

The complaint

Mrs D complains AXA Insurance UK Plc unfairly declined a claim she made on her home insurance policy for damage caused by an escape of water.

Mrs D has been represented during the claim and complaint, but for ease, I've referred to all actions and comments as being her own.

Any reference I make to AXA also includes its appointed agents, unless otherwise set out.

What happened

Mrs D found damp on a wall behind a sofa in her living room at the end of 2022. Knowing there was a shower unit on the other side of the living room wall, she contacted a plumber, and made a claim to AXA. AXA attended the property in March 2023, it declined the claim as it didn't think the damage was covered by the policy. In April 2023, AXA carried out another visit to the property. It still declined the claim; AXA said the damage had been caused due to a lack of appropriate sealant or grout and had happened gradually. It said this was not covered under the policy.

Mrs D complained to AXA, she was unhappy with the reports it had provided and she disputed AXA had carried out a gas pressure test as it had said.

AXA responded to the complaint in June 2023. It was satisfied its reports could be relied on but noted Mrs D was due to provide her own report from a plumber. It said once she'd done this its loss adjuster would review it.

Mrs D did provide further information from her plumber, but in August 2023, AXA said it wouldn't be covering the claim. It felt that the design of the shower had allowed water to ingress which had resulted in the damage.

Unsatisfied with AXA's handling of matters, Mrs D referred her complaint to the Financial Ombudsman Service for an independent review. She said AXA had claimed to have undertaken tests to confirm there was no leak, but they hadn't been done, and its communication had been poor. She also said it had given three different reasons for declining the claim and changed its reasons for the decline each time she contacted it.

Our Investigator thought AXA had unfairly declined the claim. She was satisfied an escape of water, as defined by the policy, had happened and wasn't persuaded AXA could fairly rely on any of the exclusions it had referred to. She thought AXA should reimburse Mrs D's reasonable costs incurred for the claim related damage, in line with the remaining terms of the policy. She also recommended AXA pay £100 compensation to apologise for unnecessary upset its poor communication had caused.

AXA didn't accept the outcome of our Investigator. It said both its contractor and Mrs D's plumber had agreed that the water had ingressed from faulty shower seals, which was a specific exclusion under the policy.

Our Investigator maintained her opinion that the claim had been declined unfairly. She didn't think it had been shown the water had leaked from failed grout or sealant; she was more persuaded the water had leaked from the shower unit valve.

As the matter hasn't been resolved, it has now been passed to me to decide.

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 this is an informal service, I'm not going to respond to every point or piece of evidence that has been provided by both parties. Instead, I've focussed on those that are key to the outcome I've reached. But I'd like to reassure both parties that I've read and considered all of the information provided.

When making a claim on an insurance policy, it is for the insured, so in this case Mrs D, to show she's suffered damage that is covered under the policy. If she can do so then the insurer will generally need to meet the claim, unless it can fairly rely on a valid exclusion to decline it.

Mrs D's policy covers her for escape of water. The policy defines that as "water escaping from any fixed water or heating installation or from any domestic appliance". So on the face of it, given the water was leaking from a fixed water installation – a shower – the damage is covered.

AXA seems to have mentioned several exclusions at different points in the claim to decline it. However in response to our Investigator's view, the one it seems to be relying on is loss or damage caused by "failure or lack of sealant and/or grout". So I've reviewed the reports from both AXA and Mrs D to determine what I consider the most likely cause of the damage, given the evidence, in order to assess whether AXA has fairly relied on this exclusion.

AXA provided reports by its contractor completed in March and April 2023. The reports say Mrs D told them the leak was coming from the shower valve, but it removed the tiles surrounding the valve to expose the pipework, and no leak was found. It said the shower tray was visibly sagging when stood on, and that had allowed it to pull away from the sealant, allowing water in. The conclusion of the report was that *"the water has penetrated behind the shower screen and leaking into the void, causing evident damage to walls and joist"*.

Mrs D's plumber – who replaced the shower unit in May 2023, disagrees with AXA that there was no leak from the shower unit. He had attended Mrs D's property due to a separate issue with low water pressure. He said when the water pressure had been low, water leaking from the shower valve was evident, but once the higher water pressure had been restored, he considered the force of the water had effectively pushed the valve together, so that only drips – which he didn't consider would have been seen from AXA's inspection – were leaking from the unit. He replaced part of Mrs D's shower unit to resolve the leak. So I don't think AXA is right in that this report supports its view that lack of sealant allowed the damage to occur. To me, Mrs D's plumber is saying there was a leak from the shower valve, which has allowed the water ingress and so caused the damage. I don't consider this to be the same as a leak caused by a lack or failed sealant.

When there are two conflicting reports, I have to decide what evidence I'm most persuaded by. Having considered everything, I'm more persuaded by the comments of Mrs D's plumber. I say this because AXA's report said its contractors had carried out a gas pressure test, but months later it admitted it hadn't carried out any such test, instead it had done a water pressure one. I accept mistakes can be made in reports, but it means I consider the report to be less persuasive than I otherwise might have done.

AXA's report is also lacking in detail as to how the water had been allowed to ingress into the floor, causing the damage reported. I also consider it plausible that water dripping from the shower valve behind the unit would then affect the floor joists, which would cause the sagging shower tray as AXA reported. I don't think AXA has shown that the shower tray sagging has been the cause of the damage. Based on everything I've seen I consider that

has happened as a result of the damage – i.e. water leaking behind the shower unit and affecting the floor joists, resulting in the drop in the shower tray.

It's unclear to me whether AXA has applied a gradual damage exclusion, but if it has, I don't consider it could fairly apply in this case. I consider the leak would have been concealed behind and under the shower unit, so not visible to Mrs D. I'm satisfied based on what I've seen that Mrs D reported the damage as soon as she was reasonably aware of it – when the damage had progressed to affect the visible area of wall behind the sofa. So I don't think it would be fair or reasonable for AXA to be able to rely on this to decline the claim.

Mrs D says she's already paid for the repairs to be carried out. So AXA will need to reimburse Mrs D what she paid for the claim related damage. Usually, when making a cash settlement requested by its customer, AXA would only be responsible for reimbursing what the cost would have been to it, had it done the work. However, in this case, as I'm satisfied that the claim was unfairly declined and Mrs D has reasonably had the repairs done herself, I don't consider it would be fair for AXA to apply any discount it might have received from its contractor carrying out the work. So AXA will need to assess Mrs D's costs and settle at the rate she paid, less any applicable policy excess.

At this stage, it isn't clear to me what works Mrs D carried out, but I would only expect AXA to cover the cost of repairing claim related damage. So work needed as a result of the leaking shower valve. If, after accepting this final decision, Mrs D is unhappy with how AXA settles her claim, that would need to be looked at separately, as a new complaint.

AXA will also need to pay £100 compensation to apologise for its poor communication with Mrs D, and the frustration caused by misquoting the tests carried out on her property.

My final decision

My final decision is that I uphold this complaint. I direct AXA UK Insurance Plc to

- Settle Mrs D's costs for repairs needed to the bathroom as a result of the escape of water, less any applicable policy excess. It must not apply any discount for its usual contractor rates.
- It will also need to add 8% simple interest per annum* onto the amount to be paid from the date Mrs D paid for the repairs, until the date of settlement.
- Pay Mrs D £100 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require AXA to take off tax from this interest. If asked, it must give Mrs D a certificate showing how much tax it's taken off.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 6 September 2024.

Michelle Henderson
Ombudsman