

The complaint

The estate of Mr F complain about AXA Insurance UK Plc (“AXA”) and the decision to decline the claim they made on the late Mr F’s home insurance policy, following an escape of water.

Mr F’s son, also Mr F, has represented the estate during the claim and complaint process. So, for ease of reference, any reference made to “Mr F” is intended to name Mr F’s son, rather than Mr F himself, throughout the decision.

What happened

The claim and complaint circumstances are well known to both parties and so, I don’t intend to list them chronologically in detail. But to summarise, on 17 December 2022 Mr F’s father, the late Mr F, sadly passed away. And Mr F was made an executor of the estate.

Unfortunately, on 19 January 2023, an escape of water was discovered at Mr F’s late father’s home. So, Mr F contacted AXA to make a claim on the home insurance policy, underwritten by AXA.

AXA instructed a company, who I’ll refer to as “C” to validate the claim. But during that process, having reviewed all the information available to them, AXA thought the escape of water most likely occurred more than 30 days after the property had been unoccupied. So, they declined the claim, making Mr F aware of their decision.

Mr F was unhappy about this, so he raised a complaint. Mr F explained he had stayed overnight at the property on 10 January 2023, so he didn’t think the unoccupancy exclusion applied. And he explained why he didn’t think it was reasonable for AXA to expect that he provide evidence of this. And even so, Mr F didn’t think AXA were able to prove the escape of water occurred after the 30-day time period for the property to be classed as unoccupied had elapsed. So, he thought the claim should be accepted and AXA should pay compensation for the inconvenience that had been caused.

AXA responded to the complaint and paid £25 for a delay in the reviewing of C’s report. From what I can tell, this issue is no longer in dispute and so, hasn’t been considered further. But they didn’t think they had declined the claim unfairly, setting out the evidence Mr F could’ve provided to show he had stayed at the property on 10 January 2022. And without this, based on weather reports and the attending plumber’s opinion, they thought the unoccupancy had been fairly applied. So, they didn’t think they needed to do anything more. Mr F remained unhappy with this response, so he referred the complaint to us on behalf of the estate.

Our investigator looked into the complaint about the claim decline and didn’t uphold it. They thought the escape of water most likely happened more than 30 days after the property had been unoccupied. And, as Mr F hadn’t been able to evidence he had stayed in the property overnight on 10 January, they didn’t think they could say AXA had acted unfairly when declining the claim on this basis. So, they didn’t think AXA needed to do anything more.

Mr F didn't agree, providing several comments and representations explaining why. These included, and are not limited to, Mr F's unhappiness that C didn't go into the loft when validating the claim. Mr F also explained why he didn't think there was evidence to show the joint valve failed due to freezing. And he set out why he thought AXA's decision to rely on the exclusion was unfair, considering the length of time between the unoccupancy exclusion becoming valid, and any potential escape of water. So, he maintained his belief that the claim should be accepted.

Our investigator considered all of Mr F's comments, but their view remained unchanged. Mr F continued to disagree and so, the complaint has been passed to me for a 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mr F, and the estate. I recognise Mr F's late fathers passing would no doubt have caused a great deal of upset and anguish. So, I do understand how this would've been made worse by the unexpected escape of water and the need to then engage with AXA's process. And when AXA chose to decline the claim, leaving the estate with significant financial costs to cover to repair the property, I can understand why Mr F would feel as though AXA had acted both unfairly and unreasonably and wish to raise a complaint about this.

But for me to say AXA should do something differently, for example reverse their original decision and accept the claim, I must first be satisfied they've done something wrong. So, in this situation, I'd need to be satisfied they acted outside of the terms and conditions of the policy when declining the claim. Or, if I think they did act within these, I'd need to be satisfied they acted unfairly in some other way. And in this situation, I don't think that's the case.

And before I explain why I've reached this decision, I think it would be useful for me to set out what I've been able to consider, and how. It's not my role, or the role of our service, to re-underwrite the claim as we don't have the expertise to do so. Instead, it is my role to consider the actions AXA took, including the claim decision they made, to decide whether I think they acted fairly, based on the information and evidence they had available to them. And where I can't be certain of exactly what did happen, I've thought about what I think is most likely to have happened, based on the balance of probabilities.

I've seen the terms and conditions of the policy in force at the time of the escape of water. And these define "*Unoccupied*" as a property "*not lived in and not occupied overnight by you or your family for more than 30 consecutive days*".

And within the "*Causes*" section of the policy, it explains the policy won't cover loss or damage caused by "*Sudden and unexpected water leaking... while your home is unoccupied*".

So, I think the policy terms and conditions make it reasonably clear that any claims for an escape of water such as the one Mr F made would be excluded if a property had been

unoccupied for more than 30 days. And, that it's reasonably clear an overnight stay was required for a property to be classed as occupied.

