stem from AXA's initial handling of the claim. And, as I said, AXA did cause a further three month delay – in addition to the delays considered in the previous complaint.

Given this, I do think AXA should compensate Mr E and Ms F for lost rent if it settles the claim. So, if AXA is required to settle the claim, it should pay Mr E and Ms F three months loss of rent based on what they can show is their average rental income.

Mr E and Ms F have also complained that AXA didn't install dehumidifiers to minimise the extent of damage. But insurers won't start the drying process until it's satisfied the escape of water has stopped. This isn't unreasonable because, naturally, the property will just become wet again if water is continuing to escape. And I haven't seen anything to show the cause of the damage had been rectified. So I can't say AXA has been unreasonable in not starting the drying process sooner.

I note Mr E and Ms F have also raised concerns about AXA's communication with them. AXA has highlighted that it isn't able to answer Mr E and Ms F's queries as it needs to have assessed the claim first. I agree with some of this. AXA cannot say whether it is going to settle the claim or not, or say how long repairs will take until it has inspected the property and identified the cause of the water damage.

However, I am conscious that by the time AXA issued its final response, it hadn't given Mr E and Ms F any clarity around whether it would cover some or all of the tiles that may become damaged. The leak detection report that was carried out in March 2022 identified that a number of the tiles in the area of damage would need to be removed to access the issue. G contacted AXA around the same time explaining that Mr E and Ms F had the same tiles throughout the flooring and asked if AXA would cover the cost of replacing all the tiles, even though some of them won't be damaged to ensure the tiles continued to match. I don't think this was a complicated query and one that AXA should have responded to swiftly. And it didn't need to know the cause of the damage to clarify the extent of its liability if it was to settle the claim.

Finally, I note that Mr E and Ms F have made a number of comments that AXA has had no regard to the fact that the property was their only source of income or recognise the distress that this matter was causing. They said they think AXA was delaying the claim because it suspects a third party is at fault for the claim. But I haven't seen anything to show that AXA was acting in an underhand way. It did

cause delays as I said, but I think this was simply an error rather than anything more sinister. It is entitled to investigate a claim – including understanding whether a third party made be at fault for the damage as this may have an impact on its liability. Any insurer will carry out reasonable investigations and it's not unfair that it does so. I am satisfied that, from October 2022 it had been actively looking to try to move the claim forward, but was unable to do so.

However, while I think AXA could and should have handled this claim better, I think £150, plus three months lost rent is fair compensation."

Mr E and Ms F raised the following in response to my provisional decision:

- They don't think AXA has made reasonable adjustments to help them manage the claim. In particular they highlighted that it said it would only pay for a loss assessor if it agreed to settle the claim.
- They said, without a loss assessor, they'll be unable to progress the claim themselves and they're worried AXA will close the claim.
- They said AXA only declined the use of a loss assessor as it said it isn't cost effective and it didn't want someone working against it on costs. They said costs are not a valid reason to deny someone a reasonable adjustment, nor is it fair to deny a reasonable adjustment prior to liability being confirmed.
- They said AXA didn't give them reasonable timeframes in which to respond. They said they felt badgered by AXA's agents and highlighted they were chased the night before a family funeral.
- They think AXA has simply bided its time, sat back, and continually delayed the claim. They think it collated all of the information and retrospectively come up with a story of previous non-incorporation/access.

AXA didn't respond to my provisional decision.

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.

Neither party has given any comments in response to my thoughts that AXA should pay three month's lost rent. I also don't think either party has given any material comment about both AXA, Mr E and Ms F's respective delays. So I'm not going to comment further on this.

Mr E and Ms F's primary focus in response to my provisional decision was in respect to that they don't think AXA has taken reasonable adjustments to support them. They think AXA should pay for a loss assessor to assist them handle the claim regardless of whether it settles the claim. AXA has said it will only pay a loss assessor's fees if it agrees to settle the claim.

Under the Equality Act 2010, businesses have to take reasonable steps to remove barriers disabled people face so that, as far as possible, they receive the same service as someone who is not disabled. This is known as the duty to make reasonable adjustments.

The important point to stress that AXA needed to take “reasonable steps”, not “all steps” to assist Mr E and Ms F. Loss assessors are expensive, so I can’t say it was unreasonable AXA said it wouldn’t pay for Mr E and Ms F to have an agent act on their behalf regardless of whether the claim is payable or not. I wouldn’t reasonably expect an insurer to pay an agent to pursue a claim on a consumer’s behalf if it has no liability in the first instance, unless it was clear the policyholder could not pursue the claim without this. I recognise Mr E and Ms F were finding the claim difficult to manage. But up to January 2023 – the timeframe I’m considering – I haven’t seen anything to show that their disability mean they *couldn’t* deal with the claim themselves.

I would expect AXA to work with Mr E and Ms F to assist them in moving the claim forward. And I think AXA is willing to do this. But I think there are more cost-effective ways of assisting Mr E and Ms F in the administration of the claim instead of appointing a loss assessor.

AXA has said it will consider paying the loss assessor’s fees if it agrees to settle the claim, but I would expect it to do this regardless.

From what I’ve seen, the first time Mr E and Ms F raised the need for reasonable adjustments was in March 2023. I do think AXA could have handled this request better in the first instance and it’s recognised that. Since then, I can see AXA has taken steps to provide reasonable adjustments – e.g. giving Mr E and Ms F additional time to respond, communicating in writing and writing in Arial 12 Font.

Mr E and Ms F have said they felt badgered and harassed by AXA and it’s agents. They also dispute AXA didn’t given them additional time to respond. But I can’t agree with that. As I set out in my provisional decision, I think long periods of time passed where Mr E and Ms F didn’t respond to AXA. AXA is entitled to chase responses and, in fact, I would expect it to do so.

As I said, this decision only relates to AXA’s handling of the claim between August 2022 and to January 2023. And I haven’t seen anything to support that AXA and its agent’s communication during that time was unprofessional and would surmount to badgering or harassment.

Ultimately, I set out in my provisional decision how I think AXA should put this complaint right. And I don’t think I’ve seen anything further to make me reach a different conclusion.

My final decision

For the reasons I’ve set out above, it’s my final decision that I uphold this complaint and require AXA Insurance UK Plc to do the following to put things right:

1. If it’s required to settle the claim, it should pay Mr E and Ms F three months loss of rent based on what they can show is their average rental income. If it thinks it’s required by HM Revenue & Customs to deduct income tax from that income, 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.
2. Pay £150 in compensation if it hasn’t already done so.

I don't intend to 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 24 April 2024.

Guy Mitchell

Ombudsman