

complaint

Mr and Mrs C complain about the rejection of their claim by AXA Insurance UK Plc.

background

I issued a provisional decision on this case as follows –

‘Mr and Mrs C hold cover with AXA for their property, and they made a claim for damage to their drainage system. AXA rejected this on the basis that Mr and Mrs C didn’t get a specialist drain check done when they purchased the property some months before the claim. AXA also thought there was a possibility the damage occurred before they came on risk. Mr and Mrs C (with the help of a representative) complained to us.

One of our investigators looked into the matter and upheld the complaint. They thought that AXA hadn’t proved the damage occurred before the policy started, and thought they shouldn’t be penalised for not getting a specialised report. AXA didn’t agree, so the case has been passed to me for review.

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

As above I am not currently minded to uphold this complaint. I’ll explain why.

For the claim to succeed the damage would need to be covered by the policy, and occur whilst the policy is on risk. I can’t be sure of either of these things, but in particular the coverage by the policy.

The policy covers accidental damage, but I haven’t seen any proof of accidental damage, so I can’t ask AXA to meet the claim. It’s clear that the system failed and that in turn caused the pump burn out damage, but I’ve seen no proof that the original issue was accidental damage.

It might also be argued as AXA did that any damage accidental or not, occurred before the policy began. But I don’t need to make a judgement on that, as the cause of the damage hasn’t been proven.

So, whilst I don’t think at this stage the claim is defeated by the policy start date issue, or the lack of a specialist report when the property was purchased, I do think it fails over lack of proof of accidental damage.

I have noted the investigator’s comments that the damage was sudden and unexpected, but I don’t agree that this validates the claim. Most claims are sudden and unexpected but that doesn’t mean they are covered. Many wear and tear issues, or lack of maintenance or upkeep will have a sudden and unexpected breaking point when the damage becomes visible or its effects do, but that doesn’t mean insurance covers it.

I can’t know what happened here, but as it is the claimant who must first prove their case it is for Mr and Mrs C to prove there was clear accidental damage, not for AXA to show there wasn’t.

Based on the evidence I have I am inclined to make no award.’

Since my provisional decision AXA haven't made any further comment.

The consumer's representative has submitted a six page response, which I have read in full. To summarise, they consider that the damage must be accidental as it was not intentional. They also state the policy does not require the policyholder to prove causation, they suggest there are no signs of wear and tear, my provisional decision is at odds with other decisions made by this service, and that there is no logical explanation for the damage other than a significant external force.

my findings

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I am not minded to change the view I expressed in my provisional decision, I'll explain why.

I agree that there is no proof that the damage was intentional, indeed that has never been my view. However that alone is not enough for it to be covered. I definitely don't agree though that the policyholder doesn't have to prove causation. Under any reasonable interpretation of an insurance contract the claimant does need to show the cause of the event claimed for is covered, otherwise there would be no need to say what is and what is not covered. And I still think Mr and Mrs C's claim fails on this point.

Whilst the representative contests that there is no logical explanation other than an external event, they don't actually say what this event was. It needs to be something the policy covers, and without some indication as to what it was I can't be sure that the policy does cover it, and can't ask AXA to pay the claim.

I have also taken note of the previous decisions the representative has quoted. However, all cases differ and in those cases there are many aspects that aren't contained in the published decisions due to space constraints and the need for such decisions to be anonymous, so that consumers cannot be identified. Plus ombudsmen aren't bound by precedent via previous decisions, and I am only required to make what I consider to be the fair and reasonable decision in this particular case.

my final decision

I make no award against AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 23 April 2019.

Christopher Tilson
ombudsman