

The complaint

Ms P complains that AXA Insurance UK Plc (“AXA”) unfairly declined her claim for water damage and that it provided poor customer service.

What happened

In September 2023, Ms P arrived home from a lengthy trip abroad to find flood damage to her property, following a period of rainfall which had caused water ingress. This had given rise to black mould which had ruined woodwork and furniture.

Ms P contacted her contents insurer to make a claim. It recommended she claim under her building insurance policy, once it saw photos of the damage. Ms P also started to get quotes for repair and commissioned a water ingress specialist to investigate the cause of the flood and provide a report.

Ms P then contacted AXA to make a claim under her building insurance policy. It sent a surveyor to inspect the damage, but Ms P says no furniture or flooring was moved, that the surveyor didn’t test anything, and that he was only there for 12 minutes and had asked her to watch his car to ensure he didn’t receive a parking ticket. Throughout the visit, Ms P says she felt bullied and intimidated and that the surveyor refused to consider the report Ms P had obtained and simply kept repeating that she wouldn’t be covered.

Ms P complained to AXA. It apologised and offered her compensation for the poor experience she’d had during the visit. It then sent its in-house surveyor to assess the damage. That surveyor couldn’t give a definitive answer on the claim. So Ms P obtained a further report from contractors who had taken apart the built-in bedframe.

In its response to the complaint, AXA said that the evidence highlighted an inherent defect in the building, because the recommendation from Ms P’s report was to install a membrane beneath the affected area to act as a barrier against water infiltration during heavy rainfall. So AXA’s position was that the damage wasn’t due to an insured peril, but due to a lack of damp proof membrane. Ms P didn’t agree, so she referred her complaint to this service.

Our Investigator considered the issues and thought the complaint should be upheld. She said there had been an insured event, because the damage was caused by heavy rainfall, and this was covered by the policy. She also said AXA hadn’t relied on any valid exclusions to decline the claim.

Because AXA didn’t accept our Investigator’s assessment, the complaint has now come to me to decide.

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’ve decided to uphold this complaint. I’ll explain why.

AXA has said Ms P's claim isn't covered, in part because there was no heavy rainfall on or around the date of loss. It's concluded that what happened doesn't meet the definition of a flood or any other insured peril in the policy and there's therefore no cover. It's relied on its surveyor's notes which say there was no evidence of damage caused by a single identifiable insured event, and that the damage was consistent with a possible gradual failure of the damp proof membrane.

Whilst I've taken what the surveyor said into account, I've also looked carefully at the policy and its definitions. Ms P's policy provides cover for flood damage and a flood is defined as:

"The escape of water from the normal confines of any natural or artificial water course, lake, reservoir, canal, drain or dam. Inundation from the sea. Rain induced run off, whether resulting from storm or not."

Ms P's contractor found the cause of the damage to be "water infiltration due to heavy rainfall". But AXA says the damage didn't happen because of any of the listed causes in the definition of a flood. It said the damage was consistent with damp penetration from the area under the bed. So it concluded that there was an inherent defect in the damp proof membrane at the property which meant the damage wasn't covered because the policy had an exclusion relating to faulty or defective workmanship.

However, the video I've seen, which was taken by the lodger living in the property while Ms P was abroad, clearly shows external flooding from rainfall during the summer of 2023. And from what I've seen, including the photos and all the reports provided, I think it's most likely that the water entered the property from the external flooding and accumulated underneath the built-in bed. Each of the reports confirms this in one way or another, for example, when the bed frame was ripped out, the contractors said that a "large amount of water entered the property and has been trapped under the bed saturating the flooring and underlay for some time. As it had nowhere to go and was trapped above the sealed concrete, it caused the damage you have seen. As there is no evidence of damage to the concrete floor nor evidence of damp in the floor or walls, it is our conclusion that the water pushed through from the external wall in an instance of flooding or deluge".

The contractor also comments on the cause of damp suggested by AXA, saying "If there were damp...you would see darker patches of concrete with black mould residue. In my experience, there would be evidence of moisture behind the render and brick work once exposed and there is none of this". So I think it's likely that there was an insured event here, which was a flood caused by heavy rainfall, not a failure of the damp proof membrane, based on the report by Ms P's contractor, the video taken by the lodger, and the comments made by the contractors carrying out the strip-out works.

AXA has said that the affected room was below garden level, so the damage couldn't have been caused by "rain induced run off". It's also explained that rain induced run off refers to the movement of water over the land surface, usually as a result of precipitation and it disputes that there was significant rainfall that led to this occurring.

