

The complaint

The estate of Mr C has complained that AXIS Specialty Europe SE (AXIS) unfairly declined a claim under a home insurance property.

The executor is represented in this complaint and I will sometimes refer to the representative.

What happened

The executor for the estate of Mr C took out an Unoccupied Residential Property Policy to provide cover for a property. She later made a claim under the policy following an escape of water at the property. AXIS considered the claim and declined to deal with it. It said the requirement to have the heating on continuously hadn't been met.

When the executor's representative complained, AXIS maintained its decision not to deal with the claim, as it said the terms of the policy hadn't been complied with. So, the representative complained to this service. Our investigator upheld the complaint. She said she wasn't persuaded the breach of the policy terms was material to the loss or claim. She said AXIS should reconsider the claim.

As AXIS didn't agree, the complaint was referred to me.

I issued my provisional decision on 1 November 2023. In my provisional decision, I explained the reasons why I wasn't planning to uphold the complaint. I said:

The policy included a number of endorsements, two of which were relevant to this claim. These were:

"10d. Unoccupancy Clause

If the home is unoccupied it is a condition of the policy that you must comply with the following:-

...

2) The water must be switched off at the mains and the water system drained OR the heating must be maintained at a minimum 15 degrees centigrade or 58 degrees Fahrenheit at all times."

And

"20a) Unoccupied Cover (Level 3) Extension

It is noted that the following cover items are specifically included under the policy cover when the home is unoccupied:

a) cover item 4 "Escape of water from and frost damage to fixed water tanks, apparatus or pipes" however, between the 1st October and 1st April, there is no cover UNLESS the water is turned off at the mains and the water drained OR the central heating system is in continuous operation to maintain a minimum temperature of 58 degrees Fahrenheit/15 degrees Celsius at all times"

I think the wording is clear about what is required. It isn't disputed that the water wasn't turned off and the system drained. However, this wasn't necessary if the heating was on continuously. But it's accepted that the heating wasn't on continuously. The representative told AXIS the heating was on for six hours a day, made up of two hours in the morning, one and a half hours in the afternoon and two and a half hours in the evening. So, AXIS said there wasn't cover for an escape of water because the endorsements hadn't been complied with.

The representative provided AXIS with a statement from a plumber, who said:

"From a professional opinion if the heating is programmed to come on 3 times throughout the day, evenly spread as it was and for 6 hours in total this should have been sufficient to maintain a temperature of 15 degrees centigrade within the house. Especially in the bathroom where the burst pipe occurred as this part of the house was upstairs and not vulnerable to cold conditions"

In my view, this statement lacked sufficient detail to show how the plumber reached his opinion that the temperature of the house wouldn't have dropped below 15 degrees during the periods when the heating was off, including in December, when the claim for the escape of water was made. So, I'm not currently persuaded this showed it was unreasonable for AXIS to maintain that the escape of water claim wouldn't be considered as the endorsement hadn't been complied with.

I'm aware the representative also referred to another ombudsman's decision. Each complaint is considered individually based on the circumstances of that claim and complaint. However, I've read that decision, including noting that the ombudsman was persuaded the heating was on continuously. That is a clear difference to the circumstances I'm considering, where it is accepted that the heating wasn't on continuously. It was on for six hours a day.

So, having thought about all of the above, I don't currently intend to uphold this complaint or to require AXIS to do anything further.

I asked both parties to send me any more information or evidence they wanted me to look at by 29 November 2023. Both parties replied before that date.

AXIS confirmed it had nothing further to add.

The representative for the estate of Mr C provided further comments and information. In summary:

- He disagreed the endorsements highlighted were relevant to the claim. He said they would only apply if the escape of water was due to weather conditions causing the pipework to burst due to freezing conditions.
- He explained again the circumstances of the claim and re-sent the plumber's reports.
- He said weather conditions couldn't be a contributing factor in this case as it is commonly known that pipes freeze when the temperature drops below 32 degrees Fahrenheit/ 0 degrees Celsius.
- He provided a weather report that showed the temperature didn't fall below 1.8 degrees Celsius. In addition, given the location of the failed pipe, located in an upstairs WC area, which was not vulnerable to cold, and evidence the heating was set to come on for six hours per day, it was simply impossible for those weather conditions to have impacted the pipework.
- He said again that the endorsements should not be applied to any claim decision by the insurer as they were not relevant to the cause of damage which occurred at the property.

What I've decided – and why

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

Having done so, I don't uphold this complaint and for the reasons given in my provisional decision. As part of that I've considered the comments from the representative, but these don't change my view.

I don't think it would be fair for me to decide the endorsements weren't relevant to the claim. The endorsements described the conditions that needed to be met for there to be cover for any escape of water, not just ones that involved frozen pipes. If the terms weren't complied with, there was no cover for an escape of water. There were two ways to comply with the endorsement. One was to turn off the water at the mains and drain the system. The other was for the heating to be on continuously to maintain a temperature of 15 degrees at all times. It isn't disputed that the water was on and that the heating wasn't on continuously. If the policyholders didn't want to have the heating on the whole time, they could have turned off the water and drained the system, as allowed under the endorsement. I can't say what difference that would have made to the claim, as that didn't happen.

The representative also said the weather conditions couldn't be a contributing factor. I'm not persuaded that is necessarily true. He provided weather data for the period 19 to 25 December 2022, which showed the temperature didn't drop below 0 degrees. I assume this was an error, as the reported date of discovery was listed as 16 December 2022, although I also note a reference to it being "*on or around 18 December 2022*". I've looked at temperatures local to the property for the whole of December 2022. Between 6 and 18 December 2022, on most days the temperature dropped below zero degrees. Although the representative said the pipe was protected due to its location and also, again, provided the evidence from a plumber which included a statement that said the heating being on for six hours was enough to maintain the property at 15 degrees, I am not persuaded there was sufficient detail to show how these opinions were reached and were therefore reasonable to rely on.

So, having thought carefully about this complaint again, I remain of the view it was fair for AXIS to decline the claim on the basis that the endorsement wasn't complied with. As a result, I don't uphold this complaint or require AXIS to do anything further.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that this complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 19 December 2023.

Louise O'Sullivan
Ombudsman