

The complaint

Mr P has complained that AXA Insurance UK Plc ('AXA') declined part of his claim for storm damage to his home under his smallholder's insurance policy.

For the avoidance of doubt, in this decision, 'AXA' also includes its agents, representatives and loss adjusters and 'Mr P' also includes his representative.

What happened

Following a storm in December 2020, Mr P contacted AXA to report damage caused to both the structure and contents of his home by four inches of flood water. Water then appeared a few days later on the property's ceilings. AXA appointed a loss adjuster to review the damage and subsequently settled Mr P's claim for internal damage to the property by payment of a cash sum of just over £1,700.

Mr P was unhappy that AXA wouldn't accept his claim for external damage and declined to replace the roof of his property. He also considered that AXA's cash settlement didn't cover all the internal damage. AXA maintained its view but offered compensation of £50 to Mr P 'as a gesture of goodwill' due to delays in providing a final response to Mr P's complaint. Mr P then referred his complaint to our service.

Our investigator didn't uphold Mr P's complaint. She thought that AXA had fairly declined to pay for the external damage and didn't consider it was due to a one-off event as the roof showed wear and tear, lack of maintenance and defective construction and she noted signs of previous repairs on the roof. In summary, it was our investigator's view that a well-maintained roof should have been able to withstand the storm and that the storm simply highlighted an existing issue. She said that the service couldn't look into complaint delays.

Mr P remained unhappy with the outcome of his complaint and the case was referred to me for decision in my role as Ombudsman. In October 2022, I issued a provisional decision for this complaint and explained why I was minded to uphold the complaint as follows; -

'The key issue for me to determine is whether AXA applied the terms and conditions of its policy and treated Mr P's claim in a fair and reasonable manner. I've concluded that it didn't do so in all respects and I'll explain why I've reached this provisional conclusion.'

My starting point is the insurance policy itself. It states under the heading: 'Basis of claims settlement' that it will cover the policyholder for damage to the insured property by any of the insured perils, which includes a storm event. It states that it 'may either...pay for rebuilding or repair, or...make a money payment instead without any deduction for wear and tear and depreciation provided that the property insured is maintained in a good state of repair and the property is insured for the full rebuilding value.' The policy covers damage to property caused by storm but not a gradually operating cause.

Turning to Mr P's submissions, he said that damage to skirting, architraves and doors as well as to the carpets were evident and that this hasn't been considered by AXA. He said he was given no advice or guidance by AXA as to how to deal with the sodden carpets or possessions. In January 2021, he started to notice water stains appearing on ceilings

throughout the property. The loss adjuster queried whether the roof had leaked during the extreme downpour and he instructed property damage restoration experts to provide a trace and access report. Mr P said that the expert carried out a thorough inspection, but that AXA declined to accept the report as the experts had been instructed as drying specialists only. He said that the loss adjuster offered a theory that 'torrential rain washed away moss that was bunging up pre-existing holes and cracks' and that the problem had occurred over time.

Mr P accepted that there was evidence of previous roof repairs, but he didn't think that this evidenced wear and tear being the reason for the recent damage. He said that the major water leak led to widespread ceiling staining which didn't pre-date the storm. He said that he'd owned the property for 17 years, during which one repair had been carried out due to a physical strike on the roof and that the roof was watertight at the sites of all previous repairs. He considered that corrugated asbestos sheeting of this type typically lasted 70 to 85 years.

Mr P said that the expert also advised that the interior of his home required assisted drying which would cost over £3,000 plus VAT, as well as removal of saturated insulation. Mr P said that AXA then forwarded the report to a building company: - 'with a vague request to present a scope and price to deal with the rip-out and replacement work.' He said that their quote at just under £3,000 plus VAT didn't include the full extent of necessary work and was supposed to include £500 'towards repairs to the roof'.

