

The complaint

Mr H and Mrs H complain about AXA Insurance UK Plc's decision to decline a claim made under their home insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr H and Mrs H have a home insurance policy underwritten by AXA which covers their home's buildings and contents.

They made a claim in late August 2022 after an escape of water at their home.

They'd had a bathroom re-fitted. Immediately after the plumbing work was done, Mr H and Mrs H went away for a week or so. On their return, they found their kitchen – underneath the bathroom – flooded.

The leak was quickly traced to a T junction in the pipework in the bathroom and a temporary fix was put in place. However, by that time, around £70,000-worth of damage – by Mr H and Mrs H's estimation – had been done, mainly in the kitchen.

AXA appointed a loss adjuster who inspected the property and recommended that the claim be accepted. However, around three weeks after the claim was made, AXA told Mr H and Mrs H that they'd be declining it.

Mr H and Mrs H weren't happy with this and made a complaint to AXA.

AXA's final response – dated 11 November 2022 - to that complaint said that the decision to decline the claim was, as things stood, correct.

AXA pointed out that the policy terms said they would only cover insured events (as listed in the policy). And they wouldn't cover:

- repairs, alterations, renovations or extensions unless agreed by AXA beforehand in writing;
- damage arising out of the activities of contractors; or
- damage due to faulty design or workmanship.

They said that in Mr H and Mrs H's case, the leak was from a T junction, fitted around 10 days prior to the claim, by contractors. That fitting wouldn't fail unless it was either faulty or fitted incorrectly.

AXA noted that the relevant parts (the T junction and pipe section) were with the manufacturer for inspection. And they said they were willing to re-consider the claim if the manufacturer confirmed that the parts were faulty. They added that they might want to

inspect the parts themselves once the manufacturer's investigation was complete.

They also noted a report provided by Mr H and Mrs H's contractors, which said the leak had been caused by a faulty part and not by poor installation. However, they said the report was far from independent.

They said it was more likely than not that the leak had been caused by poor installation by the contractor. And so, the decision to decline the claim was correct.

Mr H and Mrs H weren't happy with AXA's response and brought their complaint to us.

Our investigator looked into it and thought AXA had acted unfairly in the way they'd handled Mr H and Mrs H's claim.

He said AXA should settle the claim. And they should pay Mr H and Mrs H £100 in compensation for the trouble and upset they'd suffered as result of AXA's errors up to the date of AXA's final response on 11 November 2022.

AXA disagreed and asked for a final decision from an ombudsman.

I decided to issue a provisional decision – rather than a final decision – because AXA have kindly agreed that we can consider the trouble and upset potentially caused for Mr H and Mrs H *after* the date of their final response to Mr H and Mrs H's complaint. And I wanted both parties to have a chance to comment on my thinking about that.

My provisional decision

In my provisional decision, I said:

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

I don't think there's any dispute here about what Mr H and Mrs H's policy says – or about which policy terms are relevant. AXA have set that out in their final response to the complaint and I think their analysis of the policy terms is correct.

I think though that the final response might have been clearer about AXA's exact reasons for declining the claim.

They pretty much get to that when they say they believe it's more than likely the leak was caused by faulty installation.

However, they do quote other parts of the policy, saying for example that they'll only cover insured events (as defined in the policy terms) and that they won't cover alterations or renovations unless the works were agreed in advance.

I might go so far as to say that the final response is an attempt to hedge AXA's bets. So, for the purpose of complete clarity, I'll address now the policy terms that AXA have quoted.

First, the policy is clear that AXA will only cover insured events (as defined in the policy). To be clear, I'm satisfied Mr H and Mrs H suffered an insured event here – an escape of water.

AXA's loss adjuster was clear on that point in his initial report – and he was right – there has been an escape of water, which is an insured event under the policy terms.

AXA also quoted the policy term which says they won't cover alternations or renovations unless agreed in advance etc.

Mr H and Mrs H were having alterations or renovations carried out in their bathroom.

However, elsewhere the policy terms say that advance agreement from AXA is only necessary if the cost of the renovations or alterations is above a given amount. I don't think AXA are disputing that the cost of the work in Mr H and Mrs H's bathroom was below that threshold.

I'll come now to the crux of the matter in this case. AXA's final response says – or at the very least strongly implies – that they would be liable for the cost of repairing the damage caused by the escape of water if the relevant part(s) were faulty.

It's important to note that there's no suggestion that the part is badly designed. If it were, then the policy exclusion for "faulty design" might be relevant. But if the T junction design were faulty in itself, then there would be a lot more leaks up and down the country. This type of "push in" junction is very commonly (if not ubiquitously) used these days.

But AXA go on to say – rightly – that they would not be liable if the contractor installed the T junction – or the pipework going into it – poorly or incorrectly. That would amount to damage arising from "faulty workmanship" and/or the "activities of contractors" (as per the policy terms).

So, to cut to the chase, it comes down to this – was the part faulty or was it badly installed? If the part was faulty, AXA should settle the claim. If the installation was poor, they need not settle the claim.

