

The complaint

Mr P has complained AXA Insurance UK Plc unfairly declined a claim he made on a home insurance policy which provided cover to his property.

What happened

Your text here

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.

In May 2020 Mr P noticed some damage to his home and made a claim under his newbuild warranty for damage to cracked and loose tiles in the kitchen, which he thought might have been as a result of a building defect. Various investigations were carried out in relation to the issue by the warranty provider (N), but in August 2020 N rejected the claim. It said the issue with the kitchen floor was most likely related to a previous leak. Mr P says he carried out repairs at his own cost in January 2021. Then, in November 2022 Mr P says he was told there was a suspected leak. A leak was confirmed and traced in December 2022 as emanating from the family bathroom.

Mr P says he arranged an emergency plumber to fix the leak in December 2022 and made a claim with his home insurer, "C", for the damage caused by the leak. C considered the claim but in September 2023 declined it; it felt that the issue had started when Mr P's previous insurer AXA, was on cover. So the claim was transferred over to AXA at that time.

A complaint was made to C about its handling of matters and later referred to the Financial Ombudsman Service. The complaint couldn't be considered here as it hadn't been referred in time.

In the meantime, the claim, with AXA continued. But, by July 2024 Mr P said little progress had been made. He made a complaint about the delay. On 2 August 2024 AXA responded to the complaint with a final response letter (FRL). It said it was continuing its investigations into the claim (which was a large loss claim) and would give its position imminently. Unhappy with the response, Mr P referred the complaint to this Service.

Later in August 2024, following that complaint response, AXA outlined its position on the claim. It said it thought there had been a failure to comply with the policy terms in notifying it of the claim. It said it thought, from its investigations, that Mr P had been informed there was a leak in 2020, but it wasn't notified of that at the time. And AXA felt it should, at the latest, have been notified in 2022 of the claim, when Mr P had made the claim to C. It asked Mr P for comment and said it would review Mr P's response before deciding on liability.

When our Investigator looked at the complaint, she thought AXA had unfairly declined the claim. She didn't think AXA had been prejudiced by Mr P not registering the claim with it in 2022, so she felt it was unreasonable for it to rely on the condition to decline the claim. She also felt there had been unreasonable delays and recommended AXA pay £500 compensation for the unnecessary distress and inconvenience caused. She also said AXA

should reimburse Mr P for the temporary repairs he'd carried out, with 8% interest added onto the amounts.

AXA didn't agree that it had unfairly declined the claim. It made several arguments in response; it cited caselaw that an insured must notify an insurer even if there is only a "*mere possibility*" they might need to make a claim under the policy. It was satisfied this applied to the damage noted in August 2020. It also said the claims notification condition is a condition precedent to AXA's liability under the policy, as such AXA doesn't need to show its position had been prejudiced in order to decline the claim, as the failure to notify is sufficient to decline the claim.

It also said there was evidence the leak, and resultant damage, started in 2017. And that there had been numerous insurers involved over those policy years, all of whom it had contacted and been refused any assistance. It said it shouldn't be penalised for being the only insurer willing to fully investigate the claim. It further said investigations have shown that the issue was most likely the result of a building defect. But owing to the length of time that has now passed, it would be unsuccessful, it said, in pursuing subrogation rights against those responsible.

As the matter wasn't resolved it came to me for an Ombudsman's decision. I noted that at the point our Investigator had issued her findings, AXA had not formally set out its position in relation to the claim. So, I asked for its consent to consider this (as it had happened after AXA had issued its complaint FRL). AXA agreed for me to consider matters; it was satisfied it had fairly declined the claim. As such I issued a provisional decision. In it I said I didn't think AXA had acted fairly in declining the claim. A copy of my findings are below.

