

The complaint

T- a limited company, complains about the decline of their commercial property insurance claim by AXA Insurance UK Plc ('AXA').

As AXA are responsible for the actions of their appointed agents, any reference to AXA in my decision should also be interpreted as covering the actions of their appointed agents.

T raised this claim and complaint through their broker. In my decision, I'll only refer to T, but this includes the actions of their broker.

What happened

The background to this complaint is well known to T and AXA. Rather than repeat in detail what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

T made a claim for damage to their property under their commercial property insurance policy, following an 'explosion' with their boiler/heating system. AXA investigated the claim and said the damage being claimed for was caused by an escape of water following the explosion and the relevant policy excess was £10,000 – which was greater than the value of the claim.

T raised a complaint as they felt the relevant policy excess was not £10,000 - as they said the damage being claimed for was caused because of an explosion. AXA didn't uphold the complaint. In their final response letter, they said the correct excess was £10,000 as they were only considering the resultant damage (escape of water) after the explosion.

Remaining unhappy, T referred their complaint to our Service for an independent review. Our Investigator considered the complaint and recommended that it be upheld. As AXA didn't accept and the dispute remained unresolved, it was referred to me for a decision. I recently sent both parties a copy of my provisional, intended findings. As the deadline for responses has now passed, I've considered the complaint for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

Responses to provisional decision

Only T replied before the deadline set. I won't respond to their points individually, but in summary I still find that:

- A £10,000 policy excess is fair.

- There was a delay in notifying AXA. I've made no findings as to the actions of T's broker.
- No party has disputed that there was some sort of minor explosion preceding the damage being claimed for. But I'm not persuaded that AXA have acted unfairly when deciding that an explosion/steam didn't cause the damage being claimed for.

As no new evidence has been presented that materially affects the outcome I'd previously set out, I find no fair or reasonable reason to deviate from my key findings in the provisional decision. They form the basis of this, my final decision.

The scope of my decision

My role here is to determine if, on balance, AXA have fairly considered and responded to this claim in line with the terms of the contract of insurance.

I'm not considering the actions of T's broker. If T has any dissatisfaction with their broker, that would need to be raised with them in the first instance.

The starting point with any insurance claim is the insured (T) has to reasonably show that the circumstances of the claim are as described, and an insured event covered by the policy has occurred. The onus then passes to the insurer (AXA) to consider the claim and settle it, or show that a policy term/limitation fairly applies to decline the claim, or limits their outlay.

The key points of dispute in this complaint are:

- What insured event has occurred? And;
- What policy excess is applicable as a result?

The declined boiler claim

On balance, I find it reasonable that AXA have declined to cover the cost of replacing the boiler as the policy terms don't provide for this in the circumstances of this claim. Page 27 of the policy terms state:

"Miscellaneous damage exclusion

We will not cover you for any loss, damage, cost or expense caused by or consisting of....

*3 joint leakage, failure of welds, cracking, fracturing, collapse or **overheating of boilers**, economisers, superheaters, pressure vessels or any range of steam and feed piping connected to them..."*

I note that the policy terms refer to 'boiler explosion cover'. But indemnity is limited to loss of rental income. As no such claim was made here and it appears (policy schedule page four) T wasn't covered for rental income, I've not considered this point further.

What insured event has occurred (escape of water vs explosion)?

The claim was first reported to AXA on 20 February 2023. From AXA's notes [bold for emphasis by Ombudsman]:

"...from [redacted] @ the brokers with new EOW claim. We have received notification of an incident at the Insured's property whereby the boiler has exploded resulting in

damage to the property /fixtures & fittings and contents. The incident was first reported to the Property Management Company on the 05/01/2023.”

Following a difference of opinion about which excess should apply, and AXA not being notified about the claim until weeks after it had occurred, they asked T for a report from their contractor explaining the damage. This was fair. I've then considered the contractor's report dated 18 January 2023. Below are relevant extracts [bold for emphasis by Ombudsman]:

“Works: Various due to water damage...

To carry out the following works due to recent water damage all as per our recent site visit.....

*To supply decorator for 2 days to make good to walls inside and **outside affected by the water damage.**”*

AXA maintained that the loss event here was damage caused by an escape of water following a boiler explosion. The following statement is dated 28 March 2023 and from the engineer who attended the emergency call out on T's behalf [bold for emphasis by Ombudsman]:

*“Following our emergency call out, we found the boiler control contractor to have failed and as a result caused a minor explosion. **This caused the boiler to overheat and completely burst the copper cylinder.** We have isolated and made safe.”*

Given the above referenced evidence I find this was a reasonable position for AXA to take.

