

complaint

Mr and Mrs L have complained about AXA Insurance UK Plc's ("AXA") offer made in settlement of their claim for damage to their property following a storm in January 2012.

background

I issued a provisional decision in this case in October 2013. That provisional decision stated the following:

background

Mr and Mrs L submitted a claim under their home insurance in January 2012 when their property was damaged by ingress of water following a storm. AXA appointed a claims assessor to assess the claim. The claims assessor concluded that the internal damage was caused by rainwater penetrating the property over a period of time. AXA declined the claim in relation to the external damage on the basis that it was not consistent with the type of damage caused by a storm.

AXA subsequently confirmed that the internal damage claim would be met under the accidental damage cover and it asked Mr and Mrs L to obtain estimates for the repairs. It later concluded that the damage had occurred gradually. Damage caused gradually was excluded but, given the circumstances, it agreed to pay Mr and Mrs L a sum equivalent to what its own contractors would have charged for completing the internal repairs. This offer was made as a gesture of goodwill for the poor claims handling Mr and Mrs L had been subjected to.

Mr and Mrs L were unhappy with AXA's decision. Their estimates for the required internal work were greater than the sum they were being offered by AXA. They continued to hold the view that the damage was covered under the policy and were also unhappy with the way their claim had been handled overall.

As the complaint could not be resolved it was referred to this service. Our adjudicator concluded that AXA's decision to decline the part of the claim relating to the external damage was not unreasonable. In respect of the internal damage sustained by the property she was of the opinion that it was unreasonable for AXA to rely on the gradually operating cause exclusion because she felt it to be unfair that Mr and Mrs L could have been expected to know that water was entering their property.

Our adjudicator was of the view that the cost of the internal damage should be met in full by AXA under the accidental damage cover provided by Mr and Mrs L's policy. She also recommended that AXA pay £150 to Mr and Mrs L as compensation for the caused.

AXA disagreed with our adjudicator's findings. It stated that it should be able to rely on the exclusion clause relating to damage caused gradually. It argued that if it was unable to do so it would constitute a fundamental redefining of the accidental damage peril so as to extend cover to include the general maintenance of the property. This in turn would mean that policyholders would have no incentive to maintain their properties rather they could wait until damage manifested itself and then bring a claim to their insurer. AXA also pointed out that the estimates that Mr and Mrs L had provided included some works which were not necessary.

Our adjudicator noted that one of the estimates had included both water related and non water related works but that AXA should settle the claim based on the water related damage

alone. She also felt it was unreasonable to expect Mr and Mrs L to take action if they could not have known that there was a problem.

As AXA continued to disagree the complaint was referred to me to determine the final outcome.

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.

I note that it is not in dispute that the storm conditions were present around the time the damage occurred to the property, however, I agree that the external damage does not appear to be consistent with storm.

In respect of the internal damage, I do not share the view that Mr and Mrs L's claim falls within the accidental damage peril. It is my view that the proximate cause of the internal damage was the storm conditions that had prevailed. Put differently, the storm was the reason for the water ingress into the property. It thus follows that this claim should not have been considered under the accidental damage peril or excluded under the gradually operating exclusion applicable to that peril.

Despite the external damage being declined because the damage was not consistent with storm damage, I do not think the internal damage claim can be declined in the same way. AXA has stated that its report concludes that the cracks in the internal walls have been painted over, however, these cracks are difficult to make out in the photographs provided. There is not, in my view, any evidence which indicates that the reported cracks in the same area that were previously filled and painted over were caused by water ingress. Mr and Mrs L have stated that the first time that they noticed any problem was at the time of the storm. They have also stated that they made temporary repairs to the area on the landing where the water was ingressing.

I have also noted that there is no policy exclusion under the storm peril (or within the general conditions) for damage caused gradually or by wear and tear. Furthermore, given the information provided by Mr and Mrs L that the damage only became apparent during the storm, I am not persuaded that it would have been appropriate for such an exclusion to be applied, even if had existed.

Taking all of the above into account it is my view that the internal damage to the property in January 2012 should be considered by AXA under the storm peril in Mr and Mrs L's policy.

I too am of the view that AXA has put Mr and Mrs L to some inconvenience throughout the handling of this claim such that warrants a modest compensation payment.

my provisional decision

My provisional decision is that I uphold this complaint and I am minded to require AXA Insurance UK Plc to reconsider the claim for internal damage under the storm peril contained in the policy.

I am also minded to require AXA Insurance UK Plc to pay Mr and Mrs L £150 compensation for distress and inconvenience caused.

I make no other award.

AXA responded to my provisional decision and agreed that it would settle the claim for the internal damage under the storm peril subject to the remaining policy terms and conditions and that it would also pay Mr and Mrs L the sum of £150 for distress and inconvenience caused. It also went on to state that it would settle the claim based on a quotation that Mr and Mrs L had provided.

Mr and Mrs L did not respond substantively to my provisional decision.

my findings

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

As AXA has agreed with my provisional decision, and Mr and Mrs L have not provided anything further, I see no reason to depart from the conclusions that I reached in my provisional decision. I note that AXA has stated that it will settle the claim based on paying Mr and Mrs L the balance under an invoice they submitted. It is my decision that the claim should be reconsidered under the storm peril; AXA has accepted this. It has already stated it will settle the claim subject to the remaining policy terms and conditions.

my final decision

My final decision is that I uphold this complaint. I require AXA Insurance UK Plc to re-consider the claim for the internal damage under the storm peril in the policy.

I also require AXA Insurance UK Plc to pay Mr and Mrs L £150 compensation for distress and inconvenience caused to them.

I make no other award against AXA Insurance UK Plc.

Claire Woollerson
ombudsman