AXA has declined the claim as it says Mr P breached the 'claims notification condition' on the policy by not notifying it, in August 2020, of a potential claim for damage caused by an insured event. The condition says:

"You must

1 as soon as practical

a give us notice of any circumstances which might lead to a claim under this policy...

we will not pay your claim where you have not complied with this condition"

It argues in August 2020, with N confirming the damage had likely been caused by a leak, it should have been notified at that point. It said it isn't a leak itself which should have triggered notification (so the fact that N said there was a prior but not an ongoing leak is irrelevant) it is the damage that had been caused by a previous leak, that is covered under the policy. And as Mr P had noted damage, he should have made AXA aware of the possibility of a claim.

AXA says there's evidence Mr P asked the owner of the building for the building's insurance details, but it referred him back to N. As such it considers Mr P failed to notify it of a claim as soon as practical, as set out in the policy.

I accept AXA's point here. I think its arguable that Mr P should have, having been told by N what it considered the cause to be, notified AXA of the damage. However, I still have to decide whether it is fair and reasonable for AXA to rely on the 'claims notification condition' to decline the claim. To do so I've considered Mr P's reasons for not making a claim or notifying AXA of a potential claim at that point.

Mr P says he didn't contact AXA because the damage he'd noted in 2020 was to cracked tiles in his kitchen. He said he didn't think there was a leak - an escape of water under the policy, because there were no pipes running under where the tiles had cracked. He further said he'd checked the water meter which didn't give any indication there was a leak. He says the floor was repaired, at his own cost in January 2021, and he was told during that repair that there was no sign of a leak. He further said he'd continued to dispute N's findings into

2021 and 2022, as he considered there was a building defect with the tiles/how they'd been laid, rather than them having been damaged by a leak.

Having considered Mr P's points, I don't think he made an unreasonable decision in not notifying AXA, in August 2020, of a claim, or potential claim. He was clearly unhappy with N's stance. And I think it was reasonable for him to assume that when the tiles were lifted, and new flooring laid, that a leak (whether ongoing or not) would likely have been evident to those who laid the floor -and they wouldn't have laid the floor had that been the case. Instead, he says he was told there was no sign of a leak, and the floor was laid.

I also consider, had Mr P thought there had been damage caused by a leak, he most likely would have made a claim to AXA at the time. I note Mr P spent around £2,500 on his flooring repair; I'd imagine if he thought AXA would cover most of that (apart from any applicable excess) then he most likely would've made a claim.

I appreciate that it turns out Mr P may have been ill-advised at that time. And AXA, had it been notified of a potential claim in 2020, might possibly have been able to identify the true cause quicker. However, for the reasons set out above I don't think a fair and reasonable conclusion to this complaint is that because Mr P didn't notify it of a potential claim in 2020, AXA can rely on the claim notification condition to decline the claim.

I also don't think AXA can rely on the later date of November 2022, to say Mr P failed to notify it of a claim which should have been made at that time. AXA says in late 2022, once Mr P became aware there was a leak, he should have made the connection to the earlier damage, from 2020. It says not notifying AXA at this stage is another breach of the claims notification condition. I'm not persuaded its argument in that respect is reasonable.

In November 2022, Mr P notified his current insurer C, of the claim. I've seen nothing which suggests he delayed in notifying that insurer. I also haven't seen anything which persuades me he'd have been aware, at the point he notified C, that the leak discovered in the bathroom in November 2022 had actually been the cause of an issue in the kitchen more than two years earlier, which had been repaired with no further issue reported or noted by Mr P. And I'm sure that if he'd had any issue with the flooring, having paid £2,500 for it, he'd have complained to the fitter.

I accept there was then a delay between C being notified, and the claim being passed to AXA. Again, I can't see that the responsibility of that falls to Mr P. As such, it's not fair and reasonable for him to be penalised by any delay in the claim being referred to AXA.

Insurers handle complex escape of water cases, possibly spanning multiple insurers, often. Policyholders do not. It's not unreasonable for Mr P to have raised the issue with the then current insurer for the building, after all, as far as he was concerned, AXA wouldn't be responsible for reinstating his property as it was no longer the insurer by this point. And it's important to set out that I can't consider the actions of C as part of this complaint, only those of AXA and Mr P.