In this situation, Mr F's late father left the home, and passed away, on 17 December 2022. So, without the property being stayed in overnight by a family member, I think the property met the definition of unoccupied by 16 January 2023.

In this situation, Mr F has stated he did stay in the property overnight on 10 January 2023. But I note he's been unable to provide evidence to show this is the case. In any insurance claim, our service would expect a business such as AXA to take steps to validate the claim. And considering Mr F staying overnight on 10 January was so relevant to the claim decision, I think they were fair to request evidence of this. And having looked at the list of evidence they explained they would accept, I don't think this request was unfair or unreasonable.

To this date, from the information available to me, I can't see that Mr F has provided any evidence to show he did stay at the property overnight on 10 January 2023. Nor can I see he agreed to sign a Statement of Truth confirming his testimony to be truthful and legally binding. So, because of this, I don't think I can say AXA were unfair to continue to decide the claim on the basis that the property hadn't been stayed in overnight. This means that, in line with the policy criteria, the policy exclusion became applicable after 16 January 2023.

So, for me to say for AXA to have acted fairly when applying this exclusion, I need to be satisfied that the insured event, in this case the escape of water, most likely happened after 16 January 2023. And as I've explained earlier within the decision, where I can't say for certain exactly what did happen, I've had to decide what I think most likely happened, on the balance of probability.

In this situation, I wasn't in the property at the time of the leak. And nor was Mr F, or AXA. So, no-one can be certain when the leak occurred exactly.

But what I think I can be sure of is that the leak occurred after 10 January 2023, as Mr F and his neighbours have confirmed a gathering was held at the property on the day of his late father's funeral. Had a leak been present then, considering the significance of the damage caused, I think it's likely it would've been reported to AXA. And it wasn't.

This means that, on the balance of probability, the leak most likely occurred from the evening of 10 January 2023 up to 19 January 2023, when a plumber was instructed by the estate to stop the escape of water and prevent any further damage.

I've seen a signed statement from this plumber, which recalls their recollection of the escape of water, and its cause. And in this, I can see the plumber states the joint had "*blown*" off, and that this was likely caused because it had frozen.

While I appreciate Mr F's dispute of the plumber's testimony, I must stress the plumber was instructed by the estate, so I don't think the plumber has any reason to provide a recollection that supports AXA's position. And as a plumber, they are the qualified expert in the situation and so, I think AXA are fair to rely on the plumber's opinion as such.

So, as the plumber felt the joint had most likely frozen, I've then looked at the weather reports from the property's area, from 10 January 2023 onwards. And I can see that the weather only fell below freezing from 17 January onwards, the day the unoccupancy exclusion became applicable.

As the plumber felt the damage was most likely caused due to freezing, and freezing could only have occurred on 17 January or after based on the weather reports I've seen, I think that on the balance of probability, the escape of water occurred after 16 January 2023, in the period the unoccupancy exclusion was applicable.

So, because of this and the fact I've not been given any evidence that persuades me the escape of water could've been caused by something else, at a different point in time, I think AXA have acted within the terms of the policy when excluding the claim on this basis.

But as well as being satisfied AXA acted within the terms of the policy, I must also be satisfied they were fair to do so. I recognise Mr F doesn't think they were, considering the sensitivity of his late father's passing and how close in proximity the escape of water was to this, and the unoccupancy exclusion time limit.

But having reviewed the information supplied to me, which includes AXA's case notes and internal emails, I'm satisfied they placed reasonable importance on the sensitivity of the situation. I think this is represented by them choosing themselves to escalate the matter internally to ensure the claim decision was both correct, and fair. And I think it's represented by AXA's continued offer for Mr F to supply information proving he stayed at the property overnight on 10 January or to sign a Statement of Truth outlining the same. I don't think it's AXA's fault that Mr F has been either unable, or unwilling, to provide this information.

I also don't think I can agree that AXA failed in their duty of care to make Mr F aware of what risks were applicable to the property when he called them to inform them of his late father's passing. I've listened to the call in question and I think the exclusions, including the unoccupancy, were made reasonably clear to Mr F by AXA. And this is in addition to the fact that the unoccupancy risks were set out clearly within the policy documentation already.

So, while I don't in any way intend to detract from the clear financial loss the estate has been caused by AXA's decision to decline the claim, and the emotional impact this would've caused to those involved, I don't think I can say AXA have done anything wrong, or acted unfairly, when declining the claim. And because of this, I don't think they need to do anything more.

My final decision

For the reasons outlined above, I don't uphold The Estate of Mr F's complaint about AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr F to accept or reject my decision before 18 June 2024.

Josh Haskey
Ombudsman