

## **complaint**

Miss B has complained about AXA Insurance UK Plc's decision to decline her claim for water damage to her property.

## **background**

I have previously issued a provisional decision in relation to this complaint. The following represents excerpts from my provisional decision outlining the background to this complaint and my provisional findings, and forms part of this final decision:

*"On 26 December 2010, Miss B was notified by a neighbour at her second home that there appeared to have been an escape of water at the property. It transpired that a pipe had burst causing extensive water damage. Miss B called a plumber to make repairs and submitted a claim to AXA for the resulting damage. AXA appointed loss adjusters to assess the damage and validate the claim. As there was a lot of damage to Miss B's property, the loss adjusters started the process of drying the house and removed items that it deemed to have been damaged beyond economic repair. However, the claim was subsequently declined.*

*AXA decided, based on the information given, that the property had been 'unoccupied' for 30 consecutive days. In those circumstances, under the terms of Miss B's policy, there was no cover for a claim for escape of water and AXA had no liability. Miss B's insurance policy defines 'unoccupied' as "not lived in by you or your family for more than 30 consecutive days".*

*Miss B complained to AXA about her claim being declined and about the stress the handling of her claim was causing her. She stated that she had last visited the property exactly one month earlier- on 26 November. She had not stayed the night at the property on that occasion as she had been there to collect items left there on a previous visit. Miss B had said that ordinarily she would likely have visited the property more than once in the intervening month but, due to severe adverse weather conditions, she had not done so. However, she said that her visit one month earlier on 26 November, even if not to stay at the property, meant that it had not been unoccupied for more than 30 consecutive days.*

*Miss B stated that when the policy was sold to her (via a broker) the property was listed as being subject to 'lengthy' periods of unoccupancy. Because of this, she did not believe that there were any limits as to how long the property could be unoccupied for the purposes of the policy cover.*

*AXA has not sought to recover any monies relating to the works already undertaken at Miss B's property (in particular, the drying works). However, following Miss B's complaint, it still did not agree to meet her claim and so she brought a complaint to this service. Our adjudicator assessed the evidence but an agreement could not be reached and so this case has been passed to me for my consideration.*

## *my provisional findings*

*I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.*

*The issues for me to decide in this case are whether or not the decision made by AXA to decline Miss B's claim under the unoccupancy clause of her insurance policy is fair and reasonable and whether Miss B's claim has been well handled by AXA.*

### *unoccupancy*

*There is no dispute that Miss B's home was damaged by an insured event – an escape of water. The question is whether or not at that time Miss B's property had been unoccupied for 30 days or more such that, for the purposes of the policy, an exclusion for escape of water claims applied.*

*I will consider firstly the issue of unoccupancy, the exclusion under Miss B's policy and whether or not her visit to the house a month before the date of loss can be deemed to be occupancy. The policy defines 'unoccupied' as a property not being "lived in" by Miss B or a member of her family for more than 30 consecutive days. There is no further definition of the term "lived in" and so I must consider what a reasonable interpretation of this phrase might be.*

*I have looked carefully at the wording of this exclusion and noted Miss B's statements about her visits to the property. Unfortunately, I am persuaded by AXA's conclusion that a visit to the property on 26 November that did not include an overnight stay cannot be classed as the property being 'lived in' for the purposes of the unoccupancy clause. I am satisfied that it would be reasonable, for the purposes of considering a property to be lived in, to deem this to require an overnight stay at that property. In this case, therefore, although Miss B visited the property one month before the date of loss, I don't think it is unreasonable of AXA to have concluded that she was not at that time living there, that the property was unoccupied and that, therefore, the exclusion applied.*

*Miss B has discussed with this service the fact that she understood her policy to allow for periods of lengthy unoccupancy. In this case, AXA is not responsible for the sale of Miss B's policy so I will not consider here whether Miss B was mis-sold this policy or given misleading advice at the point of sale. However, I understand that a further complaint has been considered by this service in relation to the sale of Miss B's policy.*

