

complaint

Mr and Mrs M have complained about the decision by AXA Insurance UK Plc to decline a claim made under their buildings insurance policy.

background

The circumstances of this complaint were set out in my provisional decision dated 14 January 2015, a copy of which is attached and forms part of this final decision. In that decision I explained why I was minded to uphold this complaint in part.

Briefly, Mr and Mrs M's claim was refused by AXA as it thought that the moisture in the affected wall had resulted from the failure of the existing damp proof course, rather than an escape of water. It obtained two reports from specialists which said that this was the case. However Mr and Mrs M provided a report from their own specialist who said the moisture in the wall resulted from an escape of water rather than failure of the damp proof course. I said that, on balance, I thought the moisture in the wall had resulted from a combination of both. I explained that I intended to therefore require AXA to pay 50% of the claim.

I invited both parties to respond with any further submissions.

AXA responded. Although it did not have any new evidence, it said that it remained of the view that no further investigation was warranted and the claim should not succeed. It referred to the existing evidence again and said that it thought this supported that the claim related to an ongoing damp problem rather than an escape of water.

Mr and Mrs M responded. They referred to the existing evidence to support their argument that the claim related to an escape of water rather than an ongoing damp problem. They said they would like a desktop review carried out by a relevant professional (as suggested by the adjudicator) as they think this would go in their favour.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not been persuaded to depart from my provisional findings.

Neither party has provided any new evidence to support their arguments. I do not propose to repeat the same evidence that I took into account in my provisional decision, but given the opposing views of both Mr and Mrs M and the insurer, as well as the specialists that have carried out tests at Mr and Mrs M's property, I remain satisfied that a fair outcome is for 50% of the claim to be paid.

Although I acknowledge that Mr and Mrs M would like a desktop review to take place, I do not find that this would be helpful. As I said in my provisional decision, the available evidence is conflicting and indicates that the moisture in the affected wall was a combination of escaping water from the shower as well as failure of the damp proof course. A desktop review would not reveal any new evidence, and that being the case, I find that settlement on a 50% basis is appropriate.

my final decision

For the reasons set out above and contained in my provisional decision, I uphold this complaint in part. I require AXA Insurance UK Plc to pay 50% of the claim.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 26 March 2015.

Chantelle Hurn
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr and Mrs M have complained about the decision by AXA Insurance UK Plc to decline a claim made under their buildings insurance policy.

background

In March 2013, Mr and Mrs M made a claim for escape of water. They said water was escaping from their bathroom and had damaged a wall in their hallway.

AXA arranged for an assessor ("Z") to visit the property. It subsequently declined the claim as it was the assessor's opinion that the damage had occurred over a period of time as a result of wear and tear around the shower seal. Z also noted evidence of rising damp and thought this was the cause of the damage to the wall.

Mr and Mrs M disputed the assessor's findings and arranged for a different assessor ("B") to visit the property. B noted that water was escaping from the shower into the rear framing and the leak had saturated the lower wall in the hall. It confirmed that the cause of the dampness was the failure of the shower base.

AXA then arranged for a third assessor to visit the property ("R"). R concluded that there had been a failure in the damp proof course (DPC). AXA therefore maintained its decision to decline the claim.

Dissatisfied with AXA's decision, Mr and Mrs M brought a complaint to this service. Meanwhile, they arranged for B to carry out the necessary repairs to their bathroom and the affected wall.

The adjudicator investigated the complaint and thought that both parties presented persuasive arguments. As the damage had been repaired, she recommended that a desktop review of all the evidence be carried out by a further assessor to try and establish the cause of the damage.

AXA did not accept the adjudicator's recommendations and so the matter has been passed to me to consider afresh.

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 issue for me to determine is whether Mr and Mrs M have a valid claim under the policy. One of the insured perils under the policy is the escape of water. Therefore, for Mr and Mrs M's claim to be successful, there must be sufficient evidence to support that the damage to the wall in their hallway was caused by an escape of water.

Three different assessors have visited Mr and Mrs M's property and given their opinions as to the cause of the damage. Mr and Mrs M reported the damage in March 2013. Z visited the property the same month and concluded that the damage was from rising damp and wear and tear of the shower seal. B also visited the property the same month and said that a leak from the shower had saturated the hall wall, and that the cause of the dampness to the wall was the failure of the shower base. Then R visited the property in June 2013 (three months later) and said that it had carried out a salts analysis test which confirmed there were chlorides and significant nitrates present, and that moisture readings exceeded acceptable levels. It also said there were other areas in the property that showed issues. It was R's opinion that the moisture was caused by failure of the DPC, which had been inserted around 30 years earlier.

AXA has made the point that salts and nitrates are found in ground water rather than clear water that would be supplied to the home, indicating that the moisture in the walls was not from water supplied to the shower which then leaked. However, R has confirmed that it took its readings one metre from the ground and the adjudicator has made a valid point that this was apparently above the DPC; therefore it may be the case that the readings were taken from previously contaminated plaster.

I note that when R took its readings in June 2013, the shower had not been in use for some three months - therefore it is of interest that the moisture readings at that time were still higher than acceptable levels. Mr and Mrs M argue that the reason for this is because the wall is porous and takes a long time to dry out. In response to this, Z has said that a porous wall would dry out quickly, yet clearly that is not the case here. This suggests that the leaking shower was *not* the only cause of the moisture found in the wall.

Having said that, I further note that B took moisture readings in October 2013 (before the repairs were carried out), and said that the readings were perfectly acceptable and did not indicate rising damp. This was seven months after Mr and Mrs M had stopped using their shower, and so this evidence would suggest that the leaking shower was the only cause of the moisture found in the wall.

Given the opposing evidence and opinions, this has been a difficult case to decide. I therefore do understand the adjudicator's reasoning for suggesting a further assessment take place to try and establish the cause of damage. However, given that Mr and Mrs M have now had the damage repaired, any review would need to be a desktop review only and I do not think this would be particularly helpful. Arguably of course, if a moisture reading was taken now that the shower has been fixed, then we might expect there to be evidence of moisture if there was indeed rising damp. However, I note that Mr and Mrs M had the affected wall rendered with dense sand and cement, which would help prevent damp from rising. Therefore a moisture reading taken now would not be able to tell us if there had been rising damp in that particular wall before the repairs were carried out.

On balance, it seems to me that the moisture in the affected wall was likely to be a combination of escaping water from the shower, as well as failure of the damp proof course. I therefore consider a reasonable outcome to the dispute would be for AXA to pay 50% of the claim.

my provisional decision

For the reasons set out above, my provisional decision is that I intend to uphold this complaint in part. I am minded to require AXA Insurance UK Plc to pay 50% of the claim.

Both parties now have one month in which to provide me with any further submissions.

Chantelle Hurn
ombudsman