

complaint

Mr S and Mrs C complain that AXA Insurance UK Plc unfairly declined their home insurance claim following a leak at their property.

background

Mr S and Mrs C held a home insurance policy with AXA. The policy started in May 2018, and later that month they made a claim for water damage. In early-July 2018 they confirmed the leak had been located and repaired. Their plumber had to attend on multiple occasions to find the leak – which was from a mains water pipe beneath a concrete screed, below the kitchen flooring. In August 2018, they submitted quotes for the repairs.

In October 2018, Mr S and Mrs C made a complaint about the progress of their claim. They were of the view that delays had been caused by AXA due to it concluding the damp wasn't caused by the leak. They were also unhappy with the alternative accommodation being offered to them for the duration of the repairs.

AXA didn't uphold Mr S and Mrs C's complaint. It also explained that it held concerns about the length of time the leak had been ongoing, and the proximity of the claim to when their policy started. AXA explained further investigations would be undertaken.

Mr S and Mrs C then referred their complaint to this service. Whilst the case was waiting to be allocated to one of our investigators AXA undertook further investigations, and it sent Mr S and Mrs C a letter outlining its concerns:

- In February 2018, Mr S and Mrs C made four phone calls to their then insurer. Their semi-detached neighbour had damp on his side of the party wall, and he hadn't been able to find a leak at his home. Mr S and Mrs C initially advised their insurer that they had bubbles in their hallway and the damage was getting worse. They also said the leak was believed to be coming from their underfloor heating and noted their boiler pressure kept dropping. The insurer explained to Mr S and Mrs C that it was therefore likely they had a leak at their property.
- Mr S and Mrs C's insurer told them it was their responsibility to source and repair the leak before it considered the damage – Mr S and Mrs C raised dissatisfaction about this and highlighted the costs involved. The insurer reiterated that if their neighbour had conducted investigations at his home and he hadn't been able to find the leak, then it was now their responsibility to investigate and the issue couldn't be left. However, Mr S and Mrs C didn't undertake any investigations.
- The neighbour's builder visited Mr S and Mrs C in February 2018. AXA has received confirmation from the builder that he highlighted a slight leak from their boiler, but at the time he told Mr S and Mrs C he didn't consider the boiler leak to be the cause of the amount of damp he had found in the lower levels of their property.
- Mr S and Mrs C contacted AXA in May 2018 to make a claim for water damage to the walls and skirting boards in their hall, lounge, and dining area. They claimed they had noticed the damage the day before – and they failed to mention the previous issues they had raised with their previous insurer. The damage they described also wasn't consistent with a leak that had been ongoing for only a few days.

- Mr S and Mrs C presented AXA with water bills which showed an increase of about six times their average amount of water usage, dating back to before AXA's policy started. AXA thought Mr S and Mrs C would have noticed their water usage increasing by such a vast amount.

In response to AXA's concerns, Mr S and Mrs C said:

- In February 2018, they understood the damage at their property to be from a leaking boiler pipe – and they informed their then insurer they had decided not to take their claim forward as the damage was so minor. They replaced their boiler later that month and considered the issue resolved.
- During the February 2018 calls to their previous insurer they noted small bubbling in their hallway, beneath where their boiler is located. They also noted bubbling to their side of the party wall, which is a different wall to their hallway, but this was believed to be from a damp issue at their neighbour's house. They explained that they only mentioned their underfloor heating in the first instance as they were reflecting the neighbour's concerns, and they later clarified their doubts their underfloor heating was leaking given their floors were dry.
- They provided AXA with text messages that show their neighbour was satisfied after they had resolved their boiler leak. They considered their conclusions and action in February 2018 to be reasonable given the damage at their property was so minor. They also weren't aware that the mains water pipe under their kitchen floor was leaking, and the forthcoming water bill wasn't received until June 2018.
- In respect of the amount of damage reported when the claim was made in May 2018, they said they didn't notice the damage until that time, and it built up gradually. They also said a television and children's play area was obscuring some of the damage.

AXA considered Mr S and Mrs C's points, but it said they had failed to provide any evidence or reasonable explanation for why their previous insurer had recorded a claim for the same damage. It said they had failed to present any evidence that showed they had followed the previous insurer's advice to investigate the leak, and it was concerned they had failed to mitigate their loss. Therefore, AXA concluded the damage was caused before its policy started, and it declined the claim.

