

The complaint

Mr and Mrs C have complained that AXA Insurance UK Plc ('AXA') declined their claim for damage to their shower under their home insurance policy.

What happened

A home insurance policy was taken out by Mr and Mrs C with AXA in December 2022. They made an on-line claim to AXA in June 2023 when water marks appeared on their kitchen ceiling. They thought that this suggested a leak from the bathroom above. In a subsequent telephone call with AXA, they were told that the likely cause was wear and tear, and so they wouldn't be covered by the policy. Mr and Mrs C complained that they'd been given incorrect information about the validation process in relation to their claims' history.

AXA maintained its position that the damage was due to wear and tear over time, however it offered compensation of £50 for its handling of the matter. Mr and Mrs C were unhappy with the outcome of their complaint and referred the matter to this service.

The relevant investigator upheld their complaint and considered that AXA hadn't acted fairly and reasonably in reaching the conclusion that the damage had been caused by wear and tear. The investigator considered that AXA should fulfil the claim by reimbursing the cost of repairs, less the excess amount, plus interest, as well as paying £150 in total for the trouble caused to Mr and Mrs C by AXA's handling of this matter.

AXA did not agree with the investigator's view. The matter was therefore referred to me to make a final decision in my role as Ombudsman. In February 2024, I issued a provisional decision for this complaint and explained why I was not minded to uphold Mr and Mrs C's complaint as follows; -

'The key issue for me to determine is whether AXA applied the terms of the policy in a fair and reasonable manner in indicating that it would decline the claim. On a provisional basis, I consider that it did. However, I don't think that AXA acted in a fair and reasonable manner in all respects, and I partially uphold Mr and Mrs C's complaint regarding the service it provided. I'll explain why.

In reaching my provisional decision, I've also considered the submissions of the parties as summarised below. Mr and Mrs C complained that they were given incorrect information by AXA at the beginning of the claims process. They thought that the relevant customer services agent had pre-determined the outcome of the claim without evidence or an assessment by a qualified tradesman. It then became clear that a notification would remain on the file for a number of years, so affecting premiums.

Mr and Mrs C said that, to find out if the leak was coming from the sink, toilet or shower, they isolated those appliances and were able to suggest that it was likely to be coming from the shower. At this stage they weren't sure whether the shower tray, the grouting or the waste was faulty, or all of these. Mr C said he raised the claim online as it was a Sunday evening, and the AXA claim team was unavailable.

Mr and Mrs C queried how AXA could say that the water leak had been happening over

some time. Mr C said that on the first call, when he said that the shower tray was around 10 years' old, the agent immediately decided that the damage was due to wear and tear and wouldn't be covered. She then suggested looking at the home emergency cover instead. Mr C felt that her manner was dismissive and unsupportive. The agent had also explained that validators would decide if the claim had merit. Mr C interpreted what she said to mean that a claim would only be registered if it went to the validators. Mr C said that at this point, he asked for it not to be sent to validators, but the agent said she'd check in any event, based on the information provided. Mr C said that the agent called back and confirmed that the damage was likely to be due to wear and tear and asked if Mr C wanted to proceed with the claim, at which point he said no. She then confirmed the claim was registered in any event and would need to be declared in future insurance. At this point, Mr C raised a complaint.

Mr C said that AXA then requested Mr and Mrs C to engage a plumber to confirm the cause of the damage. Mr and Mrs C's plumber found; 'the shower tray to have internal support fibre failure causing movement when tray was used or pressure applied. This caused movement into the shower trap resulting in water escape and subsequent leak seen in kitchen ceiling.' He subsequently provided a follow-up view as to when and why the internal support fibre in the shower tray might have failed. He said that on extracting the tray, the failure was in one location only. He thought that the support had only failed within a couple of months before stains started to show. As to why it failed, he considered it to be 'consistent with being subject to a shock/stress in load at some point in one place'. He said he would have expected the tray to have lasted longer than it did as it was 'in excellent condition otherwise.'

Mr C decided to proceed with the work independently and outside of his home insurance and wanted the matter to be removed from his claims' record. Mr C said that his home insurance had been due for renewal and AXA was now quoting a renewal price which was well over £1,000, whilst his previous price was well under £400. He thought that this was because a claim had been recorded in June 2023. It appears that he then indicated withdrawal of the claim on this basis.

