

## **The complaint**

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

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

## **What happened**

In September 2023 there was an escape of water at Mr C's property, causing damage to a bathroom. Mr C contacted AXA to tell them about the damage and lodge a claim. AXA appointed a firm (B) to manage the claim and assess the damage. Initially, following an inspection by B, AXA declined to accept the claim, as they thought the property was suffering from wet rot and the damage had been ongoing (which were excluded from cover under the policy).

Mr C complained to AXA about progress with the claim and the initial decision to decline it. But following a review by their claims department, AXA agreed to cover it. Because of the change of decision, the claim was put on hold while AXA sought to validate it. Mr C made a further complaint about progress and AXA awarded £75 compensation. Mr C says he was told by AXA to engage his own contractors to carry out the repair and reinstatement work.

Following validation and assessment of the damage, AXA offered Mr C a cash settlement for the claim (£6,711.07). However, having appointed his own contractors to carry out the repair and reinstatement work, Mr C was unhappy the work was costing more, and he thought AXA should cover the increased cost. So, he made a further complaint to AXA (November 2023). AXA subsequently increased their cash settlement offer to £7,303.28, net of the policy excess of £750. This was based on B's scope of works, plus a 20% uplift on what would be AXA's normal rates to allow for market rates likely to be higher where a policyholder engaged their own contractors.

AXA weren't able to respond to Mr C's complaint within the eight week period allowed for a business to consider a complaint and issue a final response, so they informed him of his referral rights to this Service.

Mr C then complained to this Service. He was unhappy at AXA changing their position on whether to accept his claim, before saying they would only cover 55% of the cost he'd incurred in repairing the damage. He wanted AXA to cover the full cost of repairs.

When providing their business file to this Service so we could consider the complaint, AXA noted they'd paid a total of £8,037.24 (up to January 2024) comprising £7,303.28 for the reinstatement work; £434 for alternative accommodation and disturbance allowance; and £300 for further invoices. AXA also said that review of the settlement and costs incurred by

Mr C by B and their surveyor concluded costs claimed by Mr C included an element of betterment<sup>1</sup>, which the policy would not cover.

Our investigator considered Mr C's complaint and initially upheld it, concluding AXA hadn't acted fairly. While Mr C's claim had initially been declined based on B's report, AXA then changed the decision, but at that point Mr C's contractors had already started work before the change of decision. The investigator thought AXA were entitled to review the estimates from Mr C's contractor alongside the scope of works prepared by B. But because Mr C had engaged contractors after the initial decline of the claim, it was unfair for AXA to base their settlement on the rates they could receive from one of their appointed contractors. To put things right, the investigator concluded AXA should revise their cash settlement offer for the costs incurred by Mr C for the scope of works (plus interest on additional amount of settlement). The investigator also thought the settlement should reflect the need for replacement sanitaryware damaged on removal. AXA should also review information from Mr C about further damage discovered after B's inspection.

Because the investigator thought AXA hadn't acted fairly, she thought AXA should also pay Mr C £150 compensation for distress and inconvenience.

AXA responded to say they reviewed the costs provided by Mr C and they'd offered settlement on a like for like basis, as there was evidence of betterment in Mr C's costs. The ensuite bathroom had been stripped out before B's inspection, prejudicing AXA's position by work commencing before the visit, impacting their ability to validate the claim. They agreed to cover the claim (having initially declined it) on the basis of what they could validate. AXA would consider any further information from Mr C on costs and any additional reinstatement work that might be required but would still need to validate any costs he'd incurred before agreeing settlement. They'd also reviewed items of sanitaryware removed and couldn't evidence they couldn't be reused. But they agreed £150 compensation would be fair.

Our investigator considered AXA's response and issued a revised view in which she recommended AXA review any further information from Mr C about additional damage and reflect this in the scope of work (and consequent settlement).

Mr C provided further evidence about the damage, including photographs of the main bathroom and joists. He said AXA had told him to start removing the main bathroom after B inspected the property (at the time of the visit, only the bath panel had been removed from the main bathroom).

As there was disagreement between AXA and Mr C, the complaint has been passed to me to review.

### **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.

My role here is to decide whether AXA have acted fairly towards Mr C.

The main element of Mr C's complaint is that AXA haven't made a fair and reasonable offer to settle the claim, having first declined it then changing their position to accept it. He says their settlement offer only covers some 55% of the costs he's incurred in repairing the damage to his property. He wants AXA to cover the full cost he's incurred.

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<sup>1</sup> 'Betterment' is where settlement of a claim (repair of damage) puts a policyholder in a better position than they were in before the incident causing damage. A general principle of insurance is that policies are intended to put a policyholder in the same position they were in before the incident – not a better one.

In considering the issue, I've carefully looked at all the evidence and information provided both by Mr C and by AXA, including the report from B and opinion of AXA's surveyor, as well as the evidence of costs incurred by Mr C and the photographs he's provided of the damage at the property. In doing so, I should note that my role isn't to assess the merits or otherwise of Mr C's claim, nor to determine how the claim should be settled (including any cash settlement figure). It's to decide whether AXA have acted fairly towards Mr C. Having done so, I've concluded they haven't acted fairly and reasonably in all respects. I'll set out the reasons for reaching this conclusion.

On the initial decline of the claim and then AXA's subsequent decision to accept the claim, from AXA's claim notes the initial decline was due to B's inspection, which concluded there was extensive wet rot to floor joists and the stud partition between the main bathroom and the ensuite bathroom, tiles coming off the wall in the bathroom. B thought long term leakage had caused the wet rot. However, AXA concluded Mr C wouldn't have been aware of the issues and photographs of the stripped out material from the bathrooms didn't show signs of the mould on the walls.

