

## **The complaint**

Mr C has complained about AXA Insurance UK Plc's decision to turn down his claim under his Property Investment Protection Plan insurance policy for damage to his flat caused by an escape of water.

## **What happened**

Mr C has said he was told by his tenant that there was mould on the wall in the bathroom at his flat on 15 September 2022. He's said he went to the flat on 16 September and applied damp proof paint to cover the mould. He then got a message from his tenant later that day saying the mould had spread to the wall of the room next to the bathroom. So, he arranged for his plumber to go out and investigate the issue. His plumber eventually managed to get to the flat on 26 September 2022. While Mr C and the plumber were investigating the issue he got a call from the flat's management company saying that water was dripping into the flat below his flat. So, he got an emergency plumber out the next day to fix the problem, which was a leaking pipe behind the toilet. He's explained the pipe was behind the bathroom tiles and wasn't visible unless some of the tiles were removed.

Mr C submitted a claim to AXA. It sent its surveyor, who I'll refer to as B, out to investigate. B said that the fact the walls had mould on them showed the damage had happened gradually. It also said that Mr C must have been aware of this, as he'd painted over the mould in the bathroom. In view of B's comments, AXA declined Mr C's claim by relying on the exclusion in his policy for gradual deterioration. Mr C complained to AXA, but it didn't alter its position on the claim. It did however pay Mr C £175 in compensation for some delays in its handling of the claim.

Mr C asked us to consider his complaint about AXA. One of our investigators did this. He said he thought that, based on the evidence available, AXA was entitled to turn down Mr C's claim.

Mr C responded by providing further evidence from his plumber, which showed that there was no mould present on the bathroom wall when his plumber carried out some work on 29 July 2022. This included a photograph clearly showing this was the case. He also provided a statement from his tenant to say that when he moved into the property on 1 August 2022 there was no mould present in the bathroom, bedroom or anywhere else. And that the first time he saw any mould was on 15 September 2022.

Our investigator sent this new evidence to AXA and asked it to comment. It simply said it did not alter its view that it was correct to decline Mr C's claim. However, it didn't explain why this was still its view in light of the photograph showing there was no mould present on 29 July 2022.

As Mr C wasn't happy with the investigator's view his case was passed to me for a decision.

I issued a provisional decision on 24 January 2024 in which I set out what I'd provisionally decided and why as follows:

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

*Mr C's policy covers damage caused to his flat in the period of insurance. 'Damage' is defined as 'Accidental loss or destruction or damage'. The policy excludes 'damage caused by or consisting of inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table or its own faulty or defective design or materials'.*

*AXA has said that the damage to Mr C's flat happened gradually and that this means there is no cover for it under his policy. It seems the main reason it thinks this is that B said there was mould present which takes time to form and that Mr C had painted over it. For me this suggests a lack of understanding on how quickly mould can form. It also suggests that B didn't properly check with Mr C when he had painted over the mould and that it instead it assumed it had been there for a while and Mr C had tried to hide it.*

*However, Mr C has maintained from the outset that there was no mould present until 15 September 2021. And the evidence he provided originally of the inspections that took place when he let his property support this. And I think the more recent evidence he has provided is very strong and proves it.*

*This doesn't mean that the damage to the walls in Mr C's flat didn't happen gradually, as it seems clear the pipe behind the toilet had been leaking for some time and water had seeped into the walls gradually manifesting in damp patches and mould. However, I do not consider it would be fair for AXA to rely on the abovementioned exclusion for gradual deterioration. This is because there is no way that I can see Mr C could have been aware of the damage prior to September 2022. And – in line with our long and well established approach – I do not consider it fair for an insurer to rely on a gradual deterioration exclusion in such circumstances.*

*It therefore follows that I consider the fair and reasonable outcome to Mr C's complaint is for AXA to settle his claim for the damage to his flat in accordance with the claim settlement terms in his policy. If Mr C has paid for the repairs I also consider AXA should pay interest on the amount due to Mr C at 8% per annum simple from the date he paid for these to the date of actual settlement. This is to compensate Mr C for being without these funds. Finally, I consider AXA's investigation into Mr C's claim was poor because it did not properly consider his explanation regarding the discovery of the mould and leak. I think this caused Mr C unnecessary distress and inconvenience and AXA should pay him £300 to compensate him for this.*

I gave both parties until 7 February 2024 to provide further comments and evidence.

Mr C has responded to say he has no further comments or evidence and that he is pleased with what I have provisionally decided.

AXA has responded to say it is in agreement with my provisional decision. It has however said that in settling the claim it will want to validate the costs Mr C incurred for the repairs to his property. It's said it appreciates Mr C had to have the repairs carried out without AXA's authorisation and it will take this into account, but it wants to make sure the works carried out were all necessary.

### **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.

As Mr C hasn't provided any further comments or evidence and AXA agrees with my provisional decision I see no reason to reach a different conclusion to the one I set out as the fair and reasonable outcome to Mr C's complaint in it.

I am pleased AXA agrees with my provisional decision and I have noted its comments. I said that as part of the fair and reasonable outcome to Mr C's complaint AXA needed to settle Mr C's claim in accordance with the claim settlement terms in his policy. And this will include AXA validating the costs, including making sure what Mr C paid for the repairs was reasonable and that he didn't have unnecessary work carried out. However, I do not expect AXA to penalise him unfairly, as he didn't have the benefit of knowing what it was willing to pay for. And I do not expect AXA to apply rates it would have got from any of its approved contractors, as these were not available to Mr C.

### **Putting things right**

For the reasons set out in my provisional decision, I've decided to uphold Mr C's complaint about AXA Insurance UK Plc and make it settle his claim for the damage to his flat in accordance with the claim settlement terms in his policy.

I've also decided to make AXA pay interest on the amount due to Mr C, if he has paid for the repairs to his flat to be carried out, at 8% per annum simple from the date he paid for the repairs to the date of payment<sup>1</sup>.

I have also decided AXA must pay Mr C a further £300 in compensation for distress and inconvenience.

### **My final decision**

I uphold Mr C's complaint and order AXA Insurance UK Plc to do what I have set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 March 2024.

Robert Short  
**Ombudsman**

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<sup>1</sup> AXA must tell Mr C if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Mr C if asked to do so. This will allow Mr C to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.