But the video recorded by the lodger shows clear evidence of rainfall and the gathering of water externally. Rain induced run off isn't specifically defined, so I've looked at what the usual everyday meaning of this is, and I'm satisfied it can include the flow of excess rainwater when it can no longer be absorbed by soil, or when it overwhelms the capacity of the drainage system, or similar. It doesn't mention that there needs to be a certain level of rainfall in order for this to occur or for this to be covered by the policy.

From the video provided, the property appeared to be surrounded by pooling rainwater which clearly wasn't draining, and which led to the water infiltrating the space underneath the

built-in bed. This is also confirmed by the strip-out contractor's comments. So I'm persuaded that the damage could have been caused by rain induced run off and would therefore meet the definition of a flood. And I haven't seen sufficient evidence from AXA to refute this cause.

The fact that the room was below garden level isn't relevant in my opinion. The room was not below ground level as can be seen from the photos and from the independent research carried out by our Investigator of the historic online listing of the property. This clearly shows the affected area was not below ground floor level, but below garden level as the garden area slopes upwards from the property. The room being at ground floor level makes it entirely possible that rain induced run off was the cause of the damage. And as there were no known issues with damp at the property, I find it unlikely that damp was the cause of damage. This was also confirmed by the contractors who said there was no evidence of moisture behind the render and brickwork. So because I don't consider AXA has been able to demonstrate that the lack of a damp proof membrane was the cause of the damage, I don't think AXA can fairly rely on the faulty or defective workmanship exclusion to decline the claim.

AXA has also said the damage was happening gradually. Our general approach to gradual damage is that where the consumer couldn't have reasonably been aware of it but acted as soon as they became aware, it wouldn't be fair to rely on a gradual damage exclusion. AXA has said the damage wasn't reported straight away. But I think it was reported within a reasonable timeframe. The evidence shows that water entered the property through the wall and became trapped under the built-in bed, saturating the flooring. This happened while Ms P was away. Her lodger mentioned it, drying what they found, before Ms P returned on 12 September. By 19 September Ms P had notified her contents insurer but they referred her to her building insurance policy, after she sent them photos of the damage. Ms P was also at this time dealing with quotes for repair. On 2 October, Ms P commissioned the water ingress specialist to inspect the damage and investigate the cause. And by 3 October Ms P had notified her broker to make a claim under the policy with AXA, which the broker notified AXA of the following day. I don't agree that it took over a month for Ms P to report the damage. It took just one week from Ms P returning to inspect the damage herself on 12 September, for her to notify her contents insurer – and within the next two weeks a claim was lodged with AXA, by which time Ms P had also commissioned an expert and received quotes for repair.

Overall, I'm persuaded by the available evidence that a flood occurred, which is an insured peril covered by the policy. And that the flood caused the damage being claimed for. I don't consider AXA has been able to fairly rely on an exclusion in order to decline the claim. It follows therefore, that I'll be requiring AXA to reconsider the claim, in line with the remaining terms and conditions of the policy.

I also consider Ms P to have experienced distress and inconvenience as a result of AXA's actions, for which she should be compensated. AXA offered Ms P £100 for the poor experience she'd had when the first surveyor attended. But I think there have been unacceptable delays in the handling of this claim, as well as poor communication. I say this because I can see that the impact of not having the claim accepted in a timely manner did impact Ms P's health. Whilst it isn't possible for me to safely conclude that living in the conditions she was living in caused her pneumonia, I'm persuaded that the time it took AXA to assess and reassess her claim did prolong her worry and discomfort. And I think a further £300 adequately reflects the impact of AXA's actions, in terms of its overall handling of this claim, given the amount of time things took and the fact Ms P had to proactively manage the claim and arrange the repairs herself whilst struggling with her health. So I'm requiring AXA to increase the amount of compensation for the reasons given.

Putting things right

To put things right for Ms P, AXA Insurance UK Plc should:

- Reconsider Ms P's claim in line with the remaining terms and conditions of her policy.
- If AXA Insurance UK Plc then settles the claim, the settlement should be in line with what Ms P paid for the repairs, plus 8% simple interest per annum, from the date Ms P paid for repairs until the date of settlement.
- Pay Ms P an additional £300 for distress and inconvenience, on top of the £100 it has previously offered.

My final decision

My final decision is that I uphold this complaint and I direct AXA Insurance UK Plc to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 11 January 2025.

Ifrah Malik
Ombudsman