I now turn to what AXA has said about the matter. From Mr and Mrs C's description of events, it said it sounded like the shower tray had failed over time after movement which had allowed water to escape. It said that Mr C explained during the first call that he felt the shower tray was feeling 'spongy,' and he'd already painted over the damage to the kitchen ceiling. It said its agent had advised Mr C that the cause of the leak wouldn't be covered in any event, just the resulting water damage. It also explained that Mr and Mrs C had home emergency cover which may be able to assist in sourcing the leak.

AXA concluded that the repainting of the ceiling indicated that the damage wasn't recent. It said that damage wasn't a one-off incident, but damage which occurred gradually and therefore excluded under the policy. However, it said that it could reconsider the claim if Mr and Mrs C could provide a plumber's report that supported the claim. As to the further information supplied by the plumber, it said it would have expected the plumber to reference a crack in the shower tray if it been damaged accidentally. It didn't consider that anything extraneous would have impacted the space below the tray (which was concealed) during a one-off event. It considered the most likely explanation was the support failing over time due to poor design, or workmanship, as excluded under the accidental damage policy section.

AXA considered that the only scenario where the claim could be valid would be if there had been a leak from the pipework connected to the shower. Its own view was that the escape of water was either due to sealant/grout that had failed or that the movement of the shower tray had happened over time due to poor design, faulty works, or significant deterioration. It said that all of these were excluded under the policy. As for the recording of the notification of claim on Mr and Mrs C's record, AXA said that this would occur when a customer had tried to access the benefit of their policy. It said that as Mr C made the claim online, that process

highlighted that it would be treated as a registered claim. Although the claim was declined, AXA said Mr C's had actioned his intention to make a claim and so this would remain on the system. It then explained the purpose and effect of the relevant central insurance database.

AXA said that the excess amount was £500, and it would not look to cover the repair of the leak, but would normally have covered the tracing and access of the leak if requested. AXA did however agree that its processes and policy cover could have been explained more clearly. It paid compensation of £25 in this respect. It also accepted that there had been failure to respond within agreed timescales and paid a further £25 in this respect.

The starting point for complaints of this nature will be the wording of the relevant policy, as this forms the basis of the contractual agreement between the insurer and the policyholder. The policy here covers damage caused by 'escape of water' and 'accidental damage'. In the case of escape of water, it covers, 'Sudden and unexpected water leaking from...any... fixed domestic water, drainage or heating installation. We will also pay up to the limit for any one claim for necessary and reasonable costs that you incur in tracing and accessing the source of the damage to the home...' However, the policy doesn't necessarily cover 'Loss or damage: to the fittings, installation and appliances themselves.' These are only covered if the damage has happened as a result of an insured cause or cover.

As to 'Accidental damage', the relevant section states that it provides 'extra protection in case any damage is caused by accident to the permanent fixtures and fabric of your home, including bathroom fittings'. It makes it clear that it doesn't provide cover for items which have suffered mechanical or electrical breakdown, or which have suffered 'natural and inevitable failure due to wear and tear.'

The general policy exclusions make it clear that AXA 'will not pay for any loss, damage, liability, cost or expense caused by...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.'

Having looked at all relevant evidence, I conclude that Mr and Mrs C did make an on-line claim under their AXA home insurance policy, whether or not they realised the implications of having done so at the time. Mr C has accepted that he originally submitted the claim as an on-line claim and I'm satisfied that the process does highlight the fact that by pressing the 'submit' function, this leads to formal registration of a claim. In the circumstances, and on a provisional basis, I can't say that AXA acted in an unfair or unreasonable manner when it said that the notification would appear on Mr and Mrs C's claims' record.

I now turn to the complaint that AXA had predetermined the question of wear and tear. I note that certain assumptions were reached by AXA's agent based on a short description of events, rather than upon a professional view based on photographs, a site visit or a plumber's or other specialist's report. However, I also note that it offered the opportunity to Mr C for the matter to be referred to formal validation on several occasions, which he ultimately declined. In the circumstances, I can appreciate that the discussions had been confusing for Mr C and had left him with a dilemma. He was given the clear impression that his claim was likely to be declined, but he didn't wish to be 'penalised' by having to pay for the damage himself as well as being faced with higher premiums in the future.