### *AXA's handling of this claim*

*I have considered Miss B's comments about the way that her claim was handled and have reviewed the evidence in relation to this. There were some delays in loss adjusters attending Miss B's property and, in particular, it took several months for Miss B's claim to be declined, which does not reflect good claims handling. I note that AXA too was unhappy that its appointed loss adjusters were not able to deal with the issue of unoccupancy far more expediently.*

*During the period before the claim was declined, the loss adjusters did take steps to dry the property and I note that AXA has not sought to recover the costs of any works that were carried out before the claim was declined. In its final response to Miss B's complaint, AXA states: 'with regards to the costs we have incurred in drying your property and removing those contents beyond economical repair, I confirm we will not seek recovery of these costs from you. We made the decision to appoint a disaster restoration company before liability was denied and, as such, it would not be reasonable for us [to] request you pay these costs'. I agree that it was AXA's decision to appoint loss adjusters and that recovery of these costs would not be reasonable. I do also note that commencing the work to dry the property was in the best interests of Miss B and prevented further damage to her property.*

*That being said, I am not satisfied that AXA has no liability in respect of the items removed from Miss B's home and destroyed. The loss adjusters' agents assessed certain items to be*

*beyond economic repair, removed and disposed of them. Whilst this is not unreasonable in the context of handling a claim, the fact that the claim was later declined means that Miss B has not been compensated for the loss of these items.*

*I should note firstly that items being beyond economic repair for insurance purposes and being beyond all use to Miss B are not necessarily the same thing – and, in fact, Miss B has stated that at the time of removal she commented that some items might be successfully dried. There seems to be some dispute amongst the loss adjusters and their agents as to who authorised the disposal of Miss B's contents. However, I am satisfied that for as long as Miss B's claim had not been validated by AXA, these items should not have been disposed of and Miss B could reasonably have expected to be indemnified for them.*

*I understand that Miss B was present at the time the items were removed and that she gave her consent. However, I am not persuaded that by doing so she consented to the removal and disposal of the items and for no settlement to be made in lieu of retaining them, especially as at the time the claim had not been declined. By assessing items as being beyond economic repair and removing them, Miss B was given a reasonable expectation that she would receive settlement for them.*

*AXA has not accepted Miss B's claim and I do not find that decision to be unreasonable. However, that does not mean its agents should have taken and destroyed items from her property with no offer of settlement. Therefore, I consider AXA to be liable to indemnify Miss B for these items. As such, AXA should make a settlement to Miss B for these items calculated based on the value of the items at the time of their disposal.*

*Further, I note, as did our adjudicator, that in its correspondence with Miss B AXA referred to this being a case where there had been a breach of a policy term. This is not the case – Miss B is not breaching the policy terms by leaving her home unoccupied for 30 days, but an exclusion means that in those circumstances. This confusion led Miss B to be inconvenienced by corresponding with AXA as to whether she was in breach of her policy terms and to seek advice as to whether this was only a "technical breach". All of this discussion was irrelevant because, as AXA points out in its final response letter, there has not been a breach of policy terms here.*

*Miss B has also complained that further damage was caused to her property by AXA's agents, both by a dehumidifier leaking and by one of the contractors putting his foot through a floor, causing damage to the ceiling below. I agree with our adjudicator that whilst this may have caused further inconvenience, there is no evidence that either incident caused further damage to the property such that AXA should be liable. In particular, the ceiling in question was already listed on the planned schedule of works to be completely repaired.*

*Overall therefore, I have to consider the delays in processing and validating this claim, which was then ultimately rejected, the confusion over whether or not Miss B had breached a term of her insurance policy and the disposal of Miss B's property. Taking these factors into account, I am in agreement with our adjudicator that AXA have not handled this claim well. I agree with her recommended award of £300 as compensation to Miss B for the inconvenience this caused and I understand that AXA has also agreed to this award."*

Therefore, my provisional decision was to uphold this complaint in part. Provisionally, I required AXA Insurance UK Plc to indemnify Miss B for the items removed from her home and destroyed and to pay her £300 to reflect the inconvenience the poor handling of this claim caused her.

responses to my provisional decision

AXA accepted my provisional decision.

