

The complaint

Mr S complains about how AXA Insurance UK Plc (AXA) dealt with a claim under his home insurance policy for damage to his holiday home from a leak.

AXA use agents to administer the policy and to assess claims. References to AXA include these agents.

What happened

In June 2023 Mr S discovered there had been a leak at his holiday home. Mr S appointed a loss adjuster (CS) and he contacted AXA the following month to tell them about the leak and lodge a claim. AXA appointed a loss adjuster (CH) to assess and manage the claim. CH sent a surveyor to inspect the property in August 2023 and they concluded the leak was the result of the failure of a pipe feeding into the water system in the top of the property, causing water to escape and damage the whole property.

Following this initial report and one from CH indicating the cause to be failure of a Pressure Regulation Valve (PRV), AXA appointed forensic investigators (JH) to further investigate the circumstances of the leak and PVR failure. JH inspected the property in September 2023. In their report, they concluded the leak was due to PRV failure on the second floor. The PRV was removed. It was concluded the PRV had separated from the valve body, due to the breakage of a threaded connector, resulting in the leak at mains pressure. JH recommended a laboratory examination of the PRV to determine the specific fault that caused the leak. A further investigation was then engaged with a forensic firm (EF).

The PRV was examined in November 2023, with representatives present including the installer, manufacturer and AXA. It was concluded the leak occurred due to failure of the plastic body of the PRV, in two separate fracture areas. It was also concluded the leak was caused by the design and selection of material for the PRV body.

Unhappy at the time taken assessing the claim, Mr S complained to AXA. In their first final response issued in November 2023, AXA referred to CH's conclusion the leak was due to failure of the PRV. AXA noted Mr S had made a claim against the supplier/fitter of the PRV. Due to these factors, AXA said (at the time of their final response) their underwriters had requested forensic examination of the PRV, and results were awaited before they would decide how to proceed (given the policy didn't cover defective equipment or faulty workmanship). However, AXA accepted there had been a delay in the initial stages of the claim which meant Mr S had to chase progress. In light of this and the inconvenience caused to Mr S, AXA awarded £200 compensation.

Unhappy at further delay, Mr S raised a second complaint. In a second final response issued in January 2024, AXA referred to the joint forensic examination of the PRV towards the end of November 2023 and the subsequent report which was referred to underwriters. AXA acknowledged the further delay since the forensic examination and that the claim handling lacked proactivity and could have been more effective. AXA added that the policy exclusion regarding faulty design and workmanship was a general exclusion applying to all sections of the policy, including escape of water (and would include faulty parts). Upholding the complaint, AXA awarded a further £100 compensation, making a total of £300.

Mr S remained unhappy at the delay in assessing his claim and made a further complaint. In their third final response issued at the end of January 2024, AXA didn't uphold the complaint, saying their underwriters considered the forensic report and declined the claim based on the report findings just after their second final response, that the leak was due to a faulty part (PRV) so wouldn't be covered because of the exclusion for faulty design and workmanship, which they considered included a faulty part. They added Mr S was told of this decision shortly after. So, AXA concluded there hadn't been any further delay from those considered in their second final response.

Mr S then complained to this Service. He was unhappy at the delay in assessing his claim, as he was still awaiting a decision some seven months after the leak. The delay had caused him significant distress. He'd regularly stayed at the holiday property during the year, but the damage meant it was uninhabitable/ The loss of use significantly affected his mental health (and of his wife). It had also been detrimental to his family, who'd lost use of the property. He thought the delays inexcusable and felt this constituted age discrimination as AXA had shown no regard for his circumstances and the impact on him of what had happened. He wanted a substantial financial package to compensate for the loss he'd suffered and delays.

Shortly after Mr S made his complaint, AXA wrote to him to confirm their decline of the claim. They referred to the examinations of the fitments and concluded the leak a result of defective design of the PRV. AXA referred to the policy terms and conditions which contained the exclusion for poor design or installation. AXA attributed the damage from the leak to poor design of the PRV, so the claim wouldn't be covered due to the exclusion.