Mr S and Mrs C remained unhappy, so one of our investigators considered the matter. She didn't think AXA's claim decision was reasonable and she thought the complaint should be upheld. She said the following:

- There's been an insured event, *i.e.* a water leak. Therefore, for AXA to decline the claim it needs to show that one of the policy exclusions applies, but it hasn't mentioned one.
- The leak may have started when Mr S and Mrs C held cover with a different insurer, but the leak continued into AXA's period of cover. Our approach here is for the current insurer to deal with the claim, and for it to recover some costs from the previous insurer if it feels it's appropriate to do so.

- Because Mr S and Mrs C contacted their previous insurer to ask about tracing a leak, AXA is of the view they were aware there was a problem and they didn't do enough to mitigate the damage. However, Mr S and Mrs C say on the calls that they have one or two small bubbles and their calls had been prompted by contact from their neighbour. During the calls they were clear they had little damage at their home.
- AXA has concluded that Mr S and Mrs C would have been aware for some time there was damage occurring. However, AXA first visited about three months after the claim had been made – and for about two of those months the leak was still ongoing whilst it was traced and repaired. During this period, the damage had continued to worsen. Our investigator explained there wasn't any evidence that the damage at Mr S and Mrs C's home in February 2018 was significant and ought to have prompted more investigation – or evidence from May 2018 when the claim was made, that the damage was so severe it would have been visible for some time.
- So, based on the above, our investigator said AXA should settle the claim in line with the policy terms. She also thought AXA should compensate Mr S and Mrs C £500 for the delays to their claim and their inconvenience. She noted they have two young children, and a large hole in their kitchen floor and damp.

Mr S and Mrs C accepted our investigator's conclusions, but they asked about their own report costs after they had appointed a forensic surveyor to dispute AXA's findings.

AXA disagreed with our investigator's outcome. In addition to the points already made, AXA said the policy terms exclude gradual damage. It also noted concerns that Mr S and Mrs C had asked to stay in a hotel suit whilst the repairs were completed, and it considered the damage caused by the tracing and accessing of the leak to be excessive.

Our investigator changed roles, so the case was passed to one of our other investigators to review the responses. She agreed with the previous investigator's findings, and she wasn't persuaded by AXA's response. She also said that we would consider Mr S and Mrs C's report costs once they had evidenced the amount paid. Because AXA disagreed, the complaint has been passed to me for a final decision.

Mr S and Mrs C have since provided their report invoice for £564. They also thought the £500 compensation recommended by our investigators should be increased given their experience, and the impact on their family which includes two young children.

my findings

I have considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is inconclusive or incomplete, I have reached my decision on the balance of probabilities – this means I have determined what I consider is more likely to have happened, based on all the evidence that is available and the wider surrounding circumstances.

Given how close the claim was made to the start of the policy, along with Mr S and Mrs C's phone calls to their previous insurer, I can understand AXA's initial concerns. However, I'm not persuaded those concerns were enough for AXA to have fairly declined the claim.

This means I have reached the same outcome as our investigators. However, I've increased the compensation, and clarified AXA needs to reimburse Mr S and Mrs C's surveyor fees plus interest. I will set out my findings under the following five headings: 'the insurer responsible', 'gradual damage', 'other concerns', 'forensic surveyor invoice', and 'compensation'.

the insurer responsible

Having reviewed Mr S and Mrs C's water bills, on balance, I'm persuaded that the leak was ongoing before AXA's policy started. In my view, the average monthly water usage during 2017 supports the leak started late-2017.

AXA's policy excludes any damage that occurred, or arose from an event, before the policy started. However, the leak continued for about six weeks into AXA's period of cover. So, in my view, it would be difficult to separate the damage that occurred before and after AXA's policy started. Equally, the damage wasn't from an event that only arose before its policy started; the event in question was ongoing for quite some time afterwards. So, I'm not persuaded the exclusion can fairly be applied.