Miss B made additional comments in response to my provisional decision, as set out below.

*unoccupancy*

Miss B wanted to clarify the chain of events set out in the “background” of the provisional decision. It was stated that she had not stayed the night at the property on 26 November (one month before the escape of water) as she had been there to collect items left there on a previous occasion. Miss B wanted to confirm that she had intended to stay longer at the property on that occasion, however heavy rain was forecast and she left prematurely to avoid any potential travel issues as she had a function to attend.

*AXA’s handling of the claim*

Miss B did not accept that the award of £300 compensation reflected the amount of distress and inconvenience caused by AXA’s handling of her claim.

She stated that she has developed health problems as a result of the distress caused by the claim, including insomnia and tinnitus. Miss B underlined that the inconvenience she has suffered has been compounded by the loss of use of her second home for a three year period since she made the claim in December 2010. Given these circumstances, Miss B thought a higher compensatory award was merited.

Miss B has stated that it “is not pertinent” for AXA to indemnify her, as proposed by the provisional decision, for the loss of contents its agents assessed as being beyond economic repair and destroyed given her proposed settlement with the broker.

*additional comments*

Miss B also raised other issues such as her policy not having been renewed this year by AXA and the fact that she has continued to pay council tax on her second home during the period of this complaint.

**my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

*unoccupancy*

I have noted Miss B’s comments about the chain of events preceding the escape of water at her property and thank her for the clarification, although this does not affect my findings about the unoccupancy term in her insurance policy.

*AXA’s handling of this claim*

I have considered carefully Miss B’s comments about my provisional findings that AXA should reimburse her for the items assessed as being beyond economic repair and destroyed, despite her claim later being declined. However, AXA is liable to reimburse Miss B for these items, on the basis of the items’ condition at the time they were removed

from the property by its agents, and it would not be appropriate for me not to make an award on that basis.

This award does not constitute reimbursement under the terms of Miss B's policy as I have assessed that AXA has fairly and reasonably declined her claim. However, before doing so, it (or its agents) should not have destroyed her property. Any recompense paid to Miss B under the terms of her policy by a third party is a separate issue to that of AXA's liability here.

#### *AXA's handling of this claim*

I can understand Miss B's distress at losing the use of her second home – in particular for an extended period of time. However, I cannot attribute the whole period of that loss of use to AXA's actions, such that I should make an award on that basis.

As set out in my provisional decision, AXA should have made an assessment as to whether or not it would accept this claim far more expediently than it did. However, although this delay of several months did not constitute good claims handling on the part of AXA, it is not the direct cause of Miss B having been without the use of her property for three years. AXA's decision to decline this claim was not unreasonable and, therefore, I am not persuaded that it would be fair or reasonable to consider AXA liable for the distress caused since the decline of the claim. Therefore, I am not satisfied that it would be appropriate to increase my recommended award.

As also set out in my provisional decision, AXA has not sought to recover the costs of any works that were carried out before the claim was declined. These works involved the drying of Miss B's property, which was in her best interests and prevented further damage to her property.

#### *additional comments*

The issues set out above, including in relation to council tax payments, did not form part of Miss B's initial complaint to this service and neither did any questions about the policy renewal process. Therefore, as AXA has not had the opportunity to comment on these matters, any complaint should be directed to AXA in the first instance. As such, I do not intend to make any findings on these issues.

#### **my final decision**

For the reasons given above, I uphold this complaint in part. I require AXA Insurance UK Plc to indemnify Miss B for the items removed from her home and destroyed in line with my findings set out above and to pay her £300 to reflect the inconvenience the poor handling of this claim caused her.

Helene Pantelli  
**ombudsman**