

The complaint

Mr P complains that AXIS Specialty Europe SE (“AXIS”) unfairly declined a claim he made under his Commercial Property Owners insurance policy following a large escape of water.

Any reference to AXIS in this complaint includes its appointed agents. Mr P’s representative has corresponded with this service on his behalf during the course of our consideration of this complaint, but for ease I’ll refer to the representative’s comments as Mr P’s own.

What happened

A pipe burst in the early hours of 15 December 2022 in the loft space at the insured property which Mr P owns, and this flooded the property. A claim was raised with the insurer, AXIS, on the same day. AXIS contacted Mr P on 21 December to discuss the claim.

On 4 January 2023 an emergency plumber attended. He says he stripped back insulation from the pipes to identify where the pipe had burst and where the leak was coming from in order to repair it. There was then a delay in AXIS attending, so Mr P had work carried out to mitigate his losses and appointed his own loss assessor.

AXIS ultimately declined the claim and said a condition in the policy requiring pipes to be adequately lagged hadn’t been complied with. It relied on the opinion of its loss adjuster who said there wasn’t evidence of effective insulation – because if there had been proper lagging in place, the pipes likely wouldn’t have frozen and burst. The loss assessor also commented in his report that *“none of the pipes throughout the property were lagged at the time of our visit”*.

Mr P complained. He said he had a large portfolio of properties and always looked after them, so he knew the lagging on the pipes was adequate. In its response to his complaint, AXIS said its loss adjuster made enquiries as to the existence of the lagging but were unable to find evidence of this, so they weren’t satisfied the condition had been complied with.

Mr P didn’t accept AXIS’s response, so he referred his complaint to this service. Our Investigator considered it, made further enquiries about the lagging on the pipes, but didn’t receive sufficient evidence so didn’t uphold the complaint. She said the emergency plumber hadn’t provided any commentary about the effectiveness of the lagging, and she was persuaded by what AXIS had said – that if adequate lagging had been in place the pipes wouldn’t have frozen and burst – so there wasn’t enough evidence to show the condition had been complied with.

As Mr P didn’t agree with our Investigator’s opinion, the complaint has now come to me for an Ombudsman’s decision.

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 raised or comment on every piece of evidence Mr P and AXIS have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy.

In Mr P's case, I can see that the policy terms include a condition which states:

"We will not cover damage to property as a result of burst or leaking accessible water pipes and tanks which are inadequately lagged at the time of the damage."

I've carefully considered all the information provided by both parties to determine the quality of the lagging at the time the damage occurred. Mr P says there's enough evidence to show that the pipes were adequately lagged, including the plumber's statement and photographs of the pipework in the loft space. I've seen the statement from the emergency plumber who attended on 4 January and I've also seen the photos provided. It's not clear from the photos when they were taken. And the plumber says when he attended, he had to strip back the pipe insulation to locate the leak. So whilst I'm satisfied from what he's said that there was lagging in place, I don't have enough evidence to demonstrate that it was adequate. The plumber's statement, and invoice, don't go into enough detail for me to be able to safely conclude that the lagging was adequate at the time.

In addition to this, by the time AXIS's loss adjuster attended, the leak had been fixed and I note from the loss adjuster's report that he's said none of the pipes were lagged throughout the property. So I can understand why AXIS requested further evidence from the plumber as to the adequacy of the lagging in the loft.

The loss adjuster's report also suggests that the fact that the pipe froze and burst is evidence in itself that the lagging must have been inadequate. AXIS's reliance on the alleged breach of the condition is relevant and material to the circumstances of the claim, as it increased the risk of Mr P's property being flooded.

It's clear that the intention behind the policy endorsement is to prevent situations arising where damage is caused by a pipe that bursts due to freezing temperatures. From my interpretation of the policy wording, this is simply not something AXIS is prepared to cover. And it's entitled to choose the risks it's willing to insure.

As AXIS has relied on a policy condition here to decline the claim, and as there's sufficient evidence to demonstrate that there wasn't adequate lagging on the pipes (namely, the fact that the loss adjuster noted that there were no lagged pipes at all when he attended the property, the fact that temperatures didn't fall below 3 degrees Celsius around the time from the evidence I've seen, and the fact the pipes did freeze and burst) the onus is on Mr P to demonstrate that the condition was complied with at the time of loss. But the photos he's provided which show lagged pipes, don't show damage to the surrounding area which indicates that these photos were taken after the repair, not at the time of loss. While I don't expect there to have been photos of the loft space from before the loss occurred, I would've required more evidence to uphold this complaint, such as detailed commentary or photos from the emergency plumber to evidence the adequacy of the insulation.

As the policy condition is onerous, I need to be satisfied that AXIS brought it to Mr P's

attention at the inception of the policy. From looking at the policy schedule which clearly sets out five endorsements, I'm satisfied the conditions were sufficiently highlighted to Mr P.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. They should also settle claims promptly once settlement terms are agreed. I've kept this all in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

And as Mr P has been unable to evidence his compliance with the policy endorsement, I'm not persuaded that AXIS has declined the claim unfairly. If Mr P is able to obtain a further statement from the plumber that attended the property which includes additional detail about what the plumber saw and removed, or any other evidence to demonstrate the adequacy of the lagging, this should be sent to AXIS in the first instance for its consideration as we won't be able to consider it under this complaint. I note that Mr P has sent us emails which include commentary from another individual who says: *"the pipes were correctly insulated / lagged and we have photos of this, we also have a note from the plumber who attended site stating this"*.

But this statement is not from the attending plumber himself. And I also cannot accept the comments from Mr P's representative in relation to the adequacy of the lagging. He didn't attend the property at the time of loss, but he's provided an excerpt from an internet search which says even copper pipes can freeze at 3 degrees Celsius in a loft, if exposed to that temperature for a long enough period. I've considered what he's said, and I've conducted the same search online. Whilst the search result is as Mr P's representative has described, it also goes on to say that to prevent this from happening pipes should be properly insulated. It then provides a "how to guide" which suggests there are crucial measurements that need to be taken, and other steps, to ensure the job is completed properly. So I don't accept the argument that because lagging was seen and removed by the emergency plumber it must have been adequate.

It's the plumber's own statement that carries the most weight here, and that doesn't comment on the adequacy of the lagging, and the photos provided don't persuade me that the lagging was adequate at the time the pipe burst, because there's no indication that the photos were taken prior to the loss or at the time of loss. I also note that our Investigator suggested Mr P contact the attending plumber for more detailed comments, but no such additional information has been provided.

Regarding the comments that this decision will have a huge impact on the insurance industry, I'd like to clarify that each case is considered on its own merits. Whilst it's correct in a general sense that an insurer is entitled to decline a claim if a policyholder fails to evidence that a condition in the policy which is relevant to the claim has been complied with, I don't agree that insurers can now reject all claims on the basis of my findings in this case. My findings are based on the circumstances and evidence in this specific complaint and – in particular – the lack of evidence provided in relation to Mr P's compliance with the relevant policy endorsement. But, as I've said, if Mr P is able to obtain further information from the attending plumber, or any other persuasive evidence, then I'd expect AXIS to consider that additional evidence fairly.

As it stands, however, and based on the available information, I'm unable to conclude that AXIS declined Mr P's claim unfairly.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 April 2025.

Ifrah Malik
Ombudsman