

## **The complaint**

Mrs W complains about the settlement offered by AXA Insurance UK Plc after she made a buildings insurance claim.

## **What happened**

Mrs W holds buildings insurance cover with AXA. On 25 November 2022 she contacted AXA after discovering a leak in her bathroom. She delayed progressing the claim initially for personal reasons, but arranged for a plumber to attend who found multiple leaks (to the central heating system, hand basin and toilet).

AXA's agent carried out an inspection on 2 March 2023, and thought the damage had happened over time. They thought some water may have been leaking through the failed bath sealant. They estimated the damage would cost £5,108.77 to repair, including VAT.

AXA decided to only cover the damage caused by the initial escape of water from the toilet. It thought Mrs W ought to have taken action in respect of the toilet leak sooner, and thought this would have prevented the other leaks. It offered her £731.92, minus the excess. Unhappy with this, Mrs W complained to AXA.

AXA maintained its decision to offer the reduced settlement, but it accepted there had been delays whilst it dealt with the claim. It paid Mrs W £300 compensation for this. Mrs W brought her complaint to the Financial Ombudsman Service.

Our investigator didn't recommend the complaint be upheld. He thought it had been reasonable for AXA to reduce the settlement in the way it had. The investigator thought that the compensation AXA had paid for its handling of the claim was fair.

I issued a provisional decision on 29 April 2024. Here's what I said:

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

*Mrs W told our investigator that she wants to provide more information in support of her claim, but I'm satisfied there is sufficient information available for me to make a provisional finding on the matter.*

*The policy covers certain insured losses, one of those being escape of water. It says that no cover is provided for water escaping from anything other than fixed indoor pipes, boilers, water tanks or toilets (i.e. these are covered).*

*The policy excludes damage caused by a lack or failure of sealant or grout.*

*The policy also excludes an insured's failure to fix a known issue, and gives an example of a visible leak that isn't fixed which causes further damage.*

*Mrs W says the radiator came off the wall and she called a plumber. I've read the plumber's*

report, and he said a lot of damage had been caused by the leaking central heating system and the leaking toilet, and the hand basin had caused issues with a hole in the floor. He also said the bath panel not fitting properly and a lack of bath screen had added to the problems.

AXA's agent then carried out their visit. They said the plumber's report was a little vague, and Mrs W's timeline seemed doubtful. They said the bathroom wasn't in the best of conditions and the damage appeared to have occurred over time. They thought there was likely to have been water leaking via the defective bath sealant. They said the actual cause of damage wasn't clear at the time of their visit, though the gap between the sealant and bath was suspected.

AXA then went back to its agent and asked if the damage had happened gradually. A different agent to the one who visited the property said they weren't instructed to attend until the end of January 2023 with an incident date of 15 November 2022, and that they didn't believe the property would have deteriorated to the level it had in that timeframe. They said from the photos it could be reasonable to assume that the toilet leak had been ongoing for a period of time, and the damage it had caused to the floor making it sink had put stress on the wash hand basin and radiator plumbing, causing the additional leaks.

The same agent later said that from the condition of the vinyl around the toilet, the leak had been a noticeable issue for a period of time - though they couldn't be sure if Mrs W knew the extent of the issue.

Based on this, AXA decided that Mrs W had been aware there was an ongoing issue with the toilet and had ignored it, and that this had led to the other leaks. However, I don't think that was a reasonable conclusion to reach, and I'll explain why.

It seems from the plumber's report that the main issue was the central heating system. This aligns with Mrs W's explanation. She says she didn't know there was a problem with the toilet until the plumber told her this.

I've looked at photos of the damage, and whilst it's clear the flooring has been affected by the leaks (I understand the subflooring was rotten too), it's also the case that AXA's agent didn't carry out an inspection until 2 March 2023. This was nearly four months after the leak was initially reported, so it's not unexpected that the damage was fairly extensive by that point.

