

The complaint

Mrs G complained that AXA Insurance UK Plc (“AXA”) unfairly declined her claim for damage caused by an escape of water, under her home insurance policy. Mrs G was represented by Mr S during the claim.

What happened

In early June 2023, Mr S informed AXA that Mrs G’s property was unoccupied and had been for a couple of months.

In early July 2023, Mr S made a claim when he discovered significant damage in the property following an escape of water. AXA decided to decline the claim. AXA applied endorsements to the policy for it been unoccupied, which excluded cover for claims relating to escape of water.

AXA said *“I understand that the property has been unoccupied since April 2023 however we were made aware in June 2023. If we had known in April that the property had been unoccupied since this date the limitation to clause endorsement would have been applied at this time”*.

Mr S thinks this is unfair. He thinks the claim should be considered. He thinks the claim should be considered under the original policy before any endorsements were applied for the new policy (i.e., in the renewal). However due to her circumstances, Mrs G’s damaged property has been sold. Mr S said the damage caused by the leak led to the property been sold for a much lower price than it would normally be. So, Mr S has asked that AXA recompense Mrs G for this loss.

Our investigator decided to uphold the complaint. He thinks the evidence points to the leak commencing a week or so before the end of June 2023 and he thinks it’s clear that AXA communicated that the endorsements wouldn’t be applied to the policy until it renewed at the end of June 2023. So, he asked AXA to re-consider the claim, but in the absence of been able to re-consider the damage, he thought it should pay some of the shortfall Mrs G received on the sale of her home. AXA disagreed, so the case has been referred to an ombudsman.

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 started by clarifying when the leak occurred. Mr S told our service he visited the property on 26 June and didn’t see evidence of a leak. But, on the 2 July he observed significant damage. He commissioned a plumber to stop the leak. The plumber provided a report.

The plumber’s report explains some of the background to the leak and the repair he did. He goes on to say *“due to the nature of it being a smaller leak in the loft space, leaking onto the*

base of the tank stand and access walkway, the water has been able to puddle and spread to be absorbed by the timbers and plasterboard of the nearby ceilings and walls.

The water was only dripping slowly through the bedroom ceiling, yet the carpets not only in the bedroom but also the hallway were totally saturated and in fact water has affected the kitchen wooden flooring some 4/5 metres away. Mould was evident in places on the bedroom carpet - and in view of the amount of damage caused by a slow water drip, it's my considered opinion that the leak would have started about/more than a week before my visit [on 2 July 2023]."

The plumber's report is the only expert view I have of what caused the leak. The report is well written and uses facts and details to describe what the plumber observed. I find it persuasive. I don't have any other information which contradicts the report. Therefore, I think it's fair to conclude the leak occurred before the point of when the policy renewed.

AXA have said it applied a policy endorsement to the policy once it knew the property was empty. AXA said had it known about the property been vacant it would've applied the endorsement sooner.

However, Mr S said he wasn't aware of an endorsement been applied before the renewal of the policy [at the end of June 2023]. This is important, as it's AXA's responsibility to inform Mrs G / Mr S that the policy conditions have changed. I've listened to the call when Mr S informed AXA that the property was vacant. I didn't hear a conversation during that call where AXA clearly set out immediate or retrospective changes to the policy.

I can see Mr S was sent renewal documents which included endorsements to the policy. However, I haven't seen any communications highlighting to Mr S that Mrs G's original policy had changed. Therefore, I think it's reasonable for Mr S to assume the original policy would continue until the renewed policy came into force. The renewed policy also included changes that Mr S had requested, such as removing contents cover.

I've also read what AXA said to our service in response to our investigator's view. It said, "*as the date of the claim was 2nd July 2023 the customer was aware that the endorsement was present from the renewal date 29th June 2023*". So, I think it's clear that AXA are comfortable the endorsement wasn't communicated and only came into force from the date of the renewal.

It's normal for the incident date been the key date for a claim as this is when the actual event happened which the insurance cover is meant to protect. AXA have indicated the claim date of the 2nd July. This is correct. However, I think from the plumber's report, it's clear the date of the actual incident was at least 7 days before this, maybe more. So, I don't think it's reasonable AXA used the renewed policy to assess the claim against. I think it should've used the original policy which didn't have any endorsements and covered damage caused by escape of water. Therefore, I uphold this complaint.

As the house in question has now been sold, it's not possible for AXA to further investigate the damage from the incident. Instead, it needs to consider the loss Mr S has claimed on behalf of Mrs G, which is the loss in sale proceeds when the house was sold in a damaged state. Therefore, I require AXA to re-consider the claim considering this loss and settle a reasonable contribution to any shortfall in the house sale proceeds which was caused by the damage, whilst bearing in mind the remaining terms and conditions of the policy. AXA may need to liaise with Mr S to seek further information about the loss and the house sale.

My final decision

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

- Re-consider the claim taking account of this loss in house proceeds and settle a reasonable contribution to any shortfall in sale proceeds which was caused by the damage which was covered by the policy, whilst bearing in mind the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 29 August 2024.

Pete Averill
Ombudsman