

The complaint

Mr C complains that AXA Insurance UK Plc declined a claim he made for damage to the roof of his leasehold property.

What happened

Mr C is leaseholder of a flat which he lets out to tenants. The flat is covered by a Real Estate property insurance policy, taken out by the freeholder who is the insured, underwritten by AXA. Mr C pays for the insurance policy. As the policy covers damage to Mr C's leasehold flat that he could be responsible for, the policy is in part for his benefit.

In March 2023 Mr C contacted AXA to claim for damage to the roof directly above his flat, which had caused water ingress. AXA carried out an inspection of the roof and declined the claim as they said the cause of the damage was poor workmanship, which they said is excluded under the policy.

As Mr C remained unhappy with AXA's decision, he approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint. He said that the policy was 'all-risks' and AXA hadn't sufficiently evidenced poor workmanship was the cause, so he didn't think AXA had fairly applied the exclusion. Therefore, the investigator recommended AXA reconsider the claim in line with the remaining policy terms.

AXA didn't agree and the case was passed to me for a final decision.

I reached the same overall outcome as our investigator, but there were some additional reasons for doing so, and I'd considered some additional information that AXA had provided after the complaint was moved to the ombudsman stage of our process. So, I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional 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.

I'm issuing a provisional decision. I've reached the same overall outcome as our investigator, but there are some additional reasons for doing so. I've also considered some additional information provided by AXA after our investigator had issued his findings and moved the case to the ombudsman stage of our process. So, I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

I've asked for clarification from AXA on the terms and conditions of the policy they've

supplied us. This is because the full terms they sent us implied the policy covered specific insured events. But by contrast, the schedule said the policy was 'all-risk', which means damage is covered unless it is specifically excluded. AXA has confirmed the policy is 'all-risk' as per the schedule, but also confirmed the policy has exclusions as per the full terms – including the one which they seek to rely on to decline the claim.

Mr C claimed for damage to the roof of the flat. Damage is defined in the policy as:

"Damage

"DAMAGE" means loss destruction or damage"

AXA says that they initially considered whether there was storm type damage to the roof, but no damage was found which was consistent with that. So, AXA considered the claim under accidental damage.

However, AXA's agents concluded the roof was suffering poor workmanship, so they relied on an exclusion under accidental damage and declined the claim. I'll talk about the exclusion specifically further below. But before I do, I'll consider whether AXA has actually shown poor workmanship to be the cause of damage.

When AXA's agent inspected the roof, the report completed was very limited in nature. It simply said:

*"Confirm Cause of Damage in Detail:
poor workmanship"*

So, this in itself isn't persuasive. AXA also provided a further report completed by a roof specialist, they said:

"After inspecting roof I have noticed that there are areas of tiles that look to have lifted sporadically across the roof in multiple areas. The existing roof tiles have been set extremely tight on the roof, that now affected, the lifted tiles cannot sit properly and will need adjusting with a few replacements. Additionally due to the tight fit, additional areas will need to be removed and gauged properly to manipulate the tiles so they are installed correctly. my opinion is that the current state of the roof damage that has been caused by the heavy winds should not be allowing water into the property"

Whilst this report comments on the tiles being fixed tightly, this doesn't demonstrate that this led to the damage being claimed for. Instead, the report indicates that heavy winds lifted the tiles, but also says that this shouldn't be allowing water in, and doesn't give any explanation as to how, or why that conclusion was reached.

Our investigator asked AXA for further clarification on this, they provided the following comments:

"The roofer has said that the tile gauging is very tight (tiles are to compact, there should be a little wiggle room) He agrees that the wind has lifted the tiles but the felt underneath the tiles should prevent the water ingress (secondary barrier). If water is getting into the property then this would suggest damage to the felt itself or poor installation. (The roofer) has said if this is the case he's not sure that the damage to the felt would have been consistent with storm damage."

So, this seems to confirm that wind has lifted the tiles, rather than poor workmanship being the cause of them lifting. And they assumed that there is poor installation to the felt below, but not shown how or why they reached this conclusion, and it appears to be an assumption.

AXA also provided the following further comments:

“He has said on all three flanks of the roof there is evidence of poorly installed roof repairs. ridges and mortar works are evident and the standard looks poor. There are also multiple areas of peg tiles that have been replaced with new and odd colours that do not match up with the main roof.

