

The complaint

Mr A and Miss V have complained about the way AXA Insurance UK Plc ('AXA') has investigated a claim they made for flood damage at their property.

What happened

Mr A and Miss V took out a Home Protect insurance policy with AXA in March 2023.

On 22 June 2023, following heavy rainfall, water built up outside Mr A and Miss V's home, reaching the level of the air bricks and causing a small ingress of water into the property.

Mr A contacted AXA about the water level because he was concerned that the water could enter the property through the airbricks, soak through floorboards and joists and leave water sitting on the foundations.

Mr A said the same issues were affecting his neighbour who owned the adjoining semi-detached house. He explained that he was not able to investigate the floorboards and foundations to look for evidence of damage as insulation, underfloor heating pipes, screed and carpet / tiles would need to be removed, to give visibility of what was happening beneath the floorboards.

AXA sent its loss adjusters to the property on 16 November 2023 to assess the damage. They concluded there was no evidence of any damage caused by an insured peril and asked AXA if it would authorise further investigations to be undertaken to validate the claim. AXA did not agree to those investigations being undertaken and declined the claim.

Mr A and Miss V raised their concern with AXA about the risk of damage being caused to the property as a result of a full investigation not being carried out. They reported a strong smell of dampness and evidence of damp marks on their walls which they believed should be investigated.

AXA sent its final response to Mr A and Miss V's complaint on 6 December 2023, confirming its decision to decline the claim on the basis that no evidence had been provided which demonstrated damage caused by an insured peril.

Unhappy with AXA's response, Mr A and Miss V referred their complaint to this service.

One of our investigators looked into what had happened and on 19 July 2024 issued his view not upholding the complaint. He said that while the evidence provided showed extensive flooding outside of the house, he had not seen any evidence of damage inside the home. He concluded that AXA had considered the flood claim in accordance with the policy terms and conditions, and the claim had been fairly declined.

Mr A did not accept our investigator's view and provided further photographs and video evidence showing the skirting board coming away from an external wall and the plasterboard becoming loose. He explained that his property had been recently decorated and provided date-stamped images to show that the current damage was not caused by wear and tear.

Our investigator considered Mr A's additional arguments and evidence but maintained his view that the complaint should not be upheld. He explained that a smell could not be considered to be damage and while there was no dispute that water had been visible outside of Mr A's home, there was no persuasive evidence to show it was the cause of the damage to the property shown in the photographs.

Unhappy with the second view, Mr A requested an ombudsman's decision on the complaint. He said that he feels the issues with the skirting, the damp on the wall, the loose plasterboard and the strong smell of damp provides evidence that damage has been caused.

What I have 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.

Having done so I have reached the same conclusion as our investigator. I will explain why, by first making reference to the policy terms and conditions.

On page 11 of the policy terms, in section 1, under the heading: '*Buildings Cover*' it says:

'Buildings Cover is designed to protect Your Home and Outbuildings against the full range of risks (called "Insured Losses") summarised below. Your Policy Document will show if you have chosen this section of cover and the specific sum you insured your home for. Under this section of cover, Your policy will cover the following Insured Losses.'

The list that follows includes '*Flood*' which is defined on page 4 of the policy terms as:

'Sudden release or rapid build-up of water from outside the Home or Outbuildings entering into the Home or Outbuildings.'

So, if the water that had built up outside of Mr A's property, had entered the property and caused damage, then Mr A and Miss V would be covered for damage caused by '*Insured Losses*,' defined on page 5 as:

'An event or series of events that cause loss or damage which We have agreed to cover under this policy.'

To decide whether AXA has fairly declined Mr A and Miss V's claim, I first need to be satisfied that they have suffered an insured loss as detailed in the terms and conditions, which would be covered by the policy.

AXA did not agree that there had been an insured loss that had caused damage to the property that ought to be covered by the policy. AXA also said there was not any non-invasive testing they could do to see if there was any water trapped beneath the floorboards. So, it would need to take up the floorboards to see what was going on underneath, at a considerable cost, due to the presence of underfloor heating and screed beneath the tiles and carpet of the relevant areas. As its loss adjusters did not identify any evidence of actual damage caused by the heavy rainfall, AXA declined the claim.

But, Mr A and Miss V have provided photographic and video evidence, and testimony which describes a damp smell in the property in support of their view that they have done enough to evidence an insured loss has been suffered which ought to be covered by the policy. Mr A and Miss V believe that AXA should carry out the investigations to ensure that there is no

water underneath the floorboards that could be causing damage to the property.

