

The complaint

Miss M and Mrs S are unhappy that AXA Insurance UK Plc (AXA) has declined a claim made under their let property building insurance policy.

Where I've referred to AXA, this also includes any actions and involvement by agents appointed to act on their behalf.

What happened

Miss M and Mrs S own a property which is let out to tenants. They have a building insurance policy covering the property underwritten by AXA.

In November 2022, Miss M and Mrs S made a claim to AXA for damage caused by an escape of water from the bathroom of the property.

AXA inspected the damage and subsequently declined the claim. They said the damage was caused gradually as a result of failed sealant and grout, which is excluded under the policy.

Miss M and Mrs S didn't agree and obtained their own expert report, which reached different conclusions to AXA. It concluded there had been a leak from the shower pipe. This report was sent to AXA, but their claim decision remained.

As Miss M and Mrs S were unhappy with AXA's position, they approached this service.

One of our investigators looked into things but he didn't uphold the complaint. He said he was persuaded by the conclusions reached by AXA, and they had fairly declined the claim in line with the policy terms.

Miss M and Mrs S didn't agree and asked for a final decision from an ombudsman.

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, whilst I appreciate it will come as a disappointment to Miss M and Mrs S, I've reached the same outcome as our investigator.

AXA's surveyor inspected the reported damage and concluded:

"In the bathroom the affected area is the shower area, they have cut out a section of tiles and a section of mould is evident. They believe the issue is the mixer shower tap. The damage is not consistent with a leak from this area, there is no evidence of any water damage to the timber directly below. The damage appears consistent with failed sealant and grout, the area has been heavily over sealed with silicone. The skirting board is coming away from the wall due to a long term issue. The damage to the floor is extensive due to a long term leak."

And:

"The property has been inspected, and the damage is not consistent with an escape of water from pipework. The damage appears consistent with failed sealant and grout. The timber stud wall is undamaged below the pipework. The damage to the garage is ongoing. The shower area has been heavily resealed previously."

Miss M and Mrs S' policy does provide cover for damage caused by an escape of water. But taking into account the conclusions reached by their surveyor, AXA declined the claim based on the following exclusion:

"What is not covered

Loss or damage caused by failure or lack of sealant and/or grout."

Miss M and Mrs S didn't agree and appointed their own expert to report on the cause of damage. In summary, they said the leak wasn't from the sealant and instead it was from the back of the shower head and pipework.

Miss M and Mrs S also provided their views on how the damage occurred and why they think AXA reached the wrong conclusion, they say there was a loose nut on the shower pipe installation. They also provided photos of a water droplet on the shower pipe installation.

Having considered all the information provided, including the reports and extensive images of the damage, I'm persuaded by AXA's surveyor's findings and think the images support those conclusions reached. In my view, the images support damage being caused by failed sealant and grout, which has historically been resealed a number of times. The images also support that there has been a visible ongoing issue and leak, which has caused visible ongoing damage in the surrounding areas, including skirting boards, walls, floors and the ceiling below, gradually over time.

As I'm persuaded by the conclusions reached by AXA's surveyor, I don't think AXA has acted unfairly by declining the claim based on the exclusion it has relied on.

However, I should also note here that Miss M and Mrs S' expert report also concludes that there has been an ongoing leak, causing damage over time. Miss M and Mrs S also said:

"In reality, the damage is consistent with only one thing, a long-term release of water and it is the cause of this release of water that we are challenging."

So, Miss M and Mrs S don't dispute that there has been an ongoing leak, and instead don't agree that sealant and grout was the cause.

However, even if I was persuaded by Miss M and Mrs S' expert report and their views on how the damage occurred (which I'm not), their policy also has the following exclusion which applies to the whole policy:

"We will not pay for:

Gradual damage/deterioration/maintenance

Any loss or damage caused gradually or by wear and tear, depreciation, the effects of light or the atmosphere, mould, dry or wet rot or fungus and costs that arise from the normal use, maintenance and upkeep of your buildings and landlord's contents."

So, even if there was a slow leak from a pipe, rather than the sealant and grout, which had caused the damage which has visibly been ongoing for a period of time, the claim still wouldn't be covered in any event based on the above policy exclusion.

My final decision

It's my final decision that I don't uphold this complaint.

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

Callum Milne
Ombudsman