

The complaint

K, a limited company, complains AXIS Specialty Europe SE trading as AXIS Specialty London has unfairly declined a claim it made on its commercial property insurance, for works needed to a bathroom in its let property.

K is being represented in bringing this complaint by one of its directors, Mr D. For ease of reading I've referred to Mr D, rather than K, throughout the decision.

What happened

Mr D rents out a first floor flat, which is insured with AXIS. In April 2024 Mr D says his tenant informed him that the bath had sunken into the bathroom flooring; he was concerned about the floor collapsing.

Mr D says he relocated the tenant and made a claim on his AXIS policy for the damage to the floor and subfloor of the bathroom. In July 2024, AXIS declined the claim. It said it had seen an email from the owner of the flat below his, from July 2023, informing Mr D of a leak from his bathroom, which had caused damage to their flat below. As such, AXIS said it was declining the claim as the leak had been ongoing since 2023, and hadn't been rectified by Mr D. It said it was a condition of the policy that the property is maintained.

Mr D disputed that he hadn't maintained the property. He said the other leaks reported to him in 2023 were unrelated to the issue of the bath collapsing. He provided evidence of works done to the property in August 2023, including applying new bath sealant, which he said had resolved the issue. He also thought another leak had been caused due to a leak from a toilet.

AXIS didn't agree to change its position, it said gradual damage is excluded under the policy. Mr D referred his complaint to the Financial Ombudsman Service for an independent review.

Our Investigator thought AXIS had acted reasonably in declining the claim. She said she thought it was most likely the damage had been ongoing for some time and Mr D was aware of issues with water damage occurring.

Mr D didn't accept that outcome. He said there had been two other minor leaks from the bathroom identified by the owner of the flat below, but those had both been dealt with. He said the structural issues had occurred because of water leaking from a cracked pipe leading to the taps, and he provided a statement from his builder confirming this. He maintained he couldn't have been aware of the leak until the tenant reported his concerns about the safety of the floor under and around the bath.

Our Investigator reviewed Mr D's further evidence but wasn't minded to change her opinion. As such, the matter hasn't been resolved, and it has now come to me to decide.

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.

When making a claim on an insurance policy it is for the policyholder to show they have suffered damage that is covered by the policy. If the policyholder is able to do so, then an insurer will generally meet the claim, unless it can fairly rely on an exclusion to decline it.

AXIS seems to accept an escape of water happened, but it's relied on exclusions relating to gradual damage and a lack of maintenance to decline the claim. In order for me to decide whether it's fairly relied on the gradual damage exclusion to decline the claim, I've first considered if the damage did happen gradually.

Did the damage most likely happen gradually over time?

The damage claimed for includes the rotting of the floor and subfloor, which led to the floor collapsing under the weight of the bath when it was in use by Mr D's tenant. Having reviewed the evidence, I think this damage did most likely happen gradually over time.

AXIS' position is that owing to the extent of the rot, and the lack of drying of the subfloor after the previous leak (or from poor sealant allowing water into the subfloor) the damage leading to the bath ultimately collapsing into the floor most likely happened as a result of the gradual deterioration of the subfloor.

Mr D's position is that he'd repaired previous leaks, and the issue with the cracked pipe, repaired in March 2024 was a new issue, which had caused the damage to the subfloor suddenly. I accept it's possible that the 2023 issues weren't linked to the bath collapsing in 2024, as Mr D says. However, I don't think that is most likely. I consider rot does happen over time, and a leak from a cracked pipe leading to the taps of the bath would then allow water to leak into the subfloor every time the taps or bath was used. The damage wasn't for example, from a waste pipe that would've caused a sudden rush of water to flood into the subfloor and into the flat below, causing immediate damage.

I note that Mr D's invoice for the taps (and I assume the pipe, although it's not listed in the invoice) being fixed was around a month before the bath collapsed. But I'm not persuaded that the March 2024 leak was the cause of the rot in the subfloor such that the subfloor collapsed under the weight of the bath within a few weeks. I'm more persuaded by AXIS' position, that the rot found at the property showed evidence of ongoing wet conditions for a much longer period than a few weeks. That's because I'm satisfied that rot, particularly to the extent where structural beams are compromised or can no longer support the weight of a bath, would take longer than a month or so to occur.

As such, I'm satisfied that, because the policy excludes gradual damage, AXIS can, on the face of it, decline the claim by relying on the exclusion.

But this Service's approach is that it's only fair and reasonable for an insurer rely on this exclusion to decline a claim for an escape of water, if the policyholder could've been aware that damage was occurring.

Should Mr D have been reasonably aware that damage was occurring?

I'm satisfied he should have been. The occupiers of other flats told AXIS that there had been issues with leaks for the year preceding the claim being made (i.e. from 2023 leading up to April 2024, when the claim was made). I've seen emails sent to the managing agent of Mr D's property in July 2023 explaining that water had been leaking into the property underneath Mr D's flat. And Mr D says that in August 2023 the bathroom flooring was replaced, as well as sealant around the bath, which he thought had been the cause of water getting into the flats below.

Whilst Mr D says he thought the 2023 problems were related to poor bath sealant, he hasn't shown that he'd carried out any exploratory work to check for a leak which might have explained the issue. He says he put the problems down to a young child splashing in the bath.

However, even if I consider that the 2023 issues were caused by failed sealant, then it was reasonable that Mr D should've considered that water must have gone under the flooring and into the subfloor. There's nothing to suggest he checked this, or made sure the subfloor was dry, so that damage to it didn't occur gradually due to the subfloor being wet.

Mr D says it's unreasonable to expect, as part of routine maintenance, that he look under the bath and into the subfloor. But where he'd been notified that water from the bathroom had been leaking into the flat below in 2023, I consider it reasonable that Mr D should've checked for a possible leak, or for signs of damage to the subfloor. It doesn't appear that he did that.

It seems to me that Mr D had been alerted on a number of occasions of damage to the flats below in the months leading up to the bath collapsing into the floor. He also replaced the bathroom flooring in August 2023. This was done at the same time as the sealant was replaced around the bath, so I think it's reasonable to assume then that the flooring was replaced because it was showing signs of water damage. I think all of these are signs that Mr D should've been reasonably aware that damage was occurring to the subfloor. As such, I consider it fair and reasonable for AXIS to decline the claim based on the gradual damage exclusion.

I understand that AXIS also sought to rely on the 'lack of maintenance' condition of the policy to decline the claim. I haven't considered whether I think that would be fair or not, because doing so wouldn't alter the outcome of the complaint, given I'm satisfied AXIS can fairly rely on another exclusion to decline it.

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 K to accept or reject my decision before 30 October 2025.

Michelle Henderson
Ombudsman