DRN-5659363

The complaint

Mr K and Mrs T complain about AXA Insurance UK Plc's handling of a claim under their home insurance policy.

AXA has been represented by its agents during the claim. All references to AXA include its agents.

What happened

Mr K and Mrs T had a home insurance policy with AXA. In March 2024, they claimed for damage to their kitchen and kitchen floor. They said a burst pipe from the bathroom above, around a month before, caused the damage.

After inspecting the property and damage, AXA made the decision in April 2024, to decline the claim. It said the damage was not caused by an insured peril, and was due to a gradually operating cause.

Mr K and Mrs T complained about AXA's decision, and its handling of the claim.

AXA issued a complaint response in May 2024. It said it was satisfied it made the correct decision to decline the claim.

Mr K and Mrs T referred their complaint to the Financial Ombudsman Service. They said AXA had breached relevant rules and laws. They were unhappy with delays, AXA's investigations and its application of the policy terms. They said the damage they claimed for was caused by a burst pipe. They also said AXA hadn't paid them the costs it agreed to pay while it investigated the cause of damage, including alternative accommodation (AA) costs.

Following Mr K and Mrs T's referral, AXA accepted it had agreed to pay Mr K and Mrs T £25 per day disturbance allowance (DA) while it investigated the claim. So it offered to pay £825 in recognition of this, and a further £275 compensation to recognise the delay. This totalled £1,100.

The Investigator looked into the complaint. They said AXA hadn't unfairly declined the claim. And because there was no valid claim, they said AXA wasn't liable to pay AA and DA costs. They found its offer was fair in the circumstances.

Mr K and Mrs T didn't agree. They maintained AXA didn't act in line with the relevant rules, laws or industry standards, and that it didn't undertake adequate investigations. They said AXA didn't calculate the DA payment correctly, and it should pay this till 25 May 2024, including laundry costs, totalling at least £2,475. They said AXA's actions in not cordoning off the kitchen amounted to a breach of law. They wanted AXA's claim decision to be overturned, the DA payment to be recalculated and compensation for their stress and AXA's failings.

Because the complaint couldn't be resolved, it's been passed 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.

I should first set out that I acknowledge I've summarised Mr K and Mrs T's complaint in a lot less detail than they've presented it. Mr K and Mrs T have raised a number of reasons about why they're unhappy with AXA. I've not commented on each and every point they've raised but, instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy by this, but it simply reflects the informal nature of this service. I assure Mr K and Mrs T, however, that I have read and considered everything they've provided.

It's not the role of the Financial Ombudsman Service to say whether a business has acted unlawfully or not – that's a matter for the Courts. We are a dispute resolution service, not the industry regulator, so it's also not our role to fine and punish a business. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account, including relevant law, rules and what we consider to have been good industry practice at the time. Mr K and Mrs T have mentioned a number of laws, rules and standards. While I may not reference them specifically in my decision, I have kept them in mind.

Overall claim decision

The terms of Mr K and Mrs T's policy say it covers loss or damage caused to their buildings resulting from specific causes, one of which is escape of water.

To begin with, the onus is on Mr K and Mrs T to show, on the balance of probabilities, that an insured event caused the damage they're claiming for. If they can't, then it would be fair for AXA to decline the claim, on the basis the damage claimed for wasn't caused by an insured event.

From what I can see, when Mr K and Mrs T first notified AXA of the damage, they were unsure of the cause and didn't think it had been caused by a leak. But a few days later, they told AXA the damage might have been caused by a leak in the bathroom, that occurred a month before. They said they'd repaired the leak and the damage to the bathroom.

But despite AXA's requests, I can't see Mr K and Mrs T provided it with evidence of the works they carried out following the leak, such as an invoice for the works to repair the leak damage. This is also despite AXA saying it is willing to consider a claim for this damage, and the associated repairs, if the evidence is provided.

In addition to the above, I can see AXA's Surveyor, having attended the property to inspect the damage, said they wouldn't expect the volume of water from the alleged leak to be the cause of the damage Mr K and Mrs T claimed for. I understand Mr K and Mrs T have concerns with the extent of the Surveyor's investigation, but I'm not a technical expert. Instead, I rely on the evidence provided by both parties to consider which evidence is more persuasive on balance. Given the lack of evidence provided by Mr K and Mrs T, and the opinion of AXA's Surveyor, I'm not persuaded Mr K and Mrs T did show on balance that the damage was caused by an escape of water. So overall, I don't think AXA acted unfairly in declining their claim on the basis the damage was not caused by an escape of water as they'd claimed.