Our investigator considered Mr S's complaint but didn't uphold it, concluding AXA didn't need to take any action. He thought the claim could have been progressed more quickly but noted Mr S had raised three complaints and AXA had awarded £300 in compensation. He thought this was in line with the guidelines on awards for distress and inconvenience published by this Service. On decline of the claim, the investigator didn't agree with CS that AXA misapplied the exclusion for faulty design and workmanship to decline the claim. When applying an exclusion to decline a claim, the onus was on the insurer to show it was fair to apply it and the investigator thought AXA had done so in the circumstances of the case, given the forensic report.

On Mr S's view he had been discriminated against because of his age, from the evidence and information available the investigator didn't think this was the case. He didn't consider the investigations undertaken by AXA were excessive or unnecessary and while there were delays, there wasn't evidence to indicate these were made worse by Mr S's age.

Mr S disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. He didn't think £300 compensation for eight months of delay was sufficient, including delays in obtaining a forensic report. He thought AXA had shown little concern about what he considered a distressing course of events and the impact on him (and his wife). He also didn't think the exclusion was fit for purpose in a home insurance policy as it was hidden and shouldn't be interpreted to include a faulty part. 'Design' should cover the function of something, not its material (as was the case with the PRV). Declining the claim had – wrongly – exposed him to exceptional hardship.

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'd want to assure Mr S I've carefully considered everything he's told us when bringing his complaint, including the impact of what has happened on him and his wife. I also recognise the difficult situation he's told us about regarding his wife's health. I've borne this in mind when deciding, as is my role here, whether AXA have acted fairly towards Mr S.

The two main elements of Mr S's complaint are, first, the delay in AXA assessing his claim. Mr S says the eight months it took for AXA to decline his claim is excessive and caused him significant stress and inconvenience. The second element is AXA declining his claim on the grounds of a policy exclusion for poor design or installation. Mr S says it was unfair to use the exclusion as he didn't think it was applied correctly to the circumstances of his case and it was hidden in the policy terms and conditions. AXA say they applied the exclusion fairly based on the forensic examination of the PRV and its failure causing the leak.

In considering both issues, I've carefully looked at all the evidence and information provided both by Mr S and by AXA, including from the various experts. In doing so, I should note that my role isn't to assess the merits or otherwise of Mr S's claim – it's to decide whether AXA have acted fairly towards Mr S. Having done so, I've concluded they acted fairly and reasonably. I know Mr S will be disappointed by this conclusion, so I'll set out the reasons for reaching this conclusion.

In looking at the issues, I've also considered whether – as Mr S believes – he may have been discriminated against because of his age.

I've first considered whether AXA acted fairly and reasonably in declining the claim. In their letter declining the claim, AXA refer to the following policy exclusion under the section headed *General Limitations and Exclusions*:

"...our policies don't cover gradual damage or damage caused by neglect, lack of maintenance, poor design or poor quality installation."

Similar wording is contained in the *General Exclusions* section of the policy, which includes the following:

"...damage due to faulty design or workmanship..."

Faulty design or workmanship and contractor fault

Damage due to faulty design or workmanship, or the activities of contractors (including where they are responsible for the faulty design or workmanship) isn't covered."

I've then considered the evidence and information on the cause of the leak, specifically that relating to the PRV and its failure, which led to the leak.

Looking at the series of reports, in chronological order, the initial report from CH's surveyor in August 2023 states:

"...Pipe feeding into the water system in the top of the property has failed, causing water to escape to the whole property – damage to kitchen, bedroom and living area, kitchen ceiling has come down – floorboards destroyed...Contents have been damaged too..."

In their first report, later in August 2023, CH conclude:

“The cause of loss on this occasion appears to have been attributed to a failed plastic valve regulating the flow of water to the domestic hot water cylinder on the second floor of the property.”

In their report in September 2023, JH state:

“The pressure relief device had separated from the valve body, which resulted in the escape of water at mains pressure.

The threaded connector, which secured the pressure relief device to the incident valve’s body, had broken in several places....

Parts of the threaded structure had broken, allowing the pressure relief device to separate from the body of the incident valve...

Further cracking was apparent around the base of the threaded connector.”

The escape of water was caused by the failure of a threaded connector, which connected the pressure relief device to the body of the incident valve.”

JH conclude:

“At present, I have been unable to discount an installation problem or a manufacturing defect as the cause of the failure of the threaded connector on the incident valve...

I recommend that a laboratory examination of the incident valve is carried out as this may assist in determining the specific fault mechanism which resulted in the escape of water. I also recommend that if such an examination takes place, other interested parties are given the opportunity to attend.”

