

The complaint

Mr S complains that AXA Insurance UK Plc (AXA) has declined a claim made under his let property insurance policy.

What happened

Mr S owns a building which has two flats in it. He has an insurance policy underwritten by AXA to cover the building.

In May 2023 Mr S made a claim for water damage to AXA. Following communication with Mr S and an inspection of the property, the claim was declined by AXA. This was because it was concluded failed shower sealant was the cause, and wear and tear and maintenance issues are excluded under the policy.

Following this, Mr S said the leak wasn't caused by failed shower sealant and instead was due to malicious damage. He provided additional information which he said demonstrates he has a valid claim, but AXA's claim decision was maintained.

As Mr S remained unhappy, he approached this service.

One of our investigators looked into things, but she didn't uphold the complaint. She initially considered what had happened up to AXA's final response dated 21 June 2023. But following discussion with Mr S and AXA, she also considered additional information Mr S had presented up to 11 September 2023 which included witness statements from his tenant and plumber. But ultimately the investigator still didn't uphold the complaint.

A separate complaint was set up with this service for complaint points that had been raised in August 2023 with AXA about a call that Mr S had with them, along with allegations that AXA hadn't considered additional information Mr S had provided them at that time in support of the malicious damage claim. That case wasn't upheld either.

Mr S continued to send additional new information to this service, which he said showed he had a valid claim. But both the investigator in this case and the other case advised Mr S that this new information wouldn't form part of this, or the other, case. Instead, they explained that he'd need to present this new information to AXA to consider in the first instance, before referring back to this service with a new, separate, complaint if required.

Ultimately an agreement couldn't be reached and this case and the other linked case were passed to me for 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.

Firstly, I'll explain what I'm considering here in this case, what I'm considering under the separate case (which I've written separately to both parties about), and what doesn't form part of either case or my consideration.

This case

In this case, I've considered up to 11 September 2023. That is, AXA's claim decision initially reached, and the additional information Mr S provided after this (in August 2023) which both AXA and our investigator considered – which included witness statements from his tenant and plumber. And when considering this, I've decided whether AXA fairly declined the claim based on the information provided to that point.

The linked case with this service

In the other case (which I've written to both parties separately about), I've considered Mr S' complaint raised with AXA in August 2023 about a telephone call he had with them that he's unhappy with, and Mr S' allegations that AXA hadn't considered the additional information he provided at that time in support of his malicious damage claim.

New information which doesn't form part of this, or the other case

I understand Mr S has more recently provided additional information to AXA, which includes a Police crime report and updated witness statements which he says supports his claim. And Mr S has made a second malicious damage claim, which is for a more recent repeat of the same type of incident. Neither the Police report or new statements, or second claim, form part of my consideration here, or in the other linked case I've considered.

This is because this is new information that AXA would need to review and give its position on in the first instance. Our role isn't to validate claims on AXA's behalf. Therefore, AXA would need to have the opportunity to consider any new information provided by Mr S to establish if that is sufficient to validate his claim - both the previous claim, and his new more recent claim.

If Mr S is unhappy with the new claim decision reached by AXA (either for the previous claim taking into account the new information, or the new claim once it has been assessed), he'd need to raise a new complaint with AXA. If Mr S remains unhappy with AXA's final position on things based on the new information, he'd be able to refer his new complaint to this service if required, in line with our usual rules and timescales.

I'll also outline that I don't intend on commenting on every event, communication or action by either party for the period I'm considering here. I don't mean this as a discourtesy to either party, instead it reflects the informal nature of this service, and my role within it. Instead, I'll focus on the points I consider key when reaching my final decision. Having said that, I'd like to reassure both parties that I've considered all the information they've provided (limited to the period I'm considering) when reaching my final decision.

I'll now go on to consider the complaint and information that form part of this case.

The claim

On 17 May 2023, Mr S made a claim to AXA for water damage as a result of a leak from his upstairs flat causing damage to the flat below. He said he wasn't sure where the leak had come from, and he was getting a third party (a third-party utility company's home emergency department) to inspect what had happened and any damage to the electrics.

On 22 May 2023, Mr S contacted AXA again, he said the leak had stopped but again, he wasn't sure where it had come from. AXA said that as he was unsure where it had come from, they could arrange trace and access.

Following this, on 24 May 2023, Mr S was contacted by AXA's agent to arrange trace and access, however he said that the leak had been found and stopped, so trace and access was cancelled. A call was made to AXA by Mr S the same day. He advised that nothing had been fixed and he wasn't sure where the leak was from, but it had stopped in any event. AXA asked Mr S to provide information about where the leak had come from.

On 26 May 2023, Mr S provided AXA information from the third party (a third-party utility company's home emergency department) who had visited his property and investigated the leak. They said the last visit was on 17 May 2023 and they'd identified:

"Water leaking from shower tray seal, informed customer not covered, offered to quote, but declined, advised to get done sooner rather than later"

AXA asked Mr S to provide evidence that the shower tray seal had been fixed and he provided an invoice for this costing £50 dated 27 May 2023.

AXA then arranged for an inspection of the property and damage caused and this went ahead on 5 June 2023. Following this, AXA declined the claim. This was on the basis of all the information, including AXA's inspection, which concluded that the escape of water was as a result of failed shower sealant. AXA said the cause was wear and tear and maintenance related damage which is excluded under Mr S' policy.