It is a well-established principle of insurance that at the outset of a claim, the onus is on the insured to prove their claim, which includes both proving on balance that the loss was caused by an insured peril covered by the policy, and the extent of the loss suffered. The insurer will only be liable for losses proximately caused by one of the perils listed in the policy, in this case, flood.

In support of its decision to decline the claim, AXA has provided, among other things, a copy of a preliminary report completed by its loss adjusters dated 17 November 2023. As AXA has withheld consent to share the report with Mr A and Miss V due to commercially sensitive information contained in the report, I have summarised the key points of the report below:

- the front page of the report includes a photograph of the front of the driveway from the front gate;
- on page three a brief description of the property, of insured, and the circumstances giving rise to the claim was included;
- on page eight the loss adjusters said they had consulted weather records for the area and said there was no rain recorded on the 23rd, but on Tuesday 20th there was 20.5mm of rain recorded, and Wed 21st 0.2 mm recorded but it was noted there was heavy rain locally. The loss adjusters also noted that the insured had provided them with a video of the water surrounding the property and heavy rainfall at the time.

The loss adjusters said having visited the risk address there was no evidence of any damage to the property and said the insured confirmed there has been no evidence of any damage since the incident had occurred.

The preliminary report then went on to detail the views, concerns and opinions of Mr A and provided an estimate of costs to repair damage that would be caused by uplifting the floors to carry out more detailed investigations. The report concluded by saying the loss adjusters await AXA's view on policy liability and whether it is happy for any investigation works to be carried out to establish if there is any damage to the property.

A final report dated 30 November 2023 followed which referred to the initial inspection of the property and the preliminary report. The report said that after inspecting the property the loss adjusters were not able to see evidence of any damage to the property or an insured peril being in operation. It went on to say that the loss adjusters referred the claim to the underwriters who declined the claim and requested they close their file.

In addition, AXA provided case history notes which include observations from its claims handler that if significant water had entered the property, then there ought to have been evidence of damage at the floor level to carpets and tiles.

In coming to my decision on this complaint I have also reviewed all of the evidence provided by Mr A, including a number of photographs, videos and his testimony. However, having done so, in my view, the majority of the photographs do not evidence any damage to the property, rather, they show the property in a good state of repair. With a few exceptions that I have detailed below.

Five photographs of the skirting boards with a date stamp of 19 July 2024 (a year after the heavy rainfall) show some cracking to the paint above the skirting boards at the bottom of the wall and the skirting boards in two corners starting to come apart. One photograph of a hand and shadow on the wall also shows some darker patches of paint which could be

evidence of damp. However, the issue with these photographs is that they evidence the state of the property a year after the heavy rainfall, which given the time that passed, and other factors that may have contributed to the deterioration of these parts of the property, weakens the connection between the heavy rainfall and the damage.

It is not enough for an insured to show that damage has been caused to a property, they must also show that an insured peril was the proximate cause of the damage, that is, the direct cause of the loss. If, following the initial acceptance of a valid claim (which has not happened in this case) further investigations revealed the damage was caused by something excluded by the policy, such as gradual wear and tear, then an insurer could fairly decline the claim on that basis. So, an insured needs to demonstrate that the damage they are claiming for was directly caused by the insured peril.

Where the evidence is inconsistent or incomplete, as it is here, I make my decision based on what I think more likely than not, is the case. While I appreciate Mr A's strength of feeling about this matter, and his concerns about water sitting underneath his flooring, and potentially causing damage to his property, I also have to consider AXA's submissions and the policy terms and conditions, when coming to my conclusion on Mr A's complaint.

Having done so, I am currently of the view that there was likely insufficient damage caused to the property by the high-water levels in June 2023 to support Mr A's claim for damage caused to his property. I therefore conclude that AXA have acted in line with the policy terms and conditions and fairly in the circumstances, in declining Mr A's claim.

Finally, I would add that as our investigator explained, we are not able to comment on the circumstances affecting Mr A's neighbour's property, as we do not have any of the evidence in relation to that, and we are only considering the actions of Mr A's insurer, in relation to his claim, not his neighbours.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A and Miss V to accept or reject my decision before 7 February 2025.

Carolyn Harwood
Ombudsman