I've reviewed the conclusions from AXA's other investigations and reports, and I can see the opinion from the agents that attended was the damage was due to a gradually operating cause, occurring over a significant period of time, resulting in rotten floor joists. The reports refer to damp in the sub-floor void, lack of ventilation and a rise in the ground water table. I can't see that any of the potential causes identified meet the definition of any of the other insured causes listed in Mr K and Mrs T's policy. Nor can I see sufficient evidence provided by Mr K and Mrs T to show the damage was due to any other insured cause.

Mr K and Mrs T said the onus was on AXA to show any exclusion it relied on applied in the circumstances. While I agree this would be the case if AXA was solely relying on an exclusion to decline the claim, I don't think this is the case in the circumstances. I say this because for the reasons outlined above, I don't think Mr K and Mrs T showed on balance that an insured event caused the damage they claimed for.

So overall, I think AXA acted fairly in declining the claim on the basis the damage wasn't caused by an insured event. I therefore don't consider it needed to rely on an exclusion to decline the claim.

AA

The terms of Mr K and Mrs T's policy say AXA will pay for the cost of reasonable AA when the home cannot be lived in due to loss or damage caused by any of the listed insured events.

I've outlined above why I consider it was fair for AXA to conclude the damage wasn't caused by an insured event. So, I don't consider AXA was required to provide any AA cover to Mr K and Mrs T under the terms.

I can see AXA did offer and provide AA, shortly after Mr K and Mrs T made the claim, on a without prejudice basis. I understand Mr K and Mrs T may not have used the AA as they didn't consider it suitable, so they stayed elsewhere. But because AXA wasn't required to provide AA, I don't think it acted unfairly. And I don't think AXA is responsible for any of the AA costs Mr K and Mrs T requested as part of their complaint.

DA and other costs

Mr K and Mrs T said AXA agreed to reimburse some of their costs. But the evidence I've seen shows AXA only agreed to pay them £25 per day, while it investigated the claim and they stayed elsewhere. I've not seen evidence to show AXA agreed to pay them anything beyond this.

As with the AA outlined above, I don't consider AXA was required to provide these costs to Mr K and Mrs T, under the terms. But because it agreed to pay them the costs as outlined above, AXA agreed to pay this for a period of 33 days at a rate of £25 per day. I'm satisfied this covers the period between Mr K and Mrs T making the claim, and AXA completing its investigations and outlining its decision to them. This amounts to £825, which I think is fair in the circumstances.

I accept AXA's offer to pay, and then failure to pay, would have caused Mr K and Mrs T some distress and inconvenience. And keeping in mind the cost wasn't something it was required to pay under the terms, I think its offer of £275 compensation, in addition to the £825 payment outlined above, is fair and reasonable in the circumstances. This comes to a total of £1,100, which is what I will direct AXA to pay, if it hasn't done so already.

Health and safety

Mr K and Mrs T complained that AXA breached the relevant health and safety laws, but as outlined above, it’s not my role to say whether AXA acted unlawfully or not, or to fine and punish it on that basis.

Having reviewed the evidence, I think Mr K and Mrs T were aware of the danger posed by the use of the kitchen when they made their claim. And I don’t consider AXA gave them any misleading information that led them to believe the kitchen was safe to use. Instead, the evidence I’ve seen shows Mr K and Mrs T were already not using the kitchen and were advised by AXA’s agents not to use the kitchen as it was unsafe.

So, overall, having considered the evidence, I don’t consider AXA’s actions caused Mr K and Mrs T any harm or additional loss.

Delays

Mr K and Mrs T said the damage was caused by a leak from a month before they made the claim with AXA. I can’t see they reported this leak to AXA when it occurred, and given the evidence from AXA’s investigations, I’m persuaded the damage to the kitchen had been ongoing for some time, and been evident to Mr K and Mrs T, before they notified AXA.

Keeping the above in mind, I think AXA’s actions in arranging an inspection and offering AA within a week of Mr K and Mrs T making the claim, was fair and reasonable in the circumstances. So I don’t consider it caused any avoidable or unreasonable delay.

My final decision

For the reasons outlined above, my final decision is that I partly uphold this complaint.

Subject to my comments above, I require AXA Insurance UK Plc to:

- Pay Mr K and Mrs T £1,100.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K and Mrs T to accept or reject my decision before 29 July 2025.
Monjur Alam
Ombudsman