As for AXA's submissions, it noted that the roof of the property was made up of asbestos composite and that there was 'developed lichen and moss growth, which would indicate no routine of cyclable maintenance.' It thought that the roof was over 35 years old and didn't accept that any storm damage had resulted in the need for complete roof replacement, where previously the roof had simply been patched when it failed. AXA noted that the expert report suggested that the roof was leaking and that this was the cause of stains on the ceilings. Initially it stated that as the roof; 'started leaking just after the high winds I can accept that there has been some Storm damage.' It also stated however that a valid storm claim would be where severe weather conditions damaged an otherwise sound roof but there was no evidence of storm damage to the roof. It said that this was compounded by the fact that the roof was very old, in a state of 'considerable disrepair', with historic repairs to various areas.

It said that the reserve amounts of approximately £3,000 plus VAT represented the 'worst case scenario'. It said that the figure of just over £1,700 was ultimately paid as regards the interior, as the claim in relation to the roof was declined in its entirety. It didn't think that further payments were due. AXA stated that the £1,700 included a figure of just over £1,400 'in the absence of a receipt for reinstatement' for the carpet and a further payment of just over £300 in respect of contents.

In considering storm damage, our service has a three-step approach. We firstly consider whether storm conditions occurred on or around the date the damage was said to have happened. In this case, both parties accept that a storm occurred with high winds and intense and substantial rain on the relevant day, with ingress of four inches of water into the property. Both parties also accept that staining to the ceilings emerged a few days after the same set of storm conditions happened. On a provisional basis, I therefore conclude that there were storm conditions at the relevant time.

The second question for me to determine is whether the damage claimed is consistent with damage a storm typically causes. Again, there's no dispute that water damage to the interior of a property would be consistent with damage typically caused by a storm with intensive rain. Similarly, with external roof damage, the lifting and cracking of roofing sheets would be

damage typical of that often caused in a storm. I provisionally conclude that the claimed damage is consistent with storm damage.

The third question for determination is whether the storm conditions were the main cause of the damage. This will clearly be the case for carpets and certain contents and this element of the claim has been settled. I now however turn to the remaining elements of the claim. We're usually guided by what experts have said and I've therefore considered the detailed report and photographs of the property damage restoration experts engaged by AXA's loss adjuster.

The report makes it clear that the loft space was very wet, with water dripping down from the roof sheets and trusses. Consequently, the insulation was saturated. It said that this had occurred 'as the roof sheets had been lifted and displaced by strong winds.' The report went on to say that; 'The evidence suggests a single causation event, i.e. the staining appearing all at once. The panels appear to have sprained around the fixing holes whilst the bolts have remained anchored. This has been deduced from the cracks and elongated bolt holes all running from front to rear of the roof.'

As to when this damage occurred, the expert stated; 'The only reasonable physical force that could achieve this would be high winds, however whilst this may have occurred over a period of time, - loosening the fixtures, cracking the panels and elongating the fixing holes, there is no evidence that there has been water ingress prior to the period immediately after the storm weather conditions on 23 December 2020.' It said that the damage had occurred 'as the roof sheets had been lifted and displaced by strong wind'. He considered that there had been a 'single causation event'.

I've carefully considered the submissions of the parties, together with all evidence, to include the report and photographs of the property damage restoration experts. I note that the purpose of the report was to determine the cause of water staining on ceilings in the property, rather than to specifically determine the cause of the damage to the roof. Nevertheless, I consider this report to be persuasive regarding the main cause of damage, in the absence of any other detailed report or roof survey.

There's no dispute that the roof is quite old and not in the best condition. It is for me however to determine the predominant reason for the damage to the roof. The expert states that this occurred 'as the roof sheets had been lifted and displaced by strong winds' and that there had been 'a single causation event'. There was no evidence of previous ingress of water at the damaged roof locations identified by the expert or of previous ceiling damage and staining. As the significant water staining to the ceilings appeared shortly after the storm in December 2020, I consider it likely that the intense rain had penetrated through the damaged roof sheets, soaked the insulation, and then caused damage to ceilings. On the balance of probabilities, my provisional conclusions are therefore that storm damage was the main and dominant cause of the damage and cracking to the relevant roof panels and consequently to ceilings and insulation.