At this point, I should make one important thing very clear. Contrary to what AXA have told Mr H and Mrs H at times, the burden of proof – if AXA wish to apply a policy exclusion in this case – is on AXA, not Mr H and Mrs H.

We take the view - and it's widely accepted in the insurance industry – that it's for the policyholder to show that there has been an insured event which caused loss or damage.

And Mr H and Mrs H have done that in this case – as the loss adjuster said, there has been an insured event (an escape of water) and it has demonstrably caused the damage for which Mr H and Mrs H are making the claim.

But it's for the insurer to demonstrate that an exclusion applies. So, in this case, it falls to AXA to show that – on balance – it's more likely that the damage was the result of faulty workmanship rather than a faulty part.

AXA have – perhaps understandably – suggested that the contractor's report about the cause of the damage isn't independent. Clearly, the contractor has a substantial vested interest in putting the blame on the manufacturer.

However, at present - and throughout the claim - the contractor's report is just about the only evidence available. You can weigh that evidence however you like, but there's absolutely no evidence on the other side of the scales to suggest that the contractor installed the pipe and junction badly.

I should also say that the contractor's report is quite convincing. It makes sense. The

explanation given is coherent and logical.

And it's backed by evidence – marks on the pipe appear to show that the ring inside the junction which grips the pipe was at an angle, skewed or loose – which it should not be.

The contractor says that the teeth marks made by the ring on the pipe indicate a fault in the part which caused its teeth to grip the pipe at an angle. And once water was put through the pipe, the pressure inevitably caused the ring to buckle and the pipe to come loose.

The parts were sent to the manufacturer for inspection and comment. But, according to Mr H and Mrs H, the manufacturer has not responded in any way at all. That, in itself, might suggest that the manufacturer is unwilling to admit that the part had failed.

Whether that's true or not, it seems unlikely that the manufacturer will now provide any comment or evidence to contradict the contractor's assertion that the part was faulty.

So, all the evidence that there is, at present, points to a faulty part and not faulty installation. I agree that evidence is not absolutely conclusive. But it's all there is. And it would be unfair of AXA – given that the burden of proving the exclusion applies falls on them – to leave Mr H and Mrs H in a limbo between contractor and manufacturer with no hope that either would accept liability.

I would likely take a very different view if Mr H and Mrs H had – over the course of nearly 15 months now – obstructed AXA's investigation in any way. If they had, they effectively would have denied AXA the opportunity to investigate the matter and find any further evidence about the cause of the leak.

However, they haven't obstructed AXA's investigations in any way. In fact, their representative has offered on a number of occasions to send the damaged parts (now returned from the manufacturer) to AXA, so that they can inspect them themselves.

AXA – and/or their agents – have conspicuously failed to tell the representative where (which person, team or department) to send the parts to. And all contacts at AXA - or their agents - have declined to accept the parts themselves. AXA have recently admitted to us that they'd failed to act appropriately on the availability of the parts for inspection.

I suspect that Mr H and Mrs H's desire to send the parts to AXA indicates that the damage to the parts is as described in the contractor's report. And if so, that would provide further evidence that the fault is with the part not the installation.

For that reason – and because of the long delay already, which is entirely AXA's fault given their inability to take the parts for inspection – I'm minded now to require AXA to settle the claim, either by carrying out the repairs or providing a cash settlement, in line with the policy terms.

I'll summarise my current position. All of the available evidence at present suggests a faulty part caused the leak. It's for AXA to show that the exclusion for faulty workmanship applies.

AXA have already had the opportunity to investigate and find further evidence or information about the cause of the leak. – and it would be grossly unfair to Mr H and Mrs H to prolong that opportunity any further. Especially given that it's very unlikely AXA would find anything to suggest faulty workmanship. So, AXA should settle the claim.

AXA have agreed that I can consider compensation for Mr H and Mrs H's trouble and upset up to the point the complaint is resolved. As I say, I am grateful to AXA for agreeing to that, it enables a quicker and more definitive resolution to this matter, without the need for any further complaint to be made.

I don't think AXA delayed the initial investigation of the claim. Their decision on the claim was communicated to Mr H and Mrs H less than a month after the claim was made.

I think AXA made an error in declining the claim at that point. If they hadn't made that error, they would have kept the claim open, in my view. It wasn't unreasonable for AXA to say at that point that they would await the manufacturer's report so that there would be more evidence and/or information about the cause of the leak.

However, that should only have gone on for so long. Once it became apparent that the manufacturer - having returned the parts – wasn't going to admit liability, AXA should have decided (and settled) the claim on the basis of the information available.

Whether they then chose to pursue the manufacturer and/or the contractor to recover their costs would be matter for AXA. But Mr H and Mrs H would have had the repairs carried out on their kitchen within months of AXA's decision to settle the claim.

Taking all of that into account, I think Mr H and Mrs H might reasonably have expected to have the repairs completed by around February or March 2023 at the latest.

