

## **The complaint**

Mrs A complains that AXA Insurance UK Plc haven't fairly dealt with her claim for storm damage, and the settlement offered isn't adequate to cover the repairs.

## **What happened**

Mrs A held a buildings insurance policy with AXA.

In February 2022 Mrs A made a claim for storm damage to her property.

AXA's surveyor visited the property to validate the claim and assess the damage at the beginning of March 2022. Following visual inspections, the surveyor recommended that the claim was validated for some of the roof repairs, and internal damage to two of the rooms, but recommended offering a cash settlement because of concerns about the condition of the property and continual water ingress. Damage to the leaded flat roof on the dormer, and to the conservatory wasn't accepted as storm damage, and neither was any internal damage related to those issues.

Mrs A wasn't offered the option of having the repairs done by an AXA contractor and was issued with a settlement for the external repairs of £1773.73 after deducting the £100 excess. This was paid in April 2022.

Mrs A had the roof repairs completed in November 2022 by her own contractor at a cost of £3000 including scaffolding. AXA subsequently accepted that they hadn't included scaffold costs in the initial payment and issued a payment for a further £1100 on 19 December 2022. Mrs A's broker raised a complaint about the scope of the repairs that had been approved, the delays, and why AXA hadn't completed the repairs through their own repair network. She advised AXA of Mrs A's serious health condition which she believed had impacted Mrs A's ability to deal with the repairs.

As the external repairs had been completed, AXA instructed their contractors to start the internal drying and assess the internal repairs. They visited in January 2023 and produced a scope, but again AXA declined to undertake the repairs, and asked Mrs A to obtain her own quotes too to provide a settlement. Mrs A complained.

In their final response to Mrs A's complaint, AXA said that they had fairly assessed and settled the claim but accepts the service could have been better. They paid £500 to Mrs A for the distress and inconvenience caused.

Mrs A was unhappy with this, and so she brought her complaint to us. One of our investigators has looked into the complaint but felt that AXA's offer was fair.

Mrs A disagreed with our investigator's view, and so the case came to me to review.

I issued a provisional decision on the complaint. My provisional findings were as follows: In this case I have to consider whether AXA have decided the claim in line with the terms and conditions of the policy and come to a fair and reasonable decision in doing so.

Having considered all of the evidence carefully, I have upheld Mrs A's complaint, and I will explain why.

*When our service looks at a storm claim, there are three questions to consider:*

- 1. Were storm conditions present on or around the date the damage is said to have happened*
- 2. Is the damage consistent with damage caused by a storm?*
- 3. Were the storm conditions the main cause of the damage?*

*If the answer is yes to all three questions, then a claim will usually succeed.*

### **Were storm conditions present**

*It is agreed by AXA that storm conditions were present.*

### **Is the damage consistent with the damage caused by a storm**

*The photographs taken after the storm show that there is significant damage to the tiles on the roof. AXA accepted that the damage to tiles was consistent with a storm.*

### **Were storm conditions the main (or dominant) cause of the damage?**

#### **External damage**

*AXA have agreed that some of the tile damage was caused by the storm, but that the damage to the ridge/hip tiles, damage to the leaded dormer roof, and damage to the conservatory wasn't. They have attributed these issues to wear and tear.*

*Mrs A has accepted that the issues with the conservatory and the flat dormer roof are not storm related, but she has provided a report from her roofer who completed the repairs which says that the replacement of the hip tiles was storm related.*

*The roofer's invoice was for £3000 and included "full removal of hip tiles due to storm damage. All refixed and fastened down to prevent further damage" and "All damaged tiles removed and replaced caused by tiles being blown onto front porch off of the front elevation by storm damage."*

*He has provided a further e mail in which he says, "With regards to the roof report, it is effectively what was said in the invoice, storm damage. High winds and very heavy rainfall causing tiles to come off the hips/ridge which then makes the tiles loose which has then fallen off on to the front porch causing more broken tiles. The broken/loose tiles had left holes in the roof which has allowed the water to go straight in the upstairs rooms where the damage to internal decoration has occurred. Obviously once we got up on the roof, the damage caused was more significant than looked from the floor where the surveyor had looked from. Which in turn took us longer to complete the work required."*

*The report completed by AXA's surveyor in March 2022 includes photographs of missing and damaged tiles, including missing and damaged ridge/hip tiles. It says "Tiles have come off the main roof and this is consistent with storm. There are a number of trees overhanging which have also knocked tiles off and can be covered under AD. Further damage may be found as access is difficult due to lots of large trees around the property." It doesn't specifically mention or exclude damage to the ridge/hip tiles, and it is only after the invoice is sent in by Mrs A for the work – as it cost more than the settlement – that AXA sought to exclude them.*

*I've looked at the photographs and considered the report of Mrs A's roofer, and I'm satisfied that there is sufficient evidence that some damage was caused to the ridge tiles during the storm, either by the storm itself or by overhanging trees. I have taken account of the fact that the surveyor's notes say that access is difficult and they accept there may be further damage upon closer inspection, and that the roofer has been able to assess the roof and the damage more closely.*

*I also consider that as AXA's contractors refused to undertake the work themselves, they didn't have the opportunity to perform a closer inspection, and Mrs A didn't have any option but pay a local contractors price.*

*I note that AXA's final response refers to the ridge tile repairs being excluded as preventative work, but I consider that there is sufficient evidence in the photographs that there was storm damage to these tiles, and any refixing was necessary to rectify that.*

