

The complaint

Mr H complains that AXA Insurance UK Plc declined a claim he made under his home insurance policy.

AXA is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As AXA has accepted it is accountable for the actions of the agents, in my decision, any reference to AXA includes the actions of the agents.

What happened

In November 2022, Mr H made a claim under his home insurance policy with AXA after an ingress of water caused damage to his ceilings and light fittings.

AXA arranged for a surveyor to visit the property. The surveyor concluded that the damage wasn't covered by the policy. He noted that the ingress was occurring due to the shallow pitch of the roof. The damage wasn't caused by a storm and the adverse weather had merely highlighted pre-existing defects.

AXA informed Mr H it wasn't able to assist him any further because the damage wasn't covered by the policy. Mr H disputed what the loss adjuster had told him about there being a defect in the design of the roof. He raised a complaint about AXA's decision to decline his claim.

AXA maintained its position, so Mr H asked our service to consider the matter.

Our investigator didn't think Mr H's complaint should be upheld. She didn't think AXA's decision to decline the claim was unreasonable.

Mr H disagreed with our investigator's outcome. He felt his claim should be accepted because his house met the building regulations in force at the time it was built. He said he had proof that the cause of water ingress was because of the effect of climate change and extreme weather that is much more common.

Mr H provided a report to show the weather conditions around a week before he made his claim. He said this showed the weather conditions met the storm definitions required by AXA. He said there was a time delay from the water being driven into the roof space, before then soaking into and through the ceilings into the upstairs living area of his house.

Mr H disputed what AXA had said about poor workmanship and a design fault. He said he had legal documentation that proved his property was compliant with legislation and specifications required at the time, being 2008. He provided further information and commentary regarding how building regulations had changed in 2014.

Mr H also said he'd made a claim under his home emergency cover on the day that he first became aware of the damage, and this hadn't been dealt with.

I issued a provisional decision on 7 March 2024 where I explained why I didn't intend to uphold Mr H's complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Based on what I've seen so far, I don't intend to uphold Mr H's complaint. I'll explain why.

I've considered everything Mr H has told our service, but I'll be keeping my findings to what I believe to be the crux of his complaint. I wish to reassure Mr H I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Mr H has also raised concerns about the home emergency claim he made on the day he discovered the damage. I can see Mr H's policy schedule is showing basic home emergency cover as an optional extra. However, this is underwritten by a different insurer. So, I can't consider Mr H's concerns about his home emergency claim in my decision on his complaint against AXA.

When a policyholder makes a claim, the onus is on them to show that an insured event most likely caused the loss or damage. Mr H's policy provides cover for loss or damage caused by an event listed in it. For Mr H's loss to be covered, it would need to fall under one of those events. If it doesn't – then the claim isn't covered and won't be settled. So, I've needed to consider whether Mr H has shown that an event listed in the policy caused the damage.

Mr H says the damage to his property was caused by a storm, which is one of the insured events listed in the buildings section of the policy's terms and conditions. So, I've considered if the damage was likely to have been caused by this peril.

When our service looks at storm damage claims, we ask three questions. These are:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?*
- If so, is the damage being claimed for consistent with damage that a storm typically causes?*
- Were storm conditions the main or dominant cause of the damage?*

If the answer to these questions is 'yes', then the claim is likely to succeed. But, if the answer to any of the above questions is 'no' – the claim for storm damage is unlikely to be covered.

The policy's terms and conditions define "storm" as:

"A period of violent weather with wind speeds of at least 55mph, or rainfall of at least 25mm per hour, or snowfall of at least 30cm in 24 hours, or hail of such intensity that it damages hard surfaces or breaks glass."

Mr H has asked us to consider the weather conditions in his area on 1 November 2022, which was six days before he made his claim. The weather report is showing a wind speed of 54mph.

AXA's definition of a storm is similar to our services view on what constitutes storm conditions. However, as the recorded wind speed was only just below 55mph, to be fair to

Mr H, I've gone on to consider whether the damage claimed for is consistent with the damage that a storm typically causes.

AXA's claim validation report says:

"During our surveyor's recent inspection of the property, it was identified that ingress is occurring due to the shallow pitch of the roof and so therefore it has been confirmed that the cause of damage is not the result of a storm or any other fortuitous event. Any adverse weather has merely highlighted pre-existing defects with the roof and has not been the proximate cause of damage. With the absence of an insurable peril, we do not consider that a valid claim arises and the claim has been declined in full..."

On investigation there is no damage to the roof and so it would appear that water is being driven under the tiles on the lower section of the roof due to the shallow pitch and this corresponds with the location of the damage as it is around the perimeter of the property."

According to AXA's notes, the surveyor told Mr H that in his opinion the water was driving in under the tiles on the lower section of the roof due to its shallow pitch.

Mr H says AXA's surveyor didn't consider that there were two parts to the external fabrics of the roof. There was very clear damage caused to the roof membrane and that was why the water entered.

Mr H says the design and build of the roof was in full accordance with the legislation and design criteria in place at the time. Due to the rise in extreme weather conditions in recent years, improvements in roof materials and construction methods have been introduced and now apply to new builds. The changes introduced have been to the roof membrane and not the tiles.

