

The complaint

Mr B is complaining that AXA Insurance UK Plc won't cover further damage that's arisen in his flat which he thinks is down to the failure of original repairs after he made a claim on his flat's commercial property insurance policy. And he's unhappy that a 10-year warranty he was given for the works isn't being honoured.

What happened

In December 2012 Mr B says the basement in his flat became flooded. He claimed for the damage against the AXA insurance policy that covered his block of flats. AXA appointed a loss adjuster to manage the claim on its behalf. A contractor completed works – part of which required reapplying the tanking to the walls to fully damp proof the basement. Following the works, Mr B was provided with a 10-year warranty for the tanking.

Mr B says around five years later he was concerned the damp was returning. But he says he was told this was condensation. In 2023 Mr B contacted the company who installed the tanking to look to claim against the warranty, but he was told they'd ceased to exist in 2020. And he says the company hadn't passed the warranty onto another company. So he complained to AXA.

AXA didn't uphold the complaint. It said Mr B needed to contact the contractor directly as it says the contractor was appointed by Mr B. And it said it wasn't the one who was providing the warranty.

I issued a provisional decision not upholding this complaint and I said the following:

"I don't intend to uphold this complaint and I'll now explain why.

I'm persuaded that it's most likely AXA's loss adjuster handled the initial claim on AXA's behalf. In carrying out repairs to the property, AXA – through its loss adjuster – needed to ensure that it completed a lasting and effective repair. I haven't seen anything to show it hasn't done this. Mr B has said the tanking installed by the contractor has failed, but I don't think I've seen anything other than his testimony to support this. And, given the length of time that's passed, I think it's for Mr B to show the issues are down to the work carried out in 2014 – i.e. it's not for AXA to show it wasn't down to that.

But, even if it's a result of the tanking failing, I'm conscious nine years have passed before Mr B has seemed to pursue this matter. If the works weren't lasting and effective, I would have expected these issues to have arisen shortly after the works were first carried out. And I haven't seen anything to support that. So I don't think AXA is liable for the issues that Mr B is currently experiencing.

It seems to me that Mr B is primarily unhappy that he's unable to claim on the 10-year warranty he was provided. But this warranty wasn't provided by or arranged by AXA. It seems to have been provided by a separate company. AXA's agent provided a standard one-year guarantee on its works – which is in keeping with its legal obligations. But the company who provided the extended warranty wasn't an agent or representative of AXA. So

it follows that AXA isn't liable for anything related to that warranty.

Ultimately, I can't say AXA acted unreasonably in saying it wasn't liable for the issues Mr B is now experiencing."

Ms B didn't agree with my provisional decision and raised the following:

- He said an independent damp company he contacted had told him the original tanking company had used the wrong solution.
- He reiterated he'd called the contractor two years before because of an issue in the basement, but says he was told it was condensation. He said he reluctantly accepted that at the time, but the issue got worse.
- He maintains the work wasn't done properly and wants to know who is responsible for putting this right.

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 taken Mr B's comments into consideration, but I've come to the same conclusion as I did in my provisional decision.

I note Mr B's comments that a company he'd employed had said the original tanking company had said they'd used the wrong solution. But I don't agree they were as definitive as that. And the company said they needed to do further investigation to understand the actual issue.

But, as I said in my provisional decision, due to the length of time that has past, I don't think I can reasonably and fairly conclude that the work carried out wasn't a lasting and effective repair. While I recognise the statement Mr B has provided has said they suspect the original contractor used a different method to what they'd have done, it doesn't mean it wasn't lasting and effective. And, even if I accepted the issue started to arise two years before Mr B reported it to AXA, it was still effective for seven years. So I can't say AXA is liable for the damage.

Ultimately, Mr B needs to look to claim against the extended warranty if he can ascertain who is liable for it. I sympathise with the challenges he's faced in pursuing this. But, for the reasons I set out in my provisional decision, AXA isn't liable for the performance of that extended warranty.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 April 2025.

Guy Mitchell
Ombudsman