We are unsure as to what has caused the damage to the roof as the surrounding neighbours roofs are all constructed the same and show little evidence of damage. the only difference is as mentioned above this roof has had recent poor repairs carried out to the front side and rear roof.

Policy holder has also stated that recently he evicted the tenant and there was 2 x skips worth of rubbish in the roof. Possibly the works carried out in the loft space may have dislodged the tiles from the inside.”

Whilst this mentions issues with workmanship more generally, it doesn't actually show how the damage being claimed for has occurred as a result of poor workmanship. Instead, it notes the ridges and mortar, which isn't the subject of the claim, and different colour tiles, which in itself doesn't explain why this caused the damage being claimed for – displaced tiles. It also goes on to say they aren't sure how the damage occurred to the roof, and it could have been caused by someone in the roof space, but again this is speculation, and this doesn't sufficiently persuade me that poor workmanship is the cause of the damage being claimed for.

With this in mind, I'm not persuaded that AXA has sufficiently demonstrated the damage was caused as a result of poor workmanship. But even if I was persuaded there was poor workmanship shown by AXA, which I'm not, I'd also need to consider whether the exclusion had been fairly applied.

I've looked at the policy wording, and I don't think this could reasonably be applied even if AXA had demonstrated that there was poor workmanship, which caused the damage. I'll explain why.

The policy terms say what is covered and applicable exclusions, including that which AXA relied on:

*“Accidental Damage
Any other cause but excluding DAMAGE:*

...

d) to any BUILDING caused by faulty or defective workmanship on the part of the INSURED or any of their employees but this shall not exclude DAMAGE which itself results from a cause not otherwise excluded”

AXA seems to consider, at least in part, repairs Mr C arranged following a previous claim have been poorly completed (as I’ve outlined, I don’t think AXA has sufficiently shown this). But the exclusion here says faulty or defective workmanship on the part of the INSURED or their employees. Insured is defined in the policy as:

*“Insured
“INSURED” means the person persons entity or entities specified in the POLICY SCHEDULE or declared to INSURERS”*

And the policy documents list the INSURED as the freeholder, rather than Mr C. So, this exclusion might apply in circumstances where the freeholder (or their employees) carried out faulty or defective workmanship, rather than the leaseholder or anyone they engaged to complete repairs. So, if that’s the case, even if AXA had demonstrated poor workmanship, I’d unlikely conclude AXA could strictly apply this exclusion in any event.

But regardless of this, I don’t think AXA has shown the damage was caused by poor workmanship anyway as outlined. The policy covers DAMAGE, which is what Mr C has claimed for, and AXA hasn’t sufficiently shown an exclusion applies. With this in mind, unless anything changes as a result of the responses to my provisional decision, I’m minded to direct AXA to reconsider the claim in line with the remaining policy terms.”

So, I was minded to uphold the complaint and to direct AXA to reconsider the claim in line with the remaining policy terms.

The responses to my provisional decision

Mr C responded to the provisional decision and said he had nothing to add.

AXA responded to the provisional decision after referring it to their approved supplier. They reiterated what had been said before about the condition of the roof in the view of their suppliers.

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.

And I’ve thought carefully about the provisional decision I reached and the responses to it. Having done so, my final decision remains the same as my provisional decision, and for the same reasons.

There were essentially two different considerations in my provisional decision, firstly, whether AXA had demonstrated poor workmanship was the cause of damage being claimed for. Secondly, whether the poor workmanship exclusion would fairly apply even if AXA had sufficiently demonstrated poor workmanship was the cause of damage.

When responding to the provisional decision, AXA (after referring to their supplier) has quoted the same reports from their suppliers that I already quoted in my provisional decision. And AXA also provided the same images of the roof that they had provided previously. So, I'd already seen and taken all of this into account when reaching my provisional decision, and I explained why I didn't consider it persuasive in showing poor workmanship was the cause of damage being claimed for.

AXA also provided some additional comments from their suppliers, but they are effectively saying the same as the previous reports, including that poor workmanship was a generalisation of the state of the roof, and that this would *suggest* to be the cause. But as I explained in my provisional decision, I'd need to be satisfied AXA had actually demonstrated poor workmanship was the cause of damage if it was seeking to rely on that exclusion, rather than an assumption or speculation it was. And AXA's response to my provisional decision still doesn't persuade me this is the case.

As outlined in my provisