

The complaint

Mr C has complained about his let property insurer AXA Insurance UK Plc because it declined his storm claim for damage to his property.

What happened

The polycarbonate roof of a porch at a property Mr C owns was torn off in January 2023. Mr C reported to AXA that damage had been caused, not only to the roof but internally to the porch and in a basement kitchen (situated below the porch). In February, Mr C had a builder complete temporary repairs to the roof at a cost of £415. AXA sent an assessor to the property in late April 2023.

The assessor advised AXA the claim should be declined. AXA told Mr C that the most relevant cover available on the policy was for storm damage. But there hadn't been a storm at the time the damage occurred and none of the damage claimed for, it said, was consistent with storm damage. It said the roof had insufficient fixings which were rusty and internally there was sign of previous repair. Mr C complained to the Financial Ombudsman Service.

Our Investigator didn't uphold the complaint. She felt AXA had made a fair assessment of the damage.

Mr C was unhappy. He said there might have been gusts of wind not identified by the weather reports and he had witnesses to what had happened. He said the exposed roof fixings had been left in the garden for months and the area of repair internally was unrelated to this incident. He provided an email from his roofer who had completed the temporary repairs. The roofer said when he had to complete the temporary repairs "there was no significant sign of previous underlying damage visible".

The complaint was referred to me for an Ombudsman's decision. Noting that Mr C had cover for accidental damage on the policy, AXA was asked for its views on dealing with the claim under that cover. AXA said the claim wouldn't be covered as one of accidental damage because there hadn't been any "accident". It said, in any event, given the insufficient and rusted fixings, along with the signs of on-going internal damage, relevant exclusions to the cover would apply.

I considered the complaint and felt it should be upheld in part. I felt that AXA had fairly declined liability for the internal damage, but not for the roof. I thought AXA should be covering the roof repair costs under the cover for accidental damage. I also thought it should pay Mr C £150 compensation. So I issued a provisional decision.

Both AXA and Mr C replied to my provisional decision. AXA agreed with the parts I hadn't upheld, but not with what I'd said about the roof. AXA's reply being made by one of its complaint handlers, with no further comment having been provided from an expert. Mr C asked me to review my decision regarding the parts I had not upheld.

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 parties have commented on the different parts of my provisional findings. I've copied those findings below, in italics, and included a summary of their replies to each point, along with my further comments.

Storm

“AXA noted there was no storm at the time of the incident. I've reviewed weather records and I'm satisfied that was a reasonable conclusion. The fact that the roof came off suddenly and that neighbours recall the weather being bad, as argued by Mr C, does not evidence storm conditions. Because there was no storm, AXA was entitled to decline the claim for all damage under that cover on the policy.”

AXA agreed with what I said in this respect. Mr C asked that I review detail he had submitted previously; a meteorologist's report on the weather. I can assure Mr C that I had considered this when I reached my provisional decision. But the report is a news article about the storm affecting the UK – some areas will have 70mph winds and there'll likely be heavy rainfall with very unsettled weather pattern for ten days or so – it isn't specific enough to persuade me that there was a storm in the vicinity of Mr C's property on the night in question. Particularly not when weather stations in the area did not record storm force weather.

Accidental damage

“AXA's policy in this respect says this section offers cover for “any other damage”. AXA hasn't chosen to otherwise define what accidental damage is – such as damage caused unexpectedly by a sudden, identifiable source. So AXA is not correct to say this cover wasn't relevant here because there was no “accident”. In short Mr C's property has suffered damage which is not covered by the events listed in the policy, such as “storm”. So it is “any other damage”. On the face of it he has a claim for accidental damage. It's then up to AXA to show a relevant exclusion exists to decline cover.”

AXA conceded that there is a claim for accidental damage. But maintained the damage was caused by an exclusion. It queried what other cause I thought might have occurred to cause the damage.

I note AXA now accepts that, on the face of it, this is an accidental damage claim. It isn't for me to determine what caused the situation. Rather, as I've said, if AXA wants to avoid liability for the cover, it is up to it to show its most likely a relevant exclusion applies – it isn't enough to say 'as it isn't obvious that something not excluded caused the damage, something excluded must have occurred'.

The roof:

“AXA's argument regarding the roof is that there were insufficient fixings, which might be poor workmanship or faulty design and that those present were rusty, suggesting gradual damage and/or wear and tear. The cover for accidental damage does exclude damage caused by those circumstances. So I've considered the available evidence to decide whether AXA's view in this respect is fair and reasonable.

AXA's assessor said there were insufficient fixings. AXA's in-house surveyor did not say that was the case. The assessor did not explain what regulations or good practice would view to have been sufficient fixings. Nor did the assessor explain why – when the roof seemed to be fixed in the same fashion throughout its length – only part of it came away. And came away in a jagged/broken manner – the sheets were not just lifted from the roof. Nor did the assessor explain how the roof, in place for a number of years, could have lasted until January 2023, in a period of non-storm winds, if it had always had insufficient fixings. So I'm not persuaded that AXA has shown it's most likely the roof had insufficient fixings, or that such caused the damage meaning its reasonable for it to decline the claim under the exclusion for defective design or poor workmanship."

AXA said it's not aware of any regulations determining the appropriate design of roof fixings. But that clearly the fixings are only short – causing a weak bond to the supports. With the supports not having been damaged – suggesting the fixings just lifted out. AXA said though that clearly a property should be designed to withstand normal weather, which this roof did not, so either the fixings were insufficient or had deteriorated. AXA concluded by saying its primary argument though was that the fixings had likely become so rusted they no longer provided a sufficient bond.

I expect AXA is aware that if it wanted to support an argument regarding insufficient fixings, which amounts to poor design or workmanship, this service would expect it to support that with expert commentary and/or other evidence to show what was good practice at the time of installation. I note that whilst AXA has offered further comment (although not an expert opinion) about the fixings being too short, it has confirmed its argument really is that the fixings are now insufficient because they'd degraded.

"In terms of gradual deterioration or wear and tear, the assessor felt the fixings were rusty and the surveyor agreed. But the evidence in support of that seem to be one photo of a remaining fixing in the torn off piece of roof in the garden. The roof supports weren't viewed as they were covered by the temporary repair. Internally the porch below was viewed. The assessor noting no sign of water having come in from above."

I'm not persuaded that one photo of, what is referenced as a rusty nail, shows the roof had most likely been insecure for a long time such that non-storm force winds could tear it off. I've seen the roof supports – they don't look water damaged/rotten and there's no sign of staining by rust as you might expect to see if rusty nails had been in contact with the wood. I note the roofer didn't include replacement of roof supports in his quote. I don't find the photo of the rusty nail itself particularly clear, and I think Mr C has a point that the damaged piece of roof, including its fixings, had been in the garden for three and a half months before the assessor attended. I'm also persuaded by Mr C's roofer's comment, which seems to be supported by the fact the assessor found no signs of water ingress into the porch from the roof above. So I'm not persuaded that AXA has shown its most likely the roof had fixings which had deteriorated or become rusted/worn or that such caused the damage meaning its reasonable for it to decline the claim under the exclusions for gradual deterioration, wear and tear or rust."

AXA said there were multiple photos of rusty fixings, which were extensively corroded which must have happened over a long period of time. AXA said the fixings were clearly 'leaking' in places as there is some dark staining on the wood showing water ingress. It noted that Mr C's contractor's quote did not suggest he would be reusing the fixings. AXA offered a theory as to why the roof had broken as it had – that its location, vulnerability to wind and the nature of the roofing material all likely caused the jagged break.

I think it would be very unusual for a contractor to reuse fixings removed from damaged material. I've reviewed the photos. But there is still no compelling expert evidence regarding the period over which the fixings had become rusted. The complaint handler can't offer an expert opinion in this respect, the assessor merely said they were rusting, and the in-house surveyor said the assessor's report showed they were "decayed (evidenced by rust) over a period of time". As I've previously noted, they were exposed in the garden for a period of time (three and a half months). There's nothing to show they were rusted whilst in the roof. And I say that even noting AXA's comment on the water staining on one roof support – the wood is blackened – there's not sign of redness of the wood which might indicate rust contamination from the fixings.

I've considered the complaint handler's theory about the way the roof broke. Essentially that the roof lifted from an end exposed to weather and because many fixings were decayed – or had lost their bond to the supports due to water ingress. That was until the lifting roof came to the point of one fixing which held, whereupon the rigid sheets couldn't bend so they broke. It's an interesting theory, but it doesn't rise, in my view, to the level of an expert opinion.

"I've reviewed Mr C's invoice for temporary repairs and his quote. The quote includes a full price breakdown for the roof repair. I intend to require AXA to reimburse all of Mr C's costs for the roof repair (£2,760), less the £300 policy excess, plus VAT, plus interest"

In its reply AXA pointed out that the sum I had suggested it reimburse, included costs for gutters and fascias. It said these were not part of the porch roof installation. I noted the sum above comprised a total of £380 for gutters and fascias to be removed and refitted to allow for the roof work. I reviewed the available photographs of the property. I felt AXA had a point – that the damaged roof did not feature gutters affixed to fascias which would need removing in order to replace the roof, and then be refitted. Our Investigator advised Mr C that my final award, should my findings otherwise not change, would likely be less £380 for the gutters and fascias.