T told AXA [bold for emphasis by Ombudsman]:

*“There has **never been any suggestion of water damage with the cause of the loss being an explosion within the boiler** which has been confirmed by the contractors whom attended and which is expressly included as an insured peril under the terms and conditions of the policy. I accept that the initial part of the boiler that has caused the explosion would not be covered, (part only) but **all other costs presented are related to the explosion** for which cover is provided under the terms of the policy although subject to the £1000 policy excess...”*

At another point, following AXA appointing an agent to visit T's property, T provided further details of the loss event [bold for emphasis by Ombudsman]:

*“My understanding of the incident is that the boiler 'stuck on' and this resulted in the boiler exploding. When the boiler exploded **steam (not water) was emitted** into the vicinity of the boiler. As such, **the damage which is apparent arises not from any escape of water - I don't believe there was any - but rather from steam being emitted** from the boiler following the explosion. It follows that **there was no substantial water loss.** Indeed, when I found the problem, **the area was dry – the damage was caused by heat and steam coming from the boiler.** When the boiler had cooled, there was no apparent water. In terms of the exact cause of the damage shown in the pictures, **I believe this is attributable to the explosion, the overheating of the boiler room and the steam which was emitted as a result.** No doubt the explosion caused the area in the vicinity of the boiler to be extremely hot and extremely humid.”*

In my opinion, steam/heat causing the resultant damage is very different to the account/quote provided by T's contractor dated 18 January 2023 that refers throughout to

water damage. I'd reasonably have anticipated they'd refer to steam damage and not water damage if that was relevant. AXA have said in response to our Investigator's assessment:

"If the boiler had exploded there would be significant damage to the surrounding areas of this caused by the boiler exploding and from the photos I can only see water damage, not significant damage cause by an "explosion".

I find this to be reasonable, as I'm not persuaded (based on the available evidence) that damage I might expect to see after an explosion is consistent with the damage being claimed for here - and it follows that it was reasonable of AXA to consider the damage under the escape of water section of cover. For example, in claims where an explosion has taken place and caused subsequent damage, it wouldn't be uncommon to expect to see damage from intense heat/fire, fixtures/fittings such as doors displaced or shrapnel/pressure damage to the surrounding area.

On balance, I find that a minor explosion was likely part of a chain of events that lead to the loss/damage T has suffered. But AXA's position that the proximate cause of the damage to the surrounding area was caused by an escape of water following an explosion is fair and reasonable.

What policy excess is applicable?

T have focussed on policy endorsements (flood excess) that they say would lower the excess applicable to this claim. I find it was reasonable that AXA deemed no flood from a watercourse, drain etc had occurred. AXA clearly explained this to T in an email from their underwriters dated 10 January 2024.

For the reasons I've outlined earlier in this decision, AXA can fairly apply a £10,000 escape of water excess to this claim. As the cost of repairing the damage being claimed for here falls below the excess, it follows that AXA don't need to settle the claim as it would be uneconomical for T to proceed with the claim.

AXA invited T to provide further evidence for their consideration in their final response letter they said. Following our Investigator's assessment AXA have also said:

"If the insured can provide us with evidence to show that the damage to the boiler is from an insured peril then we will review this accordingly, however no evidence has been provided to show this, we cannot consider the damage to the boiler and would only look to consider the damage from the resultant escape of water, which we previously did, however this falls within the £10,000 policy excess."

I find this to be fair and reasonable.

For completeness I've also considered if any other section of cover ought to respond to this loss event. 'Miscellaneous damage' has been referred to by T. But under that section of cover it's stated: *'joint leakage, failure of welds, cracking, fracturing, collapse or overheating of boilers, economisers.....'* isn't covered.

Summary

AXA have said the damage to the boiler is not because of an insured peril. I find that to be fair.

I also find AXA's position (the boiler wasn't covered, but they'd consider the resulting escape of water damage under that section of cover) to be reasonable for the following main

reasons:

- how the claim for damage was presented and what the evidence (photos) show;
- the delay in notifying AXA due to T trying to claim against another policy and the boiler had been replaced before AXA visited the T's property - meaning AXA couldn't attend the property shortly after the damage occurred; and
- the onus rested with T to show an insured event has occurred.

It follows that I find that AXA acted fairly and reasonably when relying on the escape of water excess in this claim.

My decision will disappoint T, but it brings to an end our Service's involvement in trying to informally resolve their dispute with AXA.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 15 April 2025.

Daniel O'Shea
Ombudsman