I don't think Mr P's actions (from 2022) show he breached the claim notification condition, which only requires notification 'as soon as practically possible'. I think its arguable the point it was 'practically possible' to refer the claim to AXA was when C declined cover under its policy, explaining it considered the matter to have started in 2020.

I can, however, see AXA's frustration with the matter. From its investigations, it seems possible the leak started before its policy was in force. And the leak was only fixed with it also being notified of the damage after the policy had ended. I can see its likely the claim cost will be significant. AXA says its chances of recovery from other insurers, or the developer are now unlikely, but I don't think this means Mr P shouldn't be indemnified for a loss he's incurred. As such, I intend to decide that AXA should settle the claim, in line with the terms of the policy.

Where I uphold a complaint and direct a claim to be settled, I can require AXA to carry out the reinstatement work needed up to our award limit, which in this case would be £430,000. I've seen a reserve had previously been set by AXA at under this limit. If that is the case, and the claim costs remain below our limit, then I intend to require AXA to carry out the full reinstatement of Mr P's property. However, if the reinstatement work needed would be above this award limit, I can recommend that AXA continues the reinstatement work beyond the limit, but I can't require it to do so. And AXA doesn't have to do what I recommend. Further, and this is important for Mr P, if Mr P accepts my decision and AXA chooses to not carry out any recommendation I make, Mr P might not be able to take AXA to court to make it complete any work outstanding. Mr P may want to take legal advice before deciding whether or not to accept any final decision I ultimately make.

Mr P says as a result of the claim being declined, he's incurred costs, including carrying out his own temporary repairs in the property. I intend to decide AXA should reimburse Mr P for this work, adding 8% simple interest to the amount from the date it was paid, until the date AXA settles the claim. However, I don't know what Mr P's costs have been. In order to provide a resolution for both parties, I invite Mr P to send evidence of costs incurred in response to this provisional decision, so that I can consider them before reaching a final decision on this point. Any costs which I might find AXA should pay, not including any interest they may attract, would all count to our overall award limit explained above.

I've next considered whether AXA should pay compensation for unfairly declining the claim. I intend to decide that it should. However, deciding on a figure for this isn't easy, as clearly much of Mr P's distress and inconvenience (and that of his family) stems from the damage itself, with much of that upset occurring before AXA was notified, rather than on account of any failure of AXA, or its poor actions. I can't fairly hold AXA responsible for any inconvenience or distress suffered by Mr P before AXA was notified of the claim.

I've also considered that there are complexities in this claim, and AXA was always entitled to validate the claim before accepting it, especially given it was no longer on cover when the claim was raised. However, by August 2024, I think AXA reasonably had enough to accept the claim. And not doing so at this stage means Mr P has been living in a damaged property, including without full use of his washing facilities, for longer than he should've been. He's seen his family stressed by those conditions and I'm also aware he's welcomed a baby in this time, whilst worried about the condition of the property. As such I intend to decide AXA should pay £1,000 compensation to Mr P to recognise the impact of it not accepting the claim.

Mr P accepted the decision, he provided invoices for temporary repair costs incurred. He also included an invoice for a surveyor report, and included costs for items he says have been damaged by mould, such as clothing and bags. He further said the insurance costs had increased owing to the reserve on the claim and AXA's delay, so he felt AXA should reimburse that amount.

AXA said it was prepared to accept my provisional decision and move matters forward given the position Mr P is in.

My final decision

I uphold the complaint. And I direct AXA Insurance UK Plc to:

- Settle the claim for damage caused by escape of water in line with the policy terms. If the reinstatement cost exceeds our award limit of £430,000, then I recommend that AXA continues the work beyond this limit. However, this recommendation will not be part of my award. AXA Insurance UK Plc doesn't have to do what I recommend.
- Reimburse Mr P £6,315 for previous repairs to the property.
- To the sum above, AXA will need to add 8% simple interest from the date the repairs

were paid for, until the date of settlement.

- Consider Mr P's request for reimbursement of the cost of a surveyor's report and for damage to clothing and other items.
- Pay Mr P £1,000 compensation for unnecessary distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 September 2025.

Michelle Henderson
Ombudsman