

## **The complaint**

Mr C complains that AXA Insurance UK Plc unfairly 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 June 2023, Mr C contacted AXA because sewage was entering his kitchen, which was a converted cellar. He said the ground had shrunk due to dry weather and the downpipe had sunk and opened up a hole. AXA said there was no insurable peril and Mr C would need to determine the cause before it could deal with the claim.

Mr C was unhappy that AXA hadn't agreed to take any further action and raised some concerns through social media. AXA said it would log a complaint.

In August 2023, Mr C's wife contacted AXA again. She said they'd heard nothing since being told their complaint was being looked into. The situation was getting worse. The sunken sewer pipe had been fixed, but a void or washing away of materials that had caused the pipe to sink had meant an ingress point that opened up as a result of groundwater flooding as a result of excessive rainfall was letting more and more water into the building.

AXA said it had appointed a loss adjuster to try and validate the damage. It said it wasn't able to uphold Mr C's complaint because the terms and conditions of the policy had been followed. But it awarded £75 compensation for customer service and for a delay in responding to his complaint.

Shortly after the loss adjuster's visit, AXA declined Mr C's claim. It said it had considered his claim under the perils of escape of water, flood and storm but none of these applied. It said the damage Mr C was claiming for appeared to have been caused by a rise in the water table, which was gradual.

Mr C was unhappy with AXA's decision, so he asked our service to consider the matter. He said AXA had refused to allow him to raise a claim in 2021 which would have prevented repeat issues and further damage in 2023.

Our investigator didn't think Mr C's complaint should be upheld. He was satisfied that AXA had declined the claim fairly, in line with the policy's terms and conditions.

Mr C disagreed with our investigator's outcome. He referred to a case study on our website which he said was a carbon copy of his situation. He said our investigator's decision was based on flawed evidence. A detailed and thorough investigation had not been undertaken by any competent party. AXA had referred to a conversation the loss adjuster had with a water company employee who coincidentally happened to be parked at the end of the road, which was tenuous.

He said that when he'd informed AXA no damage was caused by the water ingress, he was referring to immediate damage to internal fixtures and fittings at the time. Subsequently plenty of damage occurred to his whole house caused by damp. He felt it was obvious that damage was being caused to a building if it's letting in water when it had previously been watertight.

Mr C said the sunken pipe had been fixed and had been checked by the water company before the main water ingress, which was caused by heavy rain events, not by a foul water pipe. He said he'd shown that heavy rainwater caused a flooding event which enters the building through a porous wall due to a loss of structure.

As Mr C disagrees with our investigator's outcome, his complaint has been passed 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 not to uphold Mr C's complaint. I'll explain why.

I've considered everything Mr C 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 C 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.

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 C's policy provides cover for loss or damage caused by an event or peril listed in it. For Mr C'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 C has shown that an event listed in the policy caused the damage.

Mr C says the first incident of water ingress occurred in 2021, following a flash flood event. He says he tried to make a claim under his policy with AXA at the time, but this was declined.

AXA has shared a note from September 2021, which says:

*"Insured called to advise he was experiencing a flood. His kitchen is in the cellar and there is water coming down the hill and thorough (sic) the wall and floor of the kitchen. Insured has advised there is no damage at present. Advised that as no damage no claim to be made but if insured notices any damage as things start drying out to give us a call back and we can register a claim."*

While there was some contact with AXA in 2021, I haven't seen any evidence to suggest that Mr C went ahead with a claim at that time.

Mr C contacted AXA again in June 2023, following an ingress of sewage water into his kitchen. AXA has noted telling Mr C there was no accidental damage for service pipes and cables. It's noted Mr C saying that his main concern was that he felt there was a problem with the external wall underground which was letting the water through. There was no internal damage for AXA to look at under the escape of water peril as the water was coming through at the base of the skirting over the floor and this was mopped up.