Mr H says the pitch of the roof does play a part, but the membrane underneath is becoming much more important to prevent driving rain and high winds pushing the rain under the tiles, where capillary action takes over and the water continues uphill and into the property. The new membrane material is now a complete water barrier and is installed differently so it creates a complete roof water seal.

Mr H believes the damage to his property was as a result of increasing severe weather, with storms that bring a combination of heavy rain and high winds at the same time, resulting in horizontally high-speed rain. He's commented that when very strong crosswinds are combined with heavy rain, that rain will impact the sloping roof of any property from a horizontal direction which will initially push the rain uphill. The effect of the wind encourages the water to 'creep' under the leading edge of the roof tiles fitted to sloping roofs.

I've reviewed the weather reports in the weeks leading up to Mr H's claim, and there is only one day which could reasonably be considered a storm. This was on 1 November 2022, where the wind speeds in Mr H's area reached 54mph. However, the weather that day is described as being a "dry storm". The maximum hourly rainfall that day was less than 3mm. So, I'm not persuaded that the weather conditions Mr H has described as causing damage occurred on that day.

While there was some heavier rainfall on some other days in the lead up to Mr H's claim, this was far below the 25mm required to meet AXA's definition of a storm. And the wind speeds were also below those of a storm.

Mr H has also said that his roof membrane was damaged by a storm. A damaged roof membrane might explain why he was experiencing an ingress of water into his property when this hadn't happened previously. But I think it's more likely this damage occurred

gradually, over a period of time, rather than being due to a one-off storm event. So, I think it's likely that bad weather in November 2022, highlighted an existing problem with Mr H's roof.

I understand that Mr H strongly believes that the damage has been caused by severe weather. But, based on what I've seen, I'm more persuaded by what AXA has said. I think the internal damage to Mr H's property was likely to have been caused by water going in under the tiles because of the design of the roof.

Mr H has queried whether his claim should have been considered under the flood peril.

"Flood" is defined in the policy as a "sudden release or rapid build-up of water from outside the Home or Outbuildings entering into the Home or Outbuildings."

It's not disputed that there has been an ingress of rainwater into Mr H's property. However, I'm not persuaded that the rain that's entered could reasonably be considered to be a "sudden release" or a "rapid build-up" of water.

I appreciate Mr H doesn't feel it would be fair for AXA to decline his claim for poor design if the property met the building regulations in place at the time. But AXA hasn't relied on a policy exclusion to decline the claim. It's declined the claim because it doesn't believe the damage was caused by an insured peril.

I know this will be disappointing for Mr H, but based on what I've seen, I'm not persuaded that the damage he is claiming for was caused by a storm, flood or any other peril the policy covers. So, I don't think AXA's decision to decline his claim was unfair."

I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

AXA said it accepted my provisional decision.

Mr H made some further comments regarding the change in building regulations since his property was built. He said there was no doubt that the Financial Ombudsman Service is fully aware the £25,000 he paid to modify the construction of his roof by replacing the dust underfelt with a complete waterproof barrier was nothing to do with wear and tear. All he had done was seal his roof underneath his roof tiles which is exactly as per the changes in standards introduced.

Mr H suggested that AXA and the ombudsman service were wrongly hindering and denying his claim, rather than help him validate it.

Mr H questioned the weather data I had referred to in my provisional decision. He said there wasn't a weather station outside his house or a wind vane on his roof. However, he felt there was sufficient information to demonstrate storm conditions were exceeded.

Mr H provided an extract from the Met Office daily weather summary for 1 November 2022, showing the daily extremes of weather across the UK. He said the location with the highest wind gust of 115mph could be seen from the beach which was a short distance from where he lives. He also questioned how rainfall of 37.6mm could be considered a "dry storm".

Mr H also challenged what I'd said about the maximum hourly rainfall in his area on that day. He said the total rainfall for his post code was 9.1mm for that day and 65.7mm for the period of his claim.

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 appreciate Mr H feels it's unfair that AXA hasn't accepted his claim despite his roof complying with building regulations in force at the time his property was built. However, no insurance policy covers all causes of damage. In order to uphold Mr H's complaint, I'd need to be persuaded that damage to Mr H's roof was caused by a one-off storm event or another peril covered by his policy.

I'd already accepted that storm conditions were met on the day Mr H says the damage occurred when I issued my provisional decision. Mr H has questioned how I could consider the weather to be a "dry storm" when rainfall of 37.6mm was recorded on that day. However, this was in a location over 100 miles from where Mr H lives, so I don't think this is relevant.

I didn't calculate the hourly rainfall myself. I've relied on weather reports that are used by insurance companies and our service. The maximum rainfall recorded for 1 November 2022 at the nearest rain station to Mr H was 2.4mm per hour. This was six miles from Mr H's post code so it's possible it was higher where he lived. However, I haven't seen any evidence to show that the damage to Mr H's roof was caused by the weather on that day.

I appreciate it's Mr H's opinion that the damage was caused by a storm, but I haven't seen any expert evidence to support this. Based on what I have seen, it seems more likely that the bad weather in November 2022 highlighted a pre-existing issue with Mr H's roof rather than a sudden, one-off storm event being the main cause of the damage.

I understand Mr H has spent a significant amount of money on making his roof watertight and I empathise. But his further comments haven't made a difference to the conclusion I reached in my provisional decision.

My final decision

For the reasons I've explained, I don't uphold Mr H's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 April 2024.

Anne Muscroft
Ombudsman