Furthermore, given the leak continued well into AXA's cover, I consider it reasonable for AXA to consider the claim and for it to seek a contribution from the previous insurer if it wishes to do so.

gradual damage

AXA points towards gradual damage being excluded by the policy terms. However, whilst I'm satisfied AXA can technically apply that exclusion here; I need to consider whether the strict application of the exclusion is fair. This service generally takes the view it isn't fair for an insurer to rely on 'gradual damage' exclusions unless the insured was aware, or ought reasonably to have been aware, of the issue. So, I've considered Mr S and Mrs C's awareness of the ongoing damage and the action they took.

Mr S and Mrs C's water bill for the period in question wasn't sent to them until after they had made a claim with AXA. I also haven't seen anything that suggests they had been alerted by their water provider there was high water usage at their property, before they were sent their bill. I note AXA has been in contact with the provider and it confirmed it was unaware of the leak until June 2018. So, the high water bill alone doesn't show Mr S and Mrs C ought reasonably to have been aware there was an ongoing leak at their home.

AXA also relies on Mr S and Mrs C's phone calls to their previous insurer in February 2018, and on the observations of their neighbour's builder. The calls took place in early-February. In my view, the calls show there was some minor damage to Mr S and Mrs C's side of the party wall, but contrary to the *neighbour's* belief that Mr S and Mrs C's underfloor heating was leaking, their floor was dry. Mr S and Mrs C told their insurer they were aware their boiler was leaking, but they didn't want to claim for the associated water damage in the hallway due to the likely low value of the repairs.

AXA says that whilst Mr S claimed the damage on their side of the wall was minimal during his February 2018 calls with the previous insurer, this contradicted what Mrs C said during the first call that month. However, having listened to the calls, it's not my view she implied the damage was greater than what he later said it was. I consider them to have been consistent.

The previous insurer also told AXA that it has a record of Mr S and Mrs C making contact in January 2018, *i.e.* before the February 2018 calls, to advise they had noticed water coming up through the kitchen floor; but they told the insurer not to worry as it wasn't causing much damage. I've explained to AXA that if I'm to place any weight on this alleged call, I need a copy of it, or at least, the call notes. However, this information hasn't been forthcoming. Therefore, I can't reasonably rely on this call when reaching my decision. I've not seen anything that shows the context of the conversation.

The neighbour's builder then visited Mr S and Mrs C in mid-February 2018 to try to identify the cause of the damage at the neighbour's property. His report, which was written for the benefit of the neighbour, explains Mr S and Mrs C's side of the party wall had high damp readings; and bubbling paint and mould was also found in various locations across their ground floor. However, no photos were taken by the builder, and on balance, I'm not persuaded the damage was significant at that time given Mr S and Mrs C's recent discussions with their insurer.

Equally, as highlighted by our investigator, the leak continued for about six weeks after the claim was made in May 2018 – and then AXA didn't visit Mr S and Mrs C for about another six weeks. During this three-month period, the damage is likely to have got worse. As such, AXA doesn't know the extent of the damage in May 2018, and therefore, if a leak ought reasonably to have been apparent long before Mr S and Mrs C attempted to trace one.

AXA says the builder has confirmed that he told Mr S and Mrs C he didn't consider the boiler leak to be the cause of the damage at their property. I haven't seen anything to support what AXA says here. But in any event, even if the builder did later say this, it contradicts what he wrote in his report at the time. His report noted he had advised Mr S during his visit that he considered it "*very highly likely*" the boiler leak was the cause of all the damage at both properties. Therefore, I don't consider AXA's reliance on his later recollections to be reasonable.

The builder noted in his report that it might be prudent for Mr S and Mrs C to ensure there are no further water leaks at their property once their boiler is repaired. The report doesn't however say this message was given to Mr S and Mrs C, and I haven't seen anything that shows they were chased further by the neighbour after their boiler was replaced. The text messages to the neighbour also show that Mr S and Mrs C were advised by their heating engineer their heating system couldn't be the problem because their underfloor heating hadn't lost any pressure.

Mr S and Mrs C were advised by their previous insurer that they needed to investigate their home if their neighbour had ruled out any issues at his. The text messages show Mr S and Mrs C were then advised by their heating engineer that he didn't consider their boiler leak could have caused damage to the *neighbours'* property – which contradicted the builder's conclusions. Therefore, I accept there's a reasonable question here about whether they ought to have carried out more investigations after their boiler was replaced.