There may well have been a slow leak from the toilet that had been ongoing for some time. However, I don't think AXA can say it's most likely that Mrs W was aware of this before she reported the leak in November 2022. Mrs W denies being aware of a leak from the toilet before this date, and I note she would have had no reason to ignore a leak, as this would have been covered under her policy.

As I understand it, Mrs W had noticed some issues with the bath separating from the sealant a few months before the leaks were discovered. However, that's not unusual as bath sealant does deteriorate over time, so I don't think this would have prompted her to realise there might be a leak elsewhere in the bathroom.

So in all the circumstances, I don't think AXA has reasonably shown that it's more likely than not that Mrs W was aware there was a leak from her toilet, and that she ignored this. I therefore don't think it would be fair for AXA to limit the settlement in the way it has, and so I intend to require AXA to settle the claim by paying Mrs W the £5,108.77 settlement (less the excess if this hasn't been paid). I don't know if AXA paid Mrs W the £731.92 less the excess already, but if it has, then it can deduct this from the final settlement.

*AXA said the leak from the bath wouldn't be covered because this was due to the failed sealant. However, we don't know that there was any leak from the bath - the plumber only said the bath panel not fitting properly and a lack of bath screen had added to the problems. Even if we did know there was a leak from the bath, I don't think you could separate out what damage had been caused by this, rather than the other leaks. AXA's agent acknowledged it was difficult to separate the issues given the extent of the damage before they attended. So I don't intend to allow AXA to make a deduction from the settlement for this.*

*There's been some discussion between the parties over whether the leaks are separate claims or linked. AXA concluded that the toilet leak had led to the hand basin and radiator leaks, so it seems these are all linked. And as I've said, there's no evidence that there was a leak from the bath. So I find that AXA should treat this as one claim for the purposes of applying the excess.*

*Mrs W told us at the beginning of April 2024 that she has a company doing her bathroom repairs. I don't know if she's paid them for that work yet, but if she has, then once she's provided evidence of this, AXA should pay interest on the settlement from the date she paid the invoice/s.*

*Mrs W has explained how she's been impacted by the matter. She doesn't have other washing facilities in the house, and therefore she and her young children have had to use a neighbour's shower to wash. She's also had to put up with mould in the property because of the leaks. Although AXA accepted that its handling of the claim had been poor in terms of delays in responding to Mrs W (which I would also agree with), I intend to require it to increase its compensation payment of £300 to £750 to recognise the impact its handling of the claim has had on Mrs W and her children.'*

I asked both parties for any comments they wanted to make before I made a final decision.

AXA didn't respond by the deadline we gave.

Mrs W responded to confirm her acceptance of my provisional decision. She provided us with a copy of an invoice dated 30 April 2024 for £5,150 for the bathroom repairs, as well as photos showing the repairs have been done. She has questioned how much the interest would be.

### **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.

Mrs W has provided us with a copy of the invoice for the bathroom repairs, but the invoice says that it hasn't been paid. If that's the case, then no interest would need to be paid by AXA on the redress amount. However, if Mrs W has since paid the invoice, then she'll need to provide evidence of this to AXA so that it can calculate how much interest is payable. This would be calculated from the date she paid the invoice to the date of settlement.

My provisional findings were that AXA should pay Mrs W £5,108.77, as this was the amount it had estimated the repair would cost. Since issuing my provisional decision, the repair has now been completed and cost £5,150. This is very close to AXA's estimation of the repair cost, but I think it would be fair for AXA to pay the higher figure of £5,150 so that Mrs W isn't out of pocket.

## **My final decision**

My final decision is that I uphold this complaint. I require AXA Insurance UK Plc to do the following:

- Pay Mrs W £5,150 (less any amount already paid towards the claim). It can deduct the excess if it hasn't already done so. If Mrs W has already paid the invoice, interest should be added at the rate of 8% simple per annum from the date she paid the invoice to the date of settlement.\*
- Pay Mrs W an additional £450 compensation.\*\*

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

\*\*AXA must pay the compensation within 28 days of the date on which we tell it Mrs W accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 11 June 2024.

Chantelle Hurn-Ryan  
**Ombudsman**