AXA didn't cause the water leak at Mr H and Mrs H's property. And once that leak had happened, Mr H and Mrs H were bound to suffer a period of stress and inconvenience whilst appropriate investigations were carried out and repairs completed.

In terms of my decision, I'm interested in how much longer than necessary Mr H and Mrs H have spent living with a semi-functional and damaged kitchen – and other damage in their house – as result of AXA's errors alone.

Our investigator thought £100 in compensation was reasonable to cover the period up to mid-November 2022. I think if things had gone as they should have, Mr H and Mrs H would have had a fully repaired house reasonably by around the end of March 2023 at the latest.

That means that to date they've had around seven further (unnecessary) months of disruption, stress and inconvenience, solely as a result of AXA's errors in handling the claim. Their kitchen has been useable but is in a poor state of repair and some facilities have been lost.

Once this complaint is resolved (within around six weeks), it will take another three months or so for the repairs to be completed. So, I don't think it's unreasonable to suggest that Mr H and Mrs H's repairs will have been delayed by about a year overall (end March 2023 to end March 2024).

If either party disagrees with this estimate, they can let me know why in their response to this provisional decision.

Given the considerable level of stress and significant inconvenience experienced by Mr H and Mrs H over that additional unnecessary year or so of delay, I'm minded to require AXA to pay Mr H and Mrs H a total of £750 in compensation for their trouble and upset."

So, to summarise, for the reasons I'd set out, I said I was minded to require AXA to settle the claim – and to pay Mr H and Mrs H £750 in compensation for their trouble and upset.

The responses to my provisional decision

AXA haven't provided any response to my provisional decision.

Mr H and Mrs H *have* responded. They broadly agree with the outcome I proposed. But they don't think the compensation I suggested AXA should pay for their trouble and upset is sufficient.

Mr H and Mrs H will forgive me if I try to summarise their arguments rather than repeat them word-for-word.

First, they say the unnecessary delays in AXA settling the claim and carrying out the required repairs is more like 16 months (December 2022 to March 2024) rather than the 12 months (March 2023 to March 2024) I suggested in my provisional decision (above).

Second, they think the compensation I suggested was too low bearing in mind that the room affected by the escape of water was the hub of their home – a kitchen, diner and family room used every day for family time and on occasion to host special events on birthdays and so on.

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.

Neither AXA nor Mr H and Mrs H have given me any further information or evidence to make me question my proposed outcome to this case. For the reasons I set out in my provisional decision, I remain of the view that AXA should settle this claim.

In terms of the appropriate compensation for Mr H and Mrs H, I've carefully considered the additional points they've made.

I don't agree with them that the unnecessary delay caused by AXA's failings begins in December 2022. If the claim had been accepted immediately after the assessment was carried out and works begun in a timely manner, then it *would* be reasonable to suggest things should have been completed before the end of 2022.

However, as I pointed out in my provisional decision, it wasn't unreasonable for AXA to wait to make a decision on the claim until after the manufacturer had been given a reasonable amount of time to comment on whether the part was faulty.

We all know now that the manufacturer doesn't intend to comment on whether the part was faulty. But AXA couldn't have known that at the time. Nor indeed did Mr H and Mrs H. And it was them – or their contractors, with their permission - who sent the faulty part to the

manufacturer for inspection.

So, I remain of the view that the unnecessary delays here start in March 2023 – when it's reasonable to think AXA should have accepted the manufacturer wasn't going to comment - and run to March 2024 (assuming the repairs are carried out in a timely manner).

Mr H and Mrs H have said that appropriate compensation in this case would amount to more like £2,500 rather than the £750 I suggested. Of course, that's only in small part because they think the relevant period is longer. They also say the room affected by the escape of water is the hub of the home.

I understand Mr H and Mrs H's point. And I understand the strength of their feeling about the time it will take for them to get their home back in a good condition so they can enjoy it again to the full.

However, it's our view – as set out in detail on our website – that compensation between £300 and £750 is appropriate where customers have experienced *considerable* distress, upset and worry and/or *significant* inconvenience and disruption, usually over many weeks or months.

In my view, that's precisely what Mr H and Mrs H have experienced in this case. And I've proposed a compensation award at the very top end of that bracket. I've borne in mind that Mr H and Mrs H have had a functioning kitchen during the relevant period and haven't been without any necessary facilities.

Putting things right

So, in summary, it's my view that AXA should settle Mr H and Mrs H's claim, in line with the terms of the policy. And that they should pay Mr H and Mrs H £750 in compensation.

The reasons for my coming to that conclusion are set out in detail above and in my provisional decision.

My final decision

For the reasons set out above, I uphold Mr H and Mrs H's complaint.

AXA Insurance UK Plc must:

- settle Mr H and Mrs H's claim, in line with the terms and conditions of their policy; and
- pay Mr H and Mrs H £750 in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 3 January 2024.

Neil Marshall
Ombudsman