Mr S was unhappy with the claim decision. During discussion with AXA on 7 June 2023, they said that it potentially could've been covered if Mr S had accidental damage cover, but unfortunately, he didn't have this. Mr S queried if it would be covered if it was malicious damage, or under any other parts of his policy.

As all the information at that point pointed towards the escape of water being as a result of the shower sealant, which is a wear and tear and a maintenance related issue (which is excluded), I don't think AXA acted unfairly by declining the claim at that point.

However, the following day, on 8 June 2023, Mr S contacted AXA and said it had just come to light that the leak was actually caused maliciously by someone breaking into the upstairs flat and leaving the taps on. So, he said his claim should be covered as malicious damage.

AXA maintained the claim decision on the basis they thought the damage was consistent with wear and tear and maintenance related, and they also said that Mr S hadn't provided sufficient evidence to support it was malicious damage.

Mr S then provided additional information in support of his claim, which included a witness statement from the tenant and a statement from the plumber. But AXA didn't think this was sufficient to demonstrate malicious damage was the cause, so the claim decline was maintained.

I don't think AXA acted unfairly by maintaining the claim declinature at that point, based on the information presented by Mr S. I'll explain why.

Mr S provided a statement from his tenant (dated 20 May 2023) which said:

"This happened on 16th May.

I rung my Landlord about this at 630pm. He attended promptly and saw damage caused to my flat and upstairs flat.

I then entered flat B with my Landlords permission and saw washing taps left running on maximum with water saturated on floor. I turned the taps off. Someone had deliberately done this. It was not an accident.

The Police were subsequently notified of this serious incident."

And they went on to say:

"My Landlord (Mr S) has made an insurance claim for malicious damage caused to my flat.

Urgent remedial works are required to reactify (sic) damage caused to my flat."

However, during the various calls Mr S had between 17 May 2023 and 7 June 2023, he said he was unsure where the leak was coming from, or what had caused it. He also arranged for someone to inspect (a third-party utility company's home emergency department) to determine this, who concluded it was due to failed shower tray sealant. Mr S then proceeded with claiming for this, until the claim was declined (not unfairly) based on an exclusion in the policy. And he then said it was actually malicious damage.

The tenant's statement says they identified what caused the leak when Mr S was also at the property. The first part of this statement also says Mr S saw the damage to the upstairs flat, although Mr S says he didn't and remained downstairs. It's not clear to me why when Mr S attended his property for the sole purpose of his downstairs tenant telling him there was a leak, the tenant entered the flat above, discovered taps left on and running, but then didn't mention this to Mr S whilst he was present, and he didn't ask them about the cause or what they found either.

The tenant also said in their statement (dated 20 May 2023) that Mr S had made a malicious damage claim to his insurer. But at that point, Mr S hadn't and said he wasn't sure what had caused the damage. And he didn't make the claim as malicious damage until 8 June 2023, after it had been declined by AXA. So, it isn't clear why the tenant thought Mr S was making a malicious damage claim some time before it was actually made.

The plumber statement Mr S provided (dated 17 May 2023) also said:

"I was called by (Mr S) to investigate the extensive water leak to (address).

I visited the flat on 17th May.

On entering the shower room noticed the flooring was saturated with water.

The washing basin water went through flooring to ground floor ceiling.

The shower screen silicon could not have resulted in a substantial water leak like this. It is not plausible."

They then went on to say:

"The tenant told me that the washing basin taps were left running and on full volume. That is what caused the water damage to ground floor flat and the resultant issues arising."

And:

"The taps left running on full volume would have exacerbated (sic) the seriousness of water damage to the ground floor.

Wear and tear was not the cause of this water damage."

Again, it's unclear to me why a plumber that Mr S arranged to attend would fail to tell him anything about what they discovered but would also comment on the shower screen silicon not being the issue, or wear and tear, in a statement prior to the claim being declined for those reasons. And Mr S then appointed someone else to investigate (a third-party utility company's home emergency element) on the same day, who concluded that the shower tray seal was the issue, which he then told AXA about, without asking the plumber he had already appointed what they thought the issue was.

Given Mr S' property was being damaged by a leak, he was there when the tenant went upstairs, and he arranged for a plumber to attend, it's unclear why Mr S wasn't aware, or didn't ask either about this. Mr S has said that neither told him about this at the time and he was only made aware of this on 8 June 2023 (after the claim had been declined for wear and tear and maintenance). But both statements Mr S provided were dated 17 and 20 May 2023 and it's not entirely clear to me why either would write a formal statement at the time but not actually tell Mr S anything about what they found.

As I say, I'm not considering the new information Mr S provided more recently, which includes a Police report he was later able to obtain, some updated witness statements he's provided, and a statement from his carpenter. And I'm not considering the new second claim made in October 2023, which Mr S says was caused by someone else breaking in and leaving the taps running again.

Instead, my consideration here is limited to whether AXA reached a fair claim decision based on the information provided before then and up to 11 September 2023. And I think they did, as I don't think Mr S provided sufficient evidence at that point to support the cause of the water leak was malicious damage.

Mr S also mentioned he's unhappy with how AXA handled his subject access request. I understand he's referred his concerns to the Information Commissioners Office, and I won't be commenting on this point further.

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 Mr S to accept or reject my decision before 10 April 2024.

Callum Milne
Ombudsman