AXA has noted telling Mr C there was no insurable peril, and he would need to determine the cause before it was able to deal with the claim. It's noted discussing the policy note from 2021 and advising it would not be a one-off event if it had happened before and damage had happened to the wall over time. It's noted that Mr C would look to get a builder / surveyor to come back to AXA if the cause was found. AXA said it would close the claim as notification only and it could be re-opened if Mr C came back.

Mr C says he paid for the downpipe to be fixed and the water company checked if pipes could be broken elsewhere but all of the pipes were deemed okay. However, water continued to enter the property following wet weather.

Mr C says he understands the external wall needs to be repaired which would require removal of the false wall and kitchen units. He believes the issue has been caused by escape of water, storm and groundwater flooding.

The policy's terms and condition say there is cover for loss or damage to buildings resulting from:

*"Sudden and unexpected water leaking from or freezing in any washing machine, dishwasher, fridge, freezer or fixed domestic water, drainage or heating installation."*

I understand from what Mr C has said that there was a damaged downpipe. But, according to AXA's notes, there wasn't any internal damage as a result of this. And I haven't seen anything to show that the building was damaged externally because of the broken pipework.

*"Storm or flood"* is also listed as an insured peril under the policy's terms and conditions.

*"Storm"* is defined as:

*"A period of violent weather defined as:*

- *Wind speeds with gusts of at least 48 knots (55mph) or*
- *Torrential rainfall at a rate of at least 25mm per hour or*
- *Snow to a depth of at least one foot (30cms) in 24 hours or*
- *Hail of such intensity that it causes damage to hard surfaces or breaks glass"*

*"Flood"* is defined as:

*"An invasion of the property by a large volume of water caused by a rapid build-up or sudden release from outside the buildings."*

Mr C says he's shown that heavy rainwater caused a flooding event which entered the building through a porous wall due to a loss of structure.

AXA says it checked local weather records at the time of the reported damage and there were no reported incidents of violent rainfall of at least 25mm per hour.

I've checked the weather reports for June 2023 and September 2021. These show the rainfall in Mr C's area being much lower than 25mm per hour.

AXA says the flood would cover such events as a river or stream overflowing from its natural confines during an isolated event. I've seen nothing to suggest this happened in 2023 or in 2021. Nor have I seen any other evidence to show that Mr C's building structure was damaged by a rapid build-up or sudden release of water from outside the building.

AXA's loss adjuster concluded that the damage was likely to have been caused by a rise in the water table, which would be considered gradual. He said that when the water table rises

to a certain level, water finds its way down a slope and through the rear wall backing on to Mr C's kitchen. He said that in the absence of any tanking system the water was able to penetrate through the stonework and find its way into the kitchen.

I appreciate Mr C disagrees with the loss adjuster's conclusions. But I haven't seen any expert evidence to show that damage to his property was caused by a one-off event that's covered by the policy. Keeping in mind that it's Mr C's responsibility as the policyholder to show that the damage to his property was caused by a peril covered by the policy, I'm not persuaded AXA has acted unfairly here.

If Mr C is able to provide evidence from a suitably qualified professional to show that damage to his property was caused by an insured peril, I'd suggest he submit this to AXA for its consideration.

Mr C has referred to a case study on our website which he believes is a 'carbon copy' of his situation. However, the scenario in the case study is one where the insurer had accepted damage to the consumers' basement was caused by an insured peril. The complaint was about the business being unwilling to pay for all of the repairs. This is a different situation to Mr C's, where it's not been accepted that the damage was covered by the policy at all.

I understand it will cost a significant amount of money to make the building watertight and repair damage to Mr C's home. I also understand the situation has caused a lot of disruption and stress to him and his family, and I empathise with them. But no buildings insurance policy will cover all causes of damage. It wouldn't be reasonable for me to tell AXA to accept Mr C's claim, when I haven't seen evidence to conclude that the damage was as a result of an insured peril. So, while I appreciate my answer will be disappointing for him, I haven't found reason to uphold his complaint.

### **My final decision**

For the reasons I've explained, I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 June 2024.

Anne Muscroft  
**Ombudsman**