

The complaint

Mr and Mrs Y complain that AXA Insurance UK Plc (AXA) refused to fully repair all the damage caused to a road following a water leak, provided poor service, and wouldn't rectify issues with their turf and patio under their home Insurance policy.

Reference to AXA includes its agents.

What happened

The background of the complaint is well known to both parties, so I've summarised the key points below:

- Mr and Mrs Y held a Home Insurance policy with AXA which covered their buildings and contents
- In early-2023, Mr and Mrs Y told AXA they had had a leak at their property.
- AXA accepted the claim under the Escape of Water peril and undertook the repairs itself, using its own contractors
- During the repairs, AXA excavated parts of the road to facilitate the replacement of underground pipework
- Mr and Mrs Y complained after AXA said it would only repair the areas in which it had excavated – and wouldn't install a kerb as there hadn't been one prior to the claim event
- They also complained that AXA poorly laid turf, which was too small for the area, that it wouldn't reach an acceptable agreement concerning the patio, and that there had been poor service and delays
- Our Investigator upheld the complaint. She didn't think AXA needed to take any further action at this stage with regards to the turf and patio – but didn't think AXA had acted fairly in respect of the other aspects of the complaint
- She said AXA needed to complete the necessary repairs to the road, consider any further information Mr and Mrs Y provided in respect of the turf and patio, and pay an additional £150 compensation for the distress and inconvenience caused which would bring the total compensation to £250
- Mr and Mrs Y accepted the Investigator's view, but despite it asking for more time, AXA didn't respond. So, the case has been passed to me, an Ombudsman, to make a decision on it.
- I issued a provisional decision on 14 June 2024 that said the following:

The claim has progressed since AXA first responded to this complaint and it's my understanding that it did reach an agreement with Mr and Mrs Y on the patio. However, I now understand that AXA hasn't made the agreed payment, so Mr and Mrs Y have now asked that this element is now reviewed again within my decision.

So, the outstanding issues here for me to make a finding on is whether AXA needs to complete all required repairs to the road, whether further action is required with regards to the lawn, and patio and the trouble and upset caused to Mr and Mrs Y.

I've looked at comments from Mr and Mrs Y, AXA, and its agents to help me make a finding on the extent of repairs AXA should be responsible for concerning the road. AXA's main argument here is that carrying out more substantial repairs to the road and adding a kerb would result in betterment. On the face of it, I can see why those conclusions could be drawn. But there are other considerations here – and there are many circumstances in which this service would say that whilst a course of action may result in betterment, it is the only fair solution. With this in mind, I don't consider that AXA's current proposal to repair the road is reasonable – and I'll explain why.

As AXA has chosen to settle the claim by repair, any repair it undertakes would be expected to be an effective and lasting repair. Essentially, a repair which fully puts right the damage and does so for an appropriate amount of time. In doing so, if AXA needs to repair uninsured damage, or incorporate preventative aspects into its repair to provide an effective and lasting repair of insured damage, we will expect it to do so.

Mr and Mrs Y said the foundation of the road had been affected due to the sustained leak over many months, which is why the work their contractor advised is required is more invasive than simply patch repairing the excavated areas. I find this persuasive and I do consider the extent of work Mr and Mrs Y are claiming for to repair the road is not excessive and is required due to the consequences of an insured event.

It's my understanding that whilst the road in its original state did not have what would be traditionally regarded as a kerb, no contractor would be able to guarantee the work without one. I don't therefore consider it's reasonable that Mr and Mrs Y are left with a road for which the repairs can't be guaranteed, as this would be in direct contradiction to providing an effective and lasting repair. Therefore, the fair solution here is for AXA to fully repair the road as per the quote provided by Mr and Mrs Y.

Having considered both Mr and Mrs Y and AXA's comments about the lawn, I'm not persuaded that further action is required at this point. AXA is of the opinion that the installation of the lawn was correct and wasn't too small for the intended area – and I don't have any evidence to dispute this. Should Mr and Mrs Y obtain a report from a suitably qualified expert which supports their opinion, it should be provided to AXA. And it would be reasonable for it to consider this to decide whether further action is warranted.

With regards to the patio, Mr and Mrs Y say AXA hasn't paid the £950 that it agreed to. They now feel that the £950 isn't a fair resolution for the damage caused to the patio from the escape of water. Mr and Mrs Y say it is evident that the damage is excessive and the cost to fix the patio is approximately £8,000. Mr and Mrs Y have said they would be happy to meet AXA halfway as the patio wasn't perfect prior to the escape of water.

I've considered the evidence provided. It isn't in dispute that there is some damage to the patio area. But the dispute is the extent of works that would be required to put Mr and Mrs Y back to a pre loss condition. Mr and Mrs Y have acknowledged that the patio wasn't in the best condition prior to the leak. I have also considered the report Mr and Mrs Y commissioned and this clearly shows that they were doing works to the patio area in line with recommendations from their pre purchase survey report.

Mr and Mrs Y have not provided any further evidence to show that the solution that was agreed is now no longer viable. I am not persuaded that it is fair and reasonable for AXA to complete lifting and relaying of the entire patio, I believe in this case that would be

betterment. I'm satisfied that the settlement that was agreed on by both parties is the fair option and so I intend to instruct AXA to pay the agreed £950 cash settlement. However, I recognise there is delay from when the settlement was agreed and having an open complaint at this service shouldn't have stopped the claim progressing. I therefore intend to ask AXA to add 8% from when it agreed to make the settlement to when it makes the payment.

Home Insurance claims, especially of this nature, will often cause distress and inconvenience to the policyholder. Whilst we can't tell AXA to compensate for this, we can tell it to compensate for distress and inconvenience it has caused to the policyholder because of its handling of the claim or the service it has provided. It's clear that AXA's service could've been better here, and it has paid Mr and Mrs Y £100 for a site visit that took place without Mr and Mrs Y being notified prior. I agree that the £100 for that issue was a fair resolution.

But there were some avoidable delays, and the level of communication Mr and Mrs Y could've reasonably expected did fall short at times. This would've added to an already difficult time for Mr and Mrs Y – and I think it's fair AXA increase the compensation by a further £150 for this.

Replies to the provisional decision

Mr and Mrs Y did respond and wanted to highlight about the issues when they were moved into alternative accommodation.

AXA didn't respond.

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.

I fully understand for Mr and Mrs Y that their complaint's with AXA has all come about under one claim for an escape of water at their property. But I have not considered the actions of AXA and what happened when they were placed in alternative accommodation this was handled under a separate complaint at this service, so I won't be considering their comments regarding that under this complaint.

As neither party have raised anything with regards to the scope of this complaint, I'm satisfied that my provisional decision represents an outcome that's fair and reasonable.

Putting things right

I instruct AXA Insurance UK Plc to:

- Repair the road in line with the quote provided by Mr and Mrs Y, or pay them the value of the quote as a cash settlement
- Consider any further information provided by Mr and Mrs Y in respect of the lawn
- Pay Mr and Mrs Y, £950 cash settlement for the patio and add 8% simple interest¹ from the date the settlement was agreed to the date of payment
- Pay Mr and Mrs Y an additional £150 compensation. AXA must pay the

compensation within 28 days of the date on which we tell it Mr Y and Mrs Y accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

¹HM Revenue & Customs requires AXA to take off tax from this interest. If it deducts tax, it must give Mr and Mrs Y a certificate showing how much tax it's taken off if they ask for one

My final decision

For the reasons given above I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y and Mrs Y to accept or reject my decision before 30 July 2024.

Angela Casey
Ombudsman