However, *overall*, I'm not persuaded it was unreasonable for Mr S and Mrs C not to have investigated further at that stage. I say this because:

- their underfloor heating had been ruled out by the heating engineer;
- their floor was dry and the damage on their side of the wall was relatively minor;

- they hadn't heard further from the neighbour that his damage was continuing to worsen after their boiler had been replaced; and
- they believed the other damage at their property had been caused by their boiler leak, which they had resolved

So, taking all the above into consideration, in my view, I can't fairly decide Mr S and Mrs C ought reasonably to have been aware there was an ongoing leak at their property causing gradual damage. *On balance*, I'm more persuaded that they took reasonable action based on the information they had received at that time and the limited damage they had so far observed at their property. Therefore, I'm not persuaded AXA's strict application of the gradual damage exclusion is fair.

other concerns

AXA says it's concerned about the damage caused during the trace and access of the leak. However, it's not said anything that persuades me the damage was caused purposely or was excessive or unnecessary. I also note the work was undertaken by a relatively well-known and reputable company. So, I'm not persuaded by the point AXA makes here.

AXA has also pointed towards Mr S and Mrs C's objections to the accommodation they were offered at the start of the claim, before it was declined. However, their second child had just been born, and in my view, it's understandable they were anxious about the property they were moving to and wanted to obtain the best arrangement possible for their needs. Therefore, I'm not persuaded by this point either.

To be clear, I've not considered whether the accommodation offered was reasonable. Due to how the claim progressed, I don't consider that issue to be relevant. Once the remedial works do now get arranged, if Mr S and Mrs C have further concern about their accommodation, they will need to make a new complaint.

forensic surveyor invoice

I've previously given AXA a copy of Mr S and Mrs C's invoice for £564. It's my understanding that they appointed a surveyor in response to AXA's concerns about their damp proof course and related issues that could affect the drying of the property. I've already explained to AXA that, given it implied in its complaint response letter it required a detailed report from Mr S and Mrs C, I intended to decide AXA should cover their surveyor's invoice if I decide AXA should accept the claim. I also explained that if AXA wishes to dispute it's responsible for these costs, it needed to let me know why.

AXA hasn't offered anything in response. Therefore, it follows that AXA needs to reimburse these costs as part of the claim. AXA should also add interest at 8% simple per year from the date Mr S and Mrs C paid the invoice, until the date AXA reimburses the £564.

compensation

As explained, I understand AXA's initial concerns given the claim was made soon after the policy started and due to the calls Mr S and Mrs C made in February 2018. In my view, it was reasonable for AXA to follow up on those concerns. However, I'm not persuaded it reached a fair claim decision, or all the points it relied on to support its decision were reasonable.

Therefore, although I accept AXA isn't responsible for the upset and inconvenience it caused by following up its concerns in the first instance, I'm satisfied it's responsible for much of the upset and inconvenience that followed afterwards.

At the time Mr S and Mrs C made the claim they had a three-year-old child, and their second was born four months later. They have since been living in a damp home and with damaged flooring in a main living space that represents a hazard to their children. The claim has been significantly delayed, and I can see from the correspondence that this matter has been very time consuming and upsetting. I'm persuaded the impact on them is likely to have been relatively significant given their new born.

Taking all the above into consideration, I'm not persuaded the £500 award recommended by our investigators goes far enough. I'm increasing this to £1,200.

my final decision

For the reasons set out above, I uphold this complaint. I require AXA Insurance UK Plc to:

- settle the claim for the damage caused by the mains water leak, subject to the remaining policy terms;
- reimburse Mr S and Mrs C £564 for their surveyor fees, and pay them interest¹ at 8% simple per year on this amount, from the date they paid the invoice until the date this part of the settlement is paid; and
- compensate Mr S and Mrs C £1,200

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs C to accept or reject my decision before 13 June 2020.

Vince Martin
Ombudsman

¹If AXA Insurance UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from the interest paid, it should tell Mr S and Mrs C how much tax it's taken off. If requested, it should also give them a certificate showing the amount deducted, so they can reclaim it from HM Revenue & Customs if appropriate.