Mr C noted that the temporary repair did not reference gutters and fascias. He said there must have been a mistake with the breakdown for permanent repairs because the other roof, below the porch, did have guttering. I've reviewed Mr C's comments made in reply regarding the guttering and fascias. I'm satisfied, given the construction of the porch, the damage to the roof and the lack of gutters affixed to fascias, it would not be fair for me to require AXA to pay for removal and refitting of the same. As such, my suggested money award will be amended by the sum of £380, from £2,760 to £2,380 (less the policy excess of £300).

I note AXA has also now sought to raise an issue about the non-standard construction of the property – given the make-up of various roofs. It's asked to be able to refer to underwriters to check the premium cost and then, potentially, apply a proportionate settlement for this claim.

I find AXA's request in this respect unfair and unreasonable at this late stage in the claim and complaint. The claim was made in spring 2023 with its assessor reporting on the property, including photos showing the various roofs, in May 2023. That was the point for AXA to raise an issue like this. I'd have expected it, at the very latest, if it had been acting fairly, to include a caveat about it in its final response letter of August 2023. At this point it is simply too late.

"The porch:

Here the floor and skirting boards were damaged. AXA's assessor noted the door mat was soaked, and found no sign of water ingress from the roof. The assessor identified failed sealant around the door as the likely cause of ingress. Sealant fails overtime. I think AXA can fairly and reasonably decline the part of the claim for damage to the porch.

The kitchen:

AXA's assessor and surveyor thought the kitchen had likely suffered damage over time. They noted mould and water staining. Mr C has argued the staining was from a previous incident, it just hadn't been painted over. Whilst I appreciate the detail Mr C has shared about the previous incident, I have difficulty in accepting the kitchen was damaged during the one incident of the roof being torn off. Particularly when there was water ingress into the porch immediately above the kitchen which seems unconnected to the roof incident. Also where the water was still clearly getting into the porch months after the roof was damaged and temporarily repaired. I think AXA's decision to decline this part of the claim, because the kitchen had likely been damaged over time, was fair and reasonable."

Regarding the porch and the kitchen Mr C referred back to detail he'd provided already. In short, he said an email from his letting agent and one from his neighbour, advised water had come in. Further, that detail from his builder stated the property needed to be protected from the weather and dried. With temporary repairs having had to be placed on hold for a fortnight due to bad weather.

I can assure Mr C that I did consider all of this detail when reaching my provisional decision. But, as noted provisionally, the porch floor was wet even months after the temporary repairs had been done, and there was no sign of damage to the ceiling or upper walls of the porch. Further, the area of damage in the kitchen was below the porch, rather than immediately under the damaged roof. On balance I'm still satisfied that AXA's conclusion, that the porch and kitchen had not suffered due to the event which damaged the roof, and so were not covered by the policy, was fair and reasonable.

Mr C also said that he had made a claim to AXA for appliances also damaged in this incident. He said it hadn't commented on this and nor had my decision.

I can understand that Mr C would like an answer about his contents items. However, when Mr C complained to this service about AXA's decline of the building damage he said; "Not mentioned as yet in claim, water damage to white goods, from flooding i.e. washer, dryer, fridge and freezers showing signs of rust!". So any response by AXA to the claim for these contents items did not form part of the complaint Mr C made about its decline of liability for the building damage. I can only consider in this decision the complaint which was made.

Compensation

"I think AXA acted unfairly and unreasonably when it declined the claim for the roof. I accept that caused Mr C some distress and inconvenience. I intend to make it pay £150 compensation."

Neither party objected to what I'd said regarding compensation.

In summary

Having considered AXA's response, I'm still not persuaded it has provided compelling evidence that supports its decline of the accidental damage claim based on exclusions to the policy. Nor have I found it fair and reasonable to allow it to raise potential proportional settlement of the claim at this late stage.

I've also considered Mr C's replies. In those respects I'm still satisfied that AXA's decline of liability for the claim under cover for storm and its refusal of liability for the internal damage to the porch and kitchen were fair and reasonable.

The replies from the parties though have satisfied me that my initially suggested award for the roof repairs should be reduced. So that change is reflected in my award section below (Putting things right).

Otherwise, I can confirm that my provisional findings have not changed. They, along with my comments here are now the findings of this, my final decision.

Putting things right

I require AXA to pay Mr C:

- £415 (including VAT) for temporary repairs, plus interest* from 3 February 2023 until settlement is made.
- £2,080 (£2,380 net the policy excess) for the roof repair, including the cost of scaffolding, plus VAT, plus interest* from the date Mr C paid for repair until settlement is made.
- £150 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require AXA to take off tax from this interest. If asked, it must give Mr C a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require AXA Insurance UK Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 March 2024.

Fiona Robinson
Ombudsman