Looking at B's report, following their inspection the day after Mr C notified AXA of the leak, it states the following about the ensuite bathroom:

*"Upon inspection the policyholder advised there was mould growth to the area noticed last weekend. Plumber attended, they have stripped wall plaster off three walls. Removed the bathroom suite, removed floor tiles and insulation..."*

*Part of the flooring has disintegrated due to the saturation. AA joist has decayed due to wet rot...*

*There has been an escape of water, but this has been happening over a period of time to cause the extensive rot. The joists have collapsed.*

*...the room has been stripped prior to our arrival...*

*The sanitary ware was damaged before he took this off the wall."*

And the following about the main bathroom:

*"...There is extensive water damage to the chipboard flooring and plasterboard. Water has been getting in behind the tiles...the bottom row of tiles is coming away..."*

While B didn't have delegated authority to accept or decline the claim, the report recommends decline of the claim due to lack of mitigation.

As B didn't have the delegated authority to decline the claim and AXA subsequently reviewed the claim and B's report, accepting the claim a few days later, at the beginning of October 2023. However, at that point, reinstatement work had already begun through Mr C's contractor (I've seen invoices from the contractor dated in the period 27 September to 17 October 2023).

While I can understand Mr C wanting to begin the reinstatement work quickly (particularly if he thought the claim was declined) it did mean some stripping out of the affected areas had already taken place at the time of B's inspection (the day after Mr C notified AXA of the damage). In responding to our investigator's initial and second view, there was disagreement between Mr C and AXA about the extent of the stripping out at the point of B's inspection.

I've looked closely at the photographs provided by Mr C and those contained in B's report. The latter show clearly the ensuite bathroom had been stripped out comprehensively (the report included photographs of the removed sanitaryware outside the property). To this extent, it would have compromised B's ability to assess the damage before the strip out (which AXA say would have prejudiced their position). I think that's reasonable.

However, the main bathroom appears to be substantially intact, except for removal of the bath panel. From what Mr C has said, that would have been stripped out subsequently (he says AXA told him to do this).

AXA say that Mr C's contractor having started to carry out work meant they wouldn't have been able to appoint their own contractor to carry out the reinstatement work. So, they would have to offer a cash settlement, based on a costed scope of works (or validated and agreed costs from Mr C's contractor).

The policy terms and conditions give AXA the choice of how to settle a claim. *Part 3 – Claims* in the policy terms and conditions, under a heading *How your insurer will settle claims* and a sub-heading *Buildings, contents and personal possession claims* states:

*"Your insurer may repair, reinstate or replace your damaged property. If you're insurer can't replace or repair your property they may pay for the loss or damage in cash or in a cash alternative (including vouchers and/or store cards).*

*Where your insurer can offer repair or replacement through a preferred supplier, but then agree to pay a cash or cash alternative settlement, then payment will not be more than the amount they would have paid their preferred supplier."*

Looking at the subsequent scope of work prepared by AXA, AXA's initial offer in October 2023 was £6,711.07, less the policy excess of £750). This compares to the estimate from Mr C's contractor of £14,872.04. The estimate was broken down (with AXA's own initial estimate for comparison) as follows:

• ensuite bathroom	£ 5,999.99	(£3,786.38)
• main bathroom	£ 7,819.85	(£2,144.54)
• bedroom/flooring	£ 1,052.20	(£ 780.15)
• Total	£14,872.04	(£6,711.07)

Looking at AXA's claim notes, the settlement offered in December 2023 was £8,053.28 (based on the scope of works and a 20% uplift on what would be AXA's normal rates to allow for market rates likely to be higher where a policyholder engages their own contractors). Applying the policy excess of £750 meant a net settlement of £7,303.28.

While AXA could have applied the terms and conditions to base their cash settlement on their contractor rates (as the initial settlement was based) I think the 20% uplift to arrive at the subsequent revised settlement was reasonable, as they weren't in a position to appoint their own contractors.

From email exchanges between Mr C and AXA I can also see AXA requested breakdown of the contractor estimates. This isn't unusual or unreasonable, as AXA would need to assess the basis for the estimate, the precise work covered by the quote etc.

AXA also agree they would review any further information and evidence about the costs incurred by Mr C in the reinstatement work. I think this is reasonable, particularly in respect of the main bathroom where the difference between the contractor estimate and AXA's

settlement offer is the most significant. This would also allow for the fact the main bathroom was largely intact at the time of B's visit and, from what I've seen of AXA's scope of works, where the quantum of work was less than that for the ensuite (for example, tiling required). I've also noted B's report includes a comment about the possibility of unseen damage in the main bathroom, which is understandable as it was largely intact).

AXA also say a significant amount of betterment was included in the estimates provided by Mr C's contractor. I accept AXA have the right to validate a claim, including where they think betterment may be involved, and I would expect this to also form part of any review of further information provided by Mr C.

I've also reviewed AXA's handling of the claim. While their initial response was timely (B's inspection was the day after Mr C notified them about the leak and the damage) there would have been a loss of expectation on Mr C's part from the claim being initially declined and then accepted. I also think there were some service failings and delays, which AXA acknowledge they would have recognised had they been able to issue a final response to Mr C's complaint within the eight week period businesses have to respond to consumer complaints. Having regard to the published guidelines on awards for distress and inconvenience from this Service and the circumstances of the case, I think £150 compensation is fair and reasonable. Your text here

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr C's complaint in part. I require AXA Insurance UK Plc to:

- Review any further information and evidence from Mr C about the costs of reinstatement work, including about additional damage, and revise their cash settlement offer as appropriate, in line with the policy terms and conditions..
- Pay Mr C £150 compensation for distress and inconvenience.

AXA Insurance UK Plc must pay the compensation within 28 days of the date we tell them Mr C accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 December 2024.

Paul King  
**Ombudsman**