

## **The complaint**

Mr V is complaining about the way AXA Insurance UK Plc has said it wants to settle a claim he made on his commercial property insurance policy.

## **What happened**

In January 2021 Mr V became aware of a leak in a property he owns and rents out. He arranged for a contractor to come and resolve the issue who initially diagnosed an issue with the sealant in the toilet. But this didn't resolve the issue, so Mr V arranged for the contractor to come back. Mr V says the issue was found to be down to a broken pipe coming from the bath. The contractor replaced that section which resolved the issue.

Mr V then contacted AXA to claim for the damage arising from the escape of water and he provided an estimate of around £25,000 to put things right. He said the water had leaked down to the kitchen and damaged some cabinets. As a result, he said he needed to replace the kitchen.

AXA then appointed another company – who I shall refer to as B – to handle the claim on its behalf. B inspected the property and said the majority of the cost Mr V had presented was for items that weren't damaged by the escape of water. B said the property was in poor condition with evidence of a number of temporary repairs having been carried out. It estimated the cost of repairing the insurance related damage to be around £1,192.

Given B's comments, AXA said it would settle the claim by paying Mr V £1,192, less his excess of £400. Mr V didn't agree with this so he referred his complaint to this Service.

Our investigator didn't uphold Mr V's complaint. He thought it was fair for AXA to say the majority of the repair estimate Mr V had provided related to items that weren't damaged in the escape of water.

Mr V didn't agree with the investigator. He said he needed to replace some kitchen cabinets, but to do so he'd need to replace everything. And he said he understood he was entitled to 50% of the cost of replacing non-damaged items under the principles of matching sets.

The investigator still didn't think AXA needed to pay to replace items that weren't damaged by the claim. He also highlighted that B didn't inspect the property until six months after the escape of water. Mr V didn't agree, so the complaint's been passed to me to decide.

## **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.

I've decided to partially uphold this complaint and I'll now explain why.

AXA has set out to this Service why it's not paying to replace the kitchen. And it's said that the kitchen was generally in a poor condition. In particular it's said that there's clear evidence of pre-existing damage to the seals to the rear of the kitchen sink and to the wall tiles around

the windowsill. It's also said that the kitchen units were in a poor condition, also showing pre-existing damage. It also said there appeared to have been several leaks previously arising from within the bathroom, which it said was evidenced by expanding foam being applied to the edge of the bath panel and the seals around the bath were in a poor condition

I've looked at the photographs B has taken and they support what AXA has said. It's evident from these photographs that the property was in a poor state of repair with evidence of pre-existing damage unrelated to the claim.

I recognise that some of the cabinets have evidence of water damage, but I can't agree that this means that AXA should replace Mr V's kitchen. It's a standard principle of insurance that insurers aren't required to put a consumer in a better position than they were before – a principle often referred to as betterment. Under the terms of the insurance policy, AXA was required to pay to repair or replace the damaged property. AXA has estimated that it would cost around £1,192 to do this. And it's provided evidence of how it's calculated this. I've reviewed this estimate and it largely seems fair.

Mr V has provided a detail of all the work that he says needs doing. I've reviewed his repair estimate and also taken AXA's comments into consideration. But, as I said, it's clear the property was in a poor state of repair before the incident and I think the vast majority of work included in his estimate isn't down to the leak. So I don't think it was unfair for AXA to not cover this.

I note, however, Mr V has said that AXA should pay to replace all the kitchen cabinets because he'll need to do so to put things right. And he's said this Service's usual approach is to require insurers to pay 50% towards undamaged items. The terms of the policy also set out that AXA *"will treat an individual item of a matching set of items or suite of furniture or sanitaryware or other bathroom fittings as a single item. We will pay you for individual damaged items but not undamaged companion pieces. If the individual damaged items cannot be repaired or a replacement found we will also pay up to 50% towards the undamaged part of the set or suite of furniture, sanitary ware or bathroom fittings."*

I agreed with Mr V's comments in this regard and I previously wrote to both parties and explained that at least one of the kitchen cabinets were damaged by the leak in question. And I understand it can't be repaired or replaced. So it seems to me that Mr V is entitled to 50% of the cost of replacing the kitchen cabinets under the terms of the policy. I recognise the cabinets were in a poor condition before the event, but this is why the policy only covers up to 50% of the replacement cost. So I think AXA should have also said it would pay 50% of the cost of replacing the undamaged cabinets on a like for like basis. AXA recently said it had tried to understand from its contractor why it didn't include this cost in its estimate, but the contractor hasn't replied. However, it said it agreed to include this cost.

Ultimately, I can't say it was unreasonable for AXA to be minded by the condition of the property before the escape of water. And I think it's reasonably demonstrated that a fair repair cost was £1,192. But it should also pay 50% of the cost of replacing the undamaged cabinets on a like for like basis.

Mr V has asked how much this would mean he would receive, but this is a matter for him to discuss with AXA.

### **My final decision**

For the reasons I've set out above, I've decided to uphold this complaint and require AXA Insurance UK Plc to pay 50% of the cost of replacing the undamaged cabinets on a like for like basis in addition to the £1,192 it's previously said it would pay to settle the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 20 January 2024.

Guy Mitchell  
**Ombudsman**