

## **The complaint**

Mr R complains about how AXA Insurance Limited (AXA), handled a claim under his home insurance policy for damage to his property from an escape of water.

Any reference to AXA in this decision includes their agents.

## **What happened**

In March 2023 Mr R contacted AXA to say he'd found standing water in the cellar at his property and to lodge a claim for the damage. AXA appointed a surveyor (B) to manage the claim and assess the damage.

B inspected the property but concluded the cellar had been poorly converted into a room with damp evident and had not been 'tanked'<sup>1</sup>. B also found damp evident but no apparent escape of water that had caused damage - the damage wasn't consistent with an escape of water. B concluded the issue was rising damp, which wasn't covered under the policy.

Mr R provided an invoice from a contractor (MS) he'd engaged to carry out repairs, totalling £8,700. AXA didn't think it clarified the cause of the leak, nor provide a breakdown of costs for the work carried out to trace and access the leak and fix it. All of which AXA said they needed to assess the claim accurately.

Mr R sent in an invoice from MS (£320) which described fixing the leak burst that caused the flooding. He also provided a separate letter setting out the contractor's opinion on what had happened and the damage in addition to images and videos of the damage. The letter referred to almost knee-level flooding and disputed the need for the cellar to be tanked. It also referred to the time spent removing the water (13 hours) with Mr R and his family.

However, based on B's opinion and from images of the cellar provided by Mr R, AXA didn't think there was any evidence of flooding in the cellar. Items on the cellar floor showed no signs of being in standing water and there were no tidemarks on the walls or concentrated damage around the escape of water point. The absence of tanking in the cellar meant it was inevitable the damage shown in the images would occur. B also noted rotten timber in several areas and there were areas on the external front wall of the property that indicated the presence of penetrating damp into the cellar (due to the absence of tanking). So, AXA declined the claim.

Mr R complained to AXA about the decline, but they didn't uphold the complaint. In their final response they referred to B's conclusions and their view of the plumber's report. AXA said that if Mr R could provide the information they thought wasn't contained in the plumber's report, they would review it – although they couldn't confirm whether any such information would change their decision to decline the claim.

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<sup>1</sup> 'Tanking' refers to the application of a liquid waterproof coating to the walls and floor of a cellar. It is used to treat damp walls by preventing water ingress, effectively making the walls permanently watertight.

Mr R then complained to this service. He said AXA should have accepted his claim under her policy. He wanted AXA to cover the cost of fixing the damage to his basement as well as the cost of engaging his plumber.

Our investigator didn't uphold the complaint, concluding AXA didn't need to take any action. He was persuaded by AXA's view, based on B's inspection, the damage wasn't caused by an escape of water, rather it was caused by damp. And AXA had fairly applied the exclusion for gradual operating cause to decline the claim.

Mr R disagreed with the investigator's view and asked that an ombudsman review the complaint. He said he'd taken photographs and video of the flooding and it took 13 hours to clear the standing water from the cellar.

### **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.

My role here is to decide whether AXA have acted fairly and reasonably towards Mr R.

Looking at the circumstances of the case, the key issue is AXA declining to cover the damage to the cellar of Mr R's property, because they don't consider the damage is consistent with an escape of water as Mr R maintains. Mr R says the damage should be covered under the policy, based on what happened and the evidence and information provided from his contractor.

On the first issue, I've considered the evidence and information available, including the report from B following their inspection. The key findings and conclusions are as follows:

*"In the cellar the room has been poorly converted with damp evidence and the area has not been tanked. The walls are plastered and painted. The floor is a concrete floor, and one half has a chipboard overlay which has rotted. There is pipe work exposed at high level and there is no moisture content around the pipe. The wall and board directly next to this would be wet, although there is no moisture evident. There is a lot of damp to the room. There are cardboard boxes and bookcases and books that are not affected by water."*

The report concludes:

*"There is no evidence of any water damage to the room, this is suffering from damp issues due to not being tanked and poorly converted."*

*Content items have no evidence of any standing water to them i.e boxes, bookshelves and books.*

*"The property has been inspected, and the damage is not consistent with an escape of water. The room is suffering due to damp issues due to not being tanked and poorly converted."*

I've also looked at the information provided by Mr R, including invoices from his contractor (MS). There's an invoice dated April 2023 which states they attended in March 2023. The invoice states:

*"Cutting out wall plaster board fixed the leak burst."*

*Water stopped leaking which caused flooding in cellar causing major damage."*

However, no more detail is provided on the exact cause of the leak. The reference to flooding in the cellar isn't consistent with B's report and the conclusions they reached about the damage being inconsistent with an escape of water.

The separate letter from MS includes the following statements:

*"Damp does not cause a flood up to mid-calf level..."*

*In terms of tanking, this is not a necessity, as majority of the houses are not tanked...*

*It took 13 hours of scooping up, bucketing up, mopping the water together with myself, Mr R and his family."*

I've considered both views carefully, but on the balance of probabilities I'm more persuaded by B's opinion, which is drawn from their inspection shortly after Mr R reported the damage. In particular, that the observed damage isn't consistent with that expected after flooding of the nature described. So, I've concluded the evidence doesn't show there was an escape of water that caused the damage.

I've also noted a subsequent invoice from MS (undated) which includes reference to work including 'tanking' (£1,500) and 'damp proofing slurry' (£310). Which suggests, consistent with B's opinion, the cellar wasn't originally tanked and so susceptible to damp penetration. In their final response, AXA refer to the *General Exclusions* section of the policy terms and conditions, specifically to the following:

*"Gradual deterioration/maintenance*

*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 its contents."*

While this doesn't specifically refer to damp, I think it reasonable to interpret the exclusion to include damage caused by damp, and B's report makes their opinion clear the damage has arisen gradually over time, and from the way the cellar was converted and used (including the absence of tanking).

On balance, I'm persuaded by the views of AXA, based on B's initial inspection report and their subsequent consideration of the evidence and information provided by Mr R, including that from MS.

When making a claim for loss or damage under an insurance policy, the onus is first on the policyholder to show the loss or damage falls under one of the policy insured perils. From the points above, I've concluded Mr R hasn't demonstrated the damage was caused by an escape of water (an insured peril under the policy). While I've reached this conclusion, I've also concluded AXA acted fairly and reasonably to apply the gradual operating cause exclusion, as set out above, to decline the claim.

### **My final decision**

For the reasons set out above, my final decision is that I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 November 2023.

Paul King  
**Ombudsman**