I note that the report recommends that the roof will need to be replaced. Whilst it would be fair and reasonable in the circumstances to expect AXA to cover the cost of repairs to the relevant roof panels, I provisionally conclude that it wouldn't be fair or reasonable to expect AXA to pay for an entirely new roof. I'm satisfied from the photographic evidence that the roof is showing clear signs of wear and tear, is likely to be reaching the end of its natural life and will require replacement within the short to medium term in any event. I note that the roof has been previously patched in areas where it has failed, and in all the circumstances it wouldn't be fair to expect AXA to pay for entire roof replacement work. My provisional conclusion is therefore that AXA should settle Mr P's claim by repairing the panels identified

in the expert report dated February 2021 or make a cash settlement to Mr P to cover the cost of these specific repairs.

As to the interior of Mr P's property, my provisional conclusion is that it's likely that the insulation and ceiling damage was caused by water leaking through the roof due to an insured event. There's been a reference to the need for assisted drying of the property and replacement of saturated insulation and repair of ceilings in this regard. My provisional conclusion on this element of Mr P's claim is that AXA should either arrange for these works to be carried out or to make a cash settlement to Mr P to cover the cost of repair.

Finally, Mr P considered that the cash settlement for the internal damage was inadequate and didn't include damage to skirting, architraves or doors. Mr P hasn't clarified as to whether these works remain outstanding, and if so, the cost of such works. My provisional conclusion on this element of Mr P's claim is that AXA should either arrange for these works to be carried out or to make a cash settlement to Mr P to cover the cost of repair.'

In my provisional decision, I asked both Mr P 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.

Mr P had no additional comments and he *'looks forward to the Insurers taking up the Ombudsman's direction and re-engaging with the him to conclude settlement of the claim.'* He added a stipulation that re-engagement shouldn't involve AXA's original loss adjusters, however he appreciated that he would need to address this point directly with AXA.

AXA provided a detailed response as follows. It partially agreed the recommendations in the provisional decision. It accepted that the policy covers accidental damage and therefore agreed that it should cover the damage to insulation and repair of ceilings to the bedroom only. However, it considered that the kitchen damage was historic and that it therefore shouldn't be required to cover this.

Separate Claims

AXA states that *'Firstly, this claim was reported for flood damage with approx. 4-5 inches of water inside. The roof, if covered under the policy, is a separate claim for storm damage and a separate excess will be applicable.'* I see that AXA addressed this point with Mr P's representative in March 2021 and said that there appeared to be two separate claims, one for flood and one for storm. Although I've found that the damage to Mr P's property was caused by the same set of extreme weather events, I agree with AXA that an Excess sum of £100 would be payable for the claims against each of the insured perils.

The Roof

AXA didn't consider that the roof had been damaged by a one-off storm event. It maintained its position that the damage to Mr P's roof was due to wear and tear. It stated: *'The fact that the insulation was soaking wet would support that rain water has been ingressing through the roof over a period of time, the insulation has soaked up the water, would dry out to some degree as heat rises, and then and eventually caused damage to the ceiling.'*

I disagree that the evidence supports the likelihood that the damage in connection with these claims was caused by ingress over a period of time. The report of the property damage

restoration experts engaged by AXA's loss adjuster refers to water dripping down from the roof sheets and trusses and consequent saturation of the insulation. This indicates a sudden, single event having caused the particular damage to the roof as identified by the expert who visited the property. The expert report also identified two definite leak points in the roof.

AXA then repeated its previous submissions that the roof was very old, there was evidence of historic localised repairs to varied sporadic areas, the repairs were not a complete replacement of the roof and had been deemed appropriate previously, *'and now the expectancy is for insurers to replace the whole roof at considerable expense'*.

AXA also maintained that a perils-related defect hadn't been identified or confirmed. It stated that the roof was of a non-standard construction for a residential property, that the roof and fascia boards were in a state of considerable disrepair. It makes the point that previous repairs appeared to be reactive repairs and not proactive maintenance aspects and that the fascia and barge boards to the front were flush with the external wall and partially covered the corrugations, whereas there should be overhangs on all elevations. It concluded that driven rain could get into the corrugations as exposed, and there was no capillary run off ledge if barge boards were flush with ship-lap panelling. Finally, AXA stated that the significant amount of developed lichen and moss growth indicated no routine or cyclable maintenance.

