

The complaint

Mr P complains about AXA XL Insurance Company UK Limited response to his building warranty claim.

XL's been represented by an agent for the claim. For simplicity I've generally referred to the agent's actions as being XL's own.

What happened

Mr P holds an XL new home building warranty. In November 2023 he claimed against the policy for various defects on his property – including a problem with the property's drainage system. As the claim was made within the 'defects period' of the policy, the developer (D) was required to address any defects. In February 2024, as D didn't agree to remedy every issue, XL proposed a mediation process.

Soon after Mr P complained to XL. He expressed dissatisfaction that XL wasn't taking action to address D's failure to install an adequate drainage system when the property was built. He said, because of health conditions, he required the mediation process to be stress free with no direct contact from D. And he was disappointed XL hadn't acknowledged his health conditions.

In March 2024 XL explained to Mr P that D had now agreed to address all the issues it had raised. It had also agreed to have its work independently verified. It asked Mr P to agree to direct contact with D to organise resolution of the outstanding matters.

In April 2024 XL issued a complaint response. It said Mr P had refused its request that, to make progress, he liaise directly with D. Instead he had requested XL remain involved. It said the issue had been referred to its loss adjuster for review, the result of which he would be informed of.

In June 2024 Mr P unsatisfied with XL's response referred his complaint to the Financial Ombudsman Service. He said D hadn't taken the agreed actions or reimbursed any costs. He said he had incurred significant costs and distress – along with a negative impact on his health. To resolve his complaint, as he doesn't trust D, he would like XL to make a monetary settlement for the defects.

Our Investigator reviewed XL's events up until the date of April 2024 complaint response. She didn't agree XL was liable for any damage at this point as D had responded to Mr P's defect notification. She said D had to be allowed to put things right or mediation to take place before XL became liable for the damage.

As Mr P didn't accept that outcome the complaint was passed to me to decide. He said none of work agreed by D had been actioned. XL had omitted numerous items from the list of required actions it sent to it. He said the Investigator's assessment had failed to consider the distress and impact on his health resulting from XL's actions.

For reasons of practicality I've, in line with the Investigator, drawn a line at the April 2024 complaint response. So I've considered events up until that date. If Mr P is unhappy with XL's actions after that date, he could consider raising a separate complaint.

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 here to every point or piece of evidence Mr P and XL have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

Mr P would like XL, rather than D, to cash settle the cost of rectifying the various defects. XL didn't agree to do that. Having considered everything I can't say that decision wasn't made in line with the terms of his policy or was unfair or unreasonable.

During the first two years, the 'defects period', Mr P's cover requires D to, when notified of a defect, repair, replace or rectify it as soon as practicably possible.

The policy requires XL to cover Mr P, during the defects period, against the cost of repairing, replacing or rectifying any defect which D is responsible for and which is approved and notified to it during, and within six months of the expiry of, the defects period.

However, the policy terms state XL won't be liable unless:

- D refused to respond to Mr P's defect notification and/or
- D withheld consent to resolve the dispute by using the mediation service and/or
- D accepted the mediation decision but failed to carry out the works or repairs stated in the mediator's report within the time frame given and/or
- D hasn't undertaken repairs or works determined by a binding legal process and/or
- D has failed to effect repairs, replacement or rectification due to its insolvency.

None of those apply here. Instead D agreed to comply with the list of defects and for independent verification of its work. So under the policy terms XL hadn't become liable. I accept Mr P doesn't trust D. But that doesn't mean XL should be required to accept liability for the defects. It's reasonable to allow D time and opportunity to resolve matters.

Mr P raised concern that reimbursement of his costs hadn't been raised with D. XL explained it had, after D agreed to resolve matters without mediation, asked it to reimburse the costs. So I'm satisfied XL had taken reasonable steps to progress that matter with D.

I've considered Mr P's comments about his health, but overall I'm satisfied that in the period I've considered XL provided a reasonable service. Its contact notes show it progressed the matter with D in reasonable time. It generally responded to Mr P's contact and concerns in a reasonable way.

My final decision

For the reasons given above, I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 January 2025.

Daniel Martin
Ombudsman