*And so I consider that AXA should pay the additional £126.27 to bring the settlement for the roof repairs from £2873.73 up to £3000.*

### **Internal damage**

*AXA have declined cover for the internal damage to one of the three affected bedrooms. That bedroom is the one where they have also declined cover for the leaded flat roof on the dormer. Their report from March 2022, just after the storm, notes that the "woodchip wallpaper around the window has peeled off and there is visible damage to the plaster, this however, it dry. The damage is historical and has been caused by rain water ingress over a period of time.*

*I'm satisfied that AXA have acted fairly in declining this aspect of the claim. The other areas where there has been ingress as a result of the storm are noted in the report as being wet, and as this area is dry I think it's fair to conclude that this damage isn't storm related. It is likely to be related to the deteriorating leaded flat roof which it is accepted is not covered.*

*In the general exclusions of the policy it excludes "Any loss or damage caused gradually or by wear and tear, depreciation, the effects of light or the atmosphere, mould, dry or wet rot or fungus and costs that arise from the normal use, maintenance and upkeep of your buildings and its contents.". And so I think it's fair to say that the gradual damage caused by the poor condition of the leaded dormer is excluded.*

*In relation to the other two bedrooms where it is accepted there has been storm related ingress, I understand that contractors have dried the rooms out but have refused to do the repair and reinstatement work as they have been unable to completely dry out an area on the chimney breast in one room. They consider that this indicates an underlying issue that needs rectifying, and so they are only willing to offer a cash settlement for the internal repairs. AXA have offered £1072.24 for the internal works.*

*AXA have said that they can restrict the amount of settlement to what they would have paid using their preferred supplier. However, the policy terms says "Where we can offer repair or replacement through a preferred supplier but we agree to pay you a cash settlement, then payment would not exceed the amount we would have paid the preferred supplier.".*

*However, that isn't the case here. Mrs A would have been happy to use AXA's contractors, but they have refused to undertake the work, and so Mrs A is restricted to finding and paying market rates. In this situation, I consider it is fair for AXA to meet her costs in full.*

*Mrs A has now obtained quotes for the plastering which she has provided to me and we have forwarded to AXA. These quote a total of £2200 for the plastering, removal of debris and asbestos testing which is required because of the age of the plaster being removed. £400 of this quote is for the dormer room, which I have already noted is excluded, and so the total I think that AXA should pay for the internal replastering settlement is £1800.*

*I also note that if any asbestos is discovered, there will be additional costs for the removal of this. As this would be part and parcel of the repair, I consider that AXA should meet these further costs should they arise – and Mrs A will need to evidence these from an approved asbestos removal company if that is the case.*

*Mrs A has also provided us with a quote for the redecoration of the rooms following plasterwork. The quote is £3427.20 for three rooms. As I have said above, any costs related to the dormer room should be excluded, and so I think the total that AXA should pay for redecoration costs is £2402.40 which is for the two rooms affected by the storm.*

*I understand that Mrs A has already been paid £799 for a replacement mattress that was damaged, and this is fair based on the quotes she has received.*

### **Trouble and upset**

*I agree that the claim was not proactively managed and I can see that AXA have made a compensation payment of £500 to Mrs A in recognition of the delays, distress and inconvenience caused. I think was a fair offer, and I don't propose to increase this.*

### **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.

Both AXA and Mrs A have responded. AXA have agreed to pay the additional amount for the external repairs but disagree that they should pay beyond the limit of their liability for the internal repairs. They also think that allowing for redecoration back to pre-incident condition constitutes betterment as the previous wallpaper would have been old. As I have explained in my decision, as AXA have said that they aren't willing to complete the repairs, Mrs A is in a position where she has to rely on her own contractors. In that situation, I don't think it's fair and reasonable to limit liability to what AXA would have paid their own contractors, as they receive preferable rates which Mrs A is not able to take advantage of. My approach here is in line with previous decisions by our service. In respect of the other points raised, I also disagree. It is accepted that the damage to the plaster and decoration in two of the rooms has been caused by the operable peril and replastering and redecoration to pre incident condition is covered by the policy. It doesn't constitute betterment just because the previous wallpaper was older, or no claim in such circumstances would ever be succeed.

Mrs A's representative also disagrees with my decision in respect of the third bedroom and argues that it is covered under the accidental damage part of the policy. I have already explained why I think the third bedroom is excluded, which is that it is excluded by the general policy exclusion for loss or damage occurring gradually or by wear and tear. This term also applies to accidental damage claims, and as the evidence indicates the internal damage occurred over a period of time, it is fair to exclude the internal damage in accordance with this term.

In view of the above, I'm making my final decision in line with my provisional findings.

## **Putting things right**

To put things right, AXA should:

- Increase their settlement figure for the exterior repairs to £3000 and pay the difference between this and what has already been paid.
- Pay Mrs A a total of £1800 for her to complete the internal plaster repairs including asbestos testing, minus the £1072.24 already paid for internal work.
- Pay Mrs A a total of £2402.40 for decoration costs, minus the £1464.52 already paid
- Settle any additional sum for asbestos removal that arises as a result of a positive asbestos result during the removal of the plaster – evidence will need to be provided to AXA if this is the case

## **My final decision**

My final decision is I am upholding Mrs A's complaint about AXA Insurance UK Plc and directing them to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 29 February 2024.

Joanne Ward  
**Ombudsman**