AXA does not supply new evidence to further develop its submissions. It notes that the provisional decision relies heavily on the expert report and that the expert report was *'contradictory and inconclusive'* as to the cause of the damage to the roof. It stated that the report indicated that the roof sheets had been lifted and displaced by strong winds and yet then stated that the only reasonable physical force that could achieve this would be high winds and that this could have occurred over a period of time. However, this point is ultimately addressed by the expert as he thought that there was a single causation event. He also noted that prior to the storm event there was no evidence of water ingress. I'm therefore satisfied that the single causation event was the storm of December 2020 and that the damage was caused by an insured peril under Mr P's policy.

The only expert evidence supplied is that supplied on behalf of AXA, although I appreciate that it now doesn't concur with that evidence. I also appreciate that the purpose of the expert's investigation was to determine the cause of water staining to the ceilings. His report went further however, and dealt in detail with the probable cause of damage to the roof. Our approach is that expert evidence is usually persuasive in the absence of compelling evidence to the contrary. I'm therefore satisfied on the basis of the expert evidence, that Mr P's claim as regards damage to the roof of his home should be upheld. This is supported by the AXA representative's early observation that *'the roof report suggests the roof is leaking, rather than the damage being condensation. As it started leaking just after the high winds I can accept that there has been some Storm damage.'*

Ceilings

AXA accepts that damage to insulation and ceilings is covered, however it states that the kitchen ceiling damage is not accepted, as the expert's report refers to this as historical damage. However, what the expert report states is that there was water staining *'on several ceilings within the building'* and that he was informed, (presumably by Mr P), that these water stains had *'appeared simultaneously, apart from an historic patch in the kitchen.'* I'm satisfied that Mr P's claim for damage to the insulation and all ceilings throughout the property, save for the 'historic patch in the kitchen' should be upheld.

Skirting, architraves and doors

AXA stated that Mr P didn't present a claim for this damage. It supplied additional evidence, being an email from Mr P to AXA's loss adjuster, giving the breakdown of internal damage for which Mr P had requested payment. AXA said it had issued payment in accordance with this request. It added that it had seen no evidence of any damage to the skirting, architraves and doors *'but that on receipt of photos and repair estimate it was willing to consider this further.'* I consider that AXA's handling of the internal damage has been somewhat confused and unclear. In March 2021 it stated that it had paid a global figure to include architraves and I would have expected AXA to have taken photographs when the flood damage was reported, or shortly afterwards. I therefore conclude that Mr P's claim for damage to skirting, architraves and doors should be settled on receipt of a formal repair estimate, receipt or invoice for such damage.

In conclusion, subject to the points noted and agreed as above, I remain satisfied that AXA hasn't acted fairly and reasonably in response to Mr P's complaint. In all the circumstances, I conclude that the provisional decision provides a fair and reasonable outcome to the matter with a small adjustment to the finding as to skirting, architraves and doors.

My final decision

For the reasons given above, I uphold Mr P's complaint and require AXA Insurance UK Plc to do the following: -

- To promptly arrange for repairs to be carried out to the roof panels identified in the expert report, or to pay Mr P (on provision by Mr P of a formal receipt or invoice for completion of such works), within 28 days of his acceptance of any Final Decision
- To promptly arrange for replacement of damaged insulation and repair of ceilings, or to pay Mr P (on provision by Mr P of a formal receipt or invoice for completion of such works), within 28 days of his acceptance of any Final Decision.
- To promptly arrange for any outstanding repairs to skirting, architraves and doors, or to pay Mr P (on provision by Mr P of a formal repair estimate, receipt or invoice for completion of such works), within 28 days of his acceptance of any Final Decision.
- to pay interest on the cost of repairs calculated from the date Mr P paid for any of the above items to the date of settlement, at 8% a year simple interest. If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 December 2022.

Claire Jones
Ombudsman