The examination of the PRV subsequently took place, with interested parties present, at the end of November 2023. EF’s report, dated December 2023, concludes the escape of water was caused by a failure of the plastic PRV body. It states:

“...I have determined that the water leakage is likely due to the design and material selection for the PRV body. The PRV body strength and thickness appear to be inadequate for enduring the forces applied during assembly and testing. Specifically, it seems unable to withstand the impact of the testing mechanism and the hoop stress caused by tightening the mechanism onto the body. This likely led to the formation of tiny cracks (micro-cracking) during the assembly and testing phases. Eventually, these small cracks progressed to a major failure that occurred on...June 2023.”

I’ve seen nothing to contradict the conclusion that the PRV valve failure was the cause of the leak and the consequent damage to the property. Nor that there is any challenge to, or disagreement over, the conclusions in EF’s forensic report (given that interested parties were present at the examination).

That being the case, the question is then whether the failure of the PRV valve can reasonably be held to fall within the policy exclusion wordings set out above. Looking at the wording and the conclusions of the reports, particularly EF’s report, I’ve conclude it does. EF refers to the *design* (my emphasis) and material of the PRV that led to its failure. From the evidence and information I’ve seen, the PRV was installed in late 2022, meaning it failed less than a year later.

From AXA's case notes I can see notes of a call to AXA from Mr S at the beginning of January 2024, in which the call handler advised Mr S AXA would be declining the claim (confirmed in writing the following month). The notes indicate Mr S telling the call handler this was what he expected (and had indicated to CS shortly after the incident). If the note is accurate, it indicates the decline of the claim, while coming some time after the claim was lodged, was not unexpected on the part of Mr S.

As I've said, it isn't my role to assess claims, but to decide whether AXA acted fairly and reasonably towards Mr S in reaching their decision to apply the exclusion for faulty design or workmanship to decline the claim. Based on what I've seen and the conclusions I've reached, I think they did.

Moving onto the second aspect of the complaint, the delays in AXA assessing the claim and reaching their decision to decline it, I've looked at the sequence of events set out above. From the initial inspection by CH's surveyor, there was a month to JH's inspection. Given the nature of what had happened with the failure of the PRV (coming less than a year after its installation) then I don't think their recommendation of a forensic examination was unreasonable. And given the number of interested parties, including the installer and manufacturer of the PRV, as well as Mr S (CS) and AXA, I can understand why it thought necessary to have interested parties attend the forensic examination.

It took over two months from JH's inspection to arrange the forensic examination, and then a further three weeks for EF's report to be provided to AXA. And then a further three weeks (over the Christmas and New Year period) for AXA (their underwriters) to tell Mr S of their decision to decline the claim.

AXA acknowledge in the first and second final responses that there were delays and they would have impacted on Mr S. I agree there were delays and this would have caused distress and inconvenience to Mr S – although I don't think they would have affected the decision to decline the claim.

I've considered the delays in the context of what Mr S has told us about the impact of the delays on him, alongside the published guidelines from this Service on awards for distress and inconvenience. Taking all the circumstances of the case into account, I've concluded £300 for distress and inconvenience is fair and reasonable, so I won't be asking AXA to make a further award.

I've also considered Mr S's point that what happened may be considered to be discrimination against him on the grounds of his age. This Service isn't able to make a finding of discrimination under the Equality Act 2010 (only a court can decide whether there has been a breach of the Act). However, when looking at the case and the decision to decline Mr S's claim and the delays in assessing the claim, I haven't seen anything to indicate or suggest he was treated any differently than would any other customer in the same set of circumstances.

I've also considered whether what happened affected Mr S more significantly because of his age. Looking at the circumstances of the case, I'm not persuaded this is the case. I recognise the loss of use of his holiday home would have been distressing, but that would have been the case for any other consumer who would similarly have lost use of a holiday home. And the delays in assessing the claim didn't have any bearing on the outcome, AXA declining the claim, which I've concluded was fair and reasonable.

Taking all these points together, I've concluded AXA haven't acted unfairly or unreasonably towards Mr S, so I won't be asking them to take any further action.

My final decision

For the reasons set out above, it's my final decision not to uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 September 2024.

Paul King
Ombudsman