In the circumstances and on a provisional basis, I agree that AXA could have provided clearer and more sympathetic help and advice in the telephone conversations that followed the on-line claim. This is particularly as Mr C had pointed out that unnecessary registration of a claim was a key issue for him. I note that AXA has paid compensation of £25 for its lack of clarity in this respect, however I don't consider that this adequately compensates Mr and Mrs

C for the frustration and upset caused by AXA's handling of this matter.

As for the substantive issue regarding the cause of damage, I note that the only professional evidence which has been provided in this case is the brief statements made by Mr and Mrs C's plumber. As AXA unfortunately hadn't investigated the matter at the outset, it had no expert evidence of its own to clarify the point. Nevertheless, my provisional view is that the plumber's initial statement suggested that the damage was gradual in nature with the shower tray and shower becoming compromised due to loss, or failure of support beneath it. He refers specifically to 'internal support fibre failure' which would then cause movement when pressure was applied. His subsequent statement refers to 'shock' or 'stress in load at some point in one place.' However, when read together, this still doesn't refer to a one off event. In the circumstances, the plumber's evidence points to gradual wear and tear through failure, break-down or deterioration of the internal support, rather than through a one off, sudden event or accident.

I have listened to all relevant telephone calls. Mr C's own observation in the initial telephone call was that the tray was 'really spongy in parts'. I consider this to be consistent with this my provisional finding in the above paragraph. Mr C's own claim form also recorded, 'Shower tray faulty and believe waste flow also faulty causing escape of water.' I don't consider that it was unreasonable for AXA to take into account what Mr C had said in his on-line claim. In addition, none of the available evidence refers to any one-off event, a sudden blow or accident and there is no reference to any surface damage which would be expected in such circumstances.

I therefore provisionally conclude that, notwithstanding Mr and Mrs C's apparent withdrawal of their claim, it would have been fair and reasonable for AXA to have ultimately declined their claim in any event. This is in view of the evidence pointing strongly towards damage caused by the 'natural and inevitable failure due to wear and tear.' However, I do consider it most unfortunate that AXA dealt with this matter in the way that it did. I don't consider that AXA acted fairly and reasonably at the time of Mr and Mrs C's claim. A full and thorough investigation and dialogue at the outset would have ensured a clear and professional opinion to categorically determine the position in June 2023, which would have avoided considerable amount of frustration and inconvenience for Mr and Mrs C. On a provisional basis, I consider that an increased level of compensation in a total sum of £250 would be more appropriate to recognise the frustration and inconvenience caused by AXA's handling of the matter.

I appreciate that this will come as a great disappointment to Mr and Mrs C, however in all the circumstances and on a provisional basis, I consider that this represents a fair outcome for both parties. I hope that it will allow Mr and Mrs C to move forward with their lives following these unfortunate events.'

In my provisional decision, I asked both Mr and Mrs C and AXA if they had any further comments or evidence which they would like me to consider before I made a final decision.

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.

AXA hasn't indicated that it has any other final points which it would like to make. Mr C has provided a detailed response as summarised below. I've carefully considered and address each point in turn.

Mr C didn't consider that AXA had provided any evidence to support its position, other than a different interpretation of the report. I agree that it's most unfortunate that AXA didn't fully

investigate this matter and visit the premises at the outset. However, the available evidence at that time had been supplied by Mr C himself. He'd referred to a *'really spongy base'*. Unfortunately for Mr C and Mrs C, this in conjunction with the plumber's contradictory responses clearly points towards wear and tear and means that I can't reasonably say it's likely the damage was caused by a sudden event.

Mr C felt that from the outset, AXA had predetermined the outcome to decline and that it provided no help to Mr C to manage the claim. He was given the clear impression that if the claim went to validation, it would be marked as a claim on his file. He also said that AXA could have suggested sending its own assessor to validate the claim but chose not to do so.

