

The complaint

Mrs T and Mr T are unhappy with the service provided by AXA Insurance Designated Activity Company (AXA) following an escape of oil claim made on their home insurance policy.

Mrs T and Mr T are both party to this complaint, and have also instructed a third party to represent them in bringing their complaint to this Service. For ease of reference I have referred to Mr T throughout this final decision.

AXA is the underwriter of this policy. Part of this complaint concerns the actions of third parties instructed on the claim. AXA has accepted it is accountable for the actions of third parties instructed by it. In my decision, any reference to AXA includes the actions of any third party instructed.

What happened

The policy terms and conditions for Mr T's home insurance policy with AXA included the following exclusion for escape of oil claims:

We will not cover loss or damage loss or damage:

- a. caused by pollution or oil spillage if you hire any experts or contractors other than those carrying out emergency work without our permission. We will have to agree to you hiring these experts or contractors, and we have the right to choose experts from our own panel;*

The facts of Mr T's claim are well known to be parties. So I haven't repeated them in detail here.

To summarise, around September 2023, Mr T's neighbour approached Mr T with concerns about a smell of oil around his property. A leak was identified and subsequently repaired. The repairer confirmed evidence of significant oil contamination and recommended Mr T obtain advice from a specialist to understand the severity of the leak.

Mr T appointed a specialist, S, to further investigate the oil spill and advise on next steps. S confirmed a significant spillage had occurred, and the impact could be far reaching. Mr T contacted AXA to advise of S's findings, and at the same time instructed a claims handling specialist to deal with the claim on his behalf.

AXA instructed its own specialist, V, to attend to Mr T's claim to inspect the damage, and advise of a remediation strategy. V completed a survey and presented its findings to AXA. AXA told Mr T that it would offer indemnity to Mr T for the escape of oil claim on the basis that V could continue with the claim as set out in its survey.

Mr T was unhappy with AXA's response. Mr T maintained S should continue with completing any remediation work needed. Mr T complained to AXA about its decision on his claim, in saying that it could only offer cover if V was instructed.

AXA considered Mr T's complaint but said it had acted in line with the terms and conditions of Mr T's policy. AXA didn't offer to do anything in settlement of Mr T's complaint. Mr T was unhappy with this decision, and so brought his complaint to the Financial Ombudsman Service for investigation.

The Investigator found that AXA had acted fairly in reaching its decision on Mr T's claim, and didn't ask it to do anything in settlement of Mr T's complaint. Mr T didn't agree with the Investigator's findings. As the complaint couldn't be resolved it has been passed to me for 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.

I'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that has happened or been argued is set out above, I've read and considered everything that has been provided.

I note Mr T has made extensive representations in response to the Investigator's findings. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it has affected what I think is the right outcome.

When we investigate a complaint about an insurer's decision on a claim, our role is to consider whether the insurer has handled the claim in a fair and reasonable manner. To determine this, I would need to be satisfied that AXA has acted fairly and reasonably in its application of the policy terms. And having considered the evidence, I'm persuaded it has. I'll explain why.

The starting point when considering what AXA needs to do in settlement of Mr T's escape of oil claim, is to consider what the policy terms say. The policy terms say '*we have the right to choose experts from our own panel.*' The policy terms are clear in saying that in the event of an escape of oil claim, AXA retains the right to appoint its own expert for the purposes of dealing with the claim.

Mr T says it would be reasonable to expect a degree of flexibility in some circumstances, and for an insurer to consider individual circumstances that might demand departure from a rigid application of the policy terms. But I don't agree that's what AXA needs to do here.

In reaching this decision I've considered the individual circumstances of Mr T's claim. There's no dispute that Mr T's claim is unique in both the type of claim it relates to (escape of oil), and the potential far reaching impact of the damage caused by this incident.

This damage extends not only to Mr T's own property, but those surrounding his. There are also several other parties and interests that need to be considered as part of any remediation work that's carried out. Some of the potential dangers and urgent considerations which add complexity to the claim include the impact on the living population surrounding the oil leak, and the environmental impact.

It's clear that action needs to be taken promptly to start remediation work so that any negative impact can be minimised and contained. I think AXA's decision to retain control over how any remediation work is managed is reasonable, and in line with what this Service would expect in the circumstances.

Mr T feels strongly that AXA's offer to put things right is likely to result in substandard work. I recognise Mr T's apprehensiveness with going ahead with AXA's appointed expert, to complete the required work. Mr T says his concerns stem from what he has learnt about other work completed by AXA on similar cases (unconnected to the claim).

I appreciate what Mr T has explained. But I can't comment at this stage on the quality of work that *might* be completed. Mr T's concerns at this stage are speculative. I haven't seen any evidence to support Mr T's concerns in respect of V completing sub-standard work, and not meeting regulatory requirements for the claim in question. Because work has yet to be started.

As it stands, Mr T needs to decide how he wants to settle his claim. Mr T feels strongly that AXA hasn't evidenced the high standards of work it has said it will provide. But at this stage, it's not for AXA to evidence this. Should there be any issues once work is completed (if Mr T does decide to use AXA's appointed contractor, V), this would be the subject of a new complaint that would need to be raised with AXA to answer first. This is in line with our rules.

Mr T says AXA hasn't explained why S isn't a suitable business to complete the remediation work needed. But I don't think the suitability of S is of relevance here. The policy terms allow AXA to appoint its own expert, and in choosing V, that's what AXA has done. I'm satisfied its decision isn't a reflection of S's suitability. But rather, AXA's decision to manage the claim through its own appointed expert. The policy allows AXA to do this. So I can't say AXA has exercised its right unfairly, or to the detriment of Mr T.

Mr T has highlighted the gain to AXA in insisting that V is instructed over Mr T's preferred contractor S. Mr T says AXA would benefit from the cost-saving in using its own contractor. I accept Mr T's point about the raw cost of instructing V, potentially being cheaper than instructing S. However, we'd usually only expect an insurer to pay for what it would cost it to indemnify a consumer against a valid loss. So in this case, even if AXA agreed to the appointment of S in dealing with the claim, it's likely that it would cap any payment to the amount that it would cost AXA to indemnify Mr T for the claim loss. So I don't agree that cost is the reason in itself why AXA has decided to proceed with the claim by choosing V over S.

Mr T has also referenced the difference in wording in the policy terms for the policy booklet applicable to where he resides, compared to another policy booklet he has seen for a different location where AXA operates. But I don't think this has any material bearing on AXA's decision to settle Mr T's claim. It's common practice for an insurer to agree its own commercial terms, and this can vary depending on several factors, including the location of where cover will be provided. I'm satisfied AXA has applied the terms relevant for Mr T's policy when assessing and providing a decision on his claim.

During our investigation Mr T has provided further information about a legal claim being made by a third party impacted by the escape of oil incident. Mr T says this should be determined by this Service, at this time.

When dealing with a complaint about an insurance claim that remains in dispute and on-going at the time of being referred to this Service, we generally limit the scope of our decision making to issues which a business has had the opportunity to answer first. With this in mind, for any events that happened after AXA's final response letter of February 2024, Mr T is required to raise these matters with AXA to respond to first.

For the reasons explained, I'm satisfied AXA has acted reasonably, and in line with the policy terms in saying that cover will only be provided following Mr T's consent to allow V to proceed with the claim. I understand my decision will come as a disappointment to Mr T. But

for the reasons explained, I won't be asking AXA to do anything in settlement of Mr T's complaint.

My final decision

For the reasons provided I'm not asking AXA Insurance Designated Activity Company to do anything in settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 2 May 2025.

Neeta Karelia
Ombudsman