I agree that AXA didn't provide a fair and reasonable service in indicating it would decline the claim *'before the plumber report was even requested'* and in failing to offer to send an assessor. I also agree with Mr C that there was a lack of support and empathy by AXA's representative at the outset and it's for these reasons that I've partly upheld Mr and Mrs C's complaint. I consider that AXA did cause confusion and I can see why Mr C was left with the impression that the claim was very unlikely to be successful and why he was reluctant to proceed with validation. I therefore agree that; *'Had Axa taken a more supportive approach in that call with clearer explanations, [he] may have understood the implications and decided to take the validation to establish the cause'*.

Having said this, Mr C candidly recognised that he'd already submitted an online claim. From this point on, unfortunately for Mr and Mrs C that submission couldn't be deleted from the records. This meant that the issue would be treated as a notification in any event.

Mr C said that purely down to AXA's handling of the claim, the only available evidence was that of Mr and Mrs C's plumber *'and yet it is coming down to different interpretations in a decision.'* Mr C noted that the onus is on the insurer to show that an exclusion such as wear and tear applies and not the policy holder to show that it isn't. Mr C didn't believe that AXA had provided meaningful evidence in this respect and considered the insurer should be reminded of its responsibility *'to show an exclusion is the cause. They didn't and now can't and this is because of the way my claim was managed from the outset'*. I agree with Mr C that we'd usually expect the insurer to provide evidence to substantiate its use of an exclusion in the policy terms and conditions. Nevertheless, as stated above, unfortunately for Mr C and Mrs C, the evidence clearly points towards wear and tear and this means that I can't reasonably say it's likely the damage was caused by a sudden event.

As to his plumber's report, Mr C considered that this was evidence that the failure hadn't taken place over time, but was due to a stress/shock event, subsequently causing movement in the tray. He said that the plumber went on to say that the support failure would result in water escape. Unfortunately for Mr and Mrs C however, the plumber's previous report gave a strong indication that the failure had taken place over time when he used the phrase; *'internal support fibre failure'* which he said had caused movement when tray was used or pressure applied. I'm unable to ignore this clear indication of wear and tear. This, together with Mr C's reference to the spongy base means that I remain satisfied that the damage wasn't the result of a sudden incident and so not covered under the policy terms.

Mr C said that friends and family would often stay. Whilst he couldn't identify a specific single incident, he said *'that's not conclusive to say it didn't happen.'* I agree, however the issue for me is to decide what is the most likely scenario and I think wear and tear is the most likely scenario. As for repainting of the ceiling, AXA said this indicated the damage wasn't recent. Mr C didn't consider that AXA had any evidence in this respect. He thought he was being helpful in isolating facilities to determine that the source of the leak before painting over the marks. I have no reason to doubt Mr C's genuine intentions, however this doesn't affect the outcome of this matter.

As to the level of compensation, Mr C requested that this be reviewed and increased in light of the final points he'd made. As previously indicated, I do have considerable sympathy for Mr and Mrs C's position. However, I do consider that compensation at the level of £250 is appropriate. The service's guidance makes it clear that this is the level to be expected for the type of administrative failure which I've identified in this case.

Finally, Mr C referred to his insurance renewal premium which AXA had increased to over £1,000 and he then changed to another provider for a significantly cheaper premium. Nevertheless, he thought it was likely that he would be paying higher premiums for the next five years on his home insurance as a result of this incident. Again, I have considerable sympathy for Mr and Mrs C's position here. However, the fact that Mr C had lodged an on-line claim before AXA's service failures occurred means that this impact was unfortunately inevitable.

Mr C's points are clear and well made. I have considerable sympathy for Mr and Mrs C's position. However, I must make my final decision on the basis of the evidence in the light of the policy terms and conditions. In all the circumstances I consider that the provisional decision provided a fair and reasonable outcome to the complaint.

My final decision

For the reasons given above, I intend to partly uphold Mr and Mrs C's complaint and to require AXA Insurance UK Plc to pay them a total of £250 in compensation to recognise the frustration and inconvenience caused. AXA may deduct from this sum any compensation payments already made to Mr and Mrs C.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 8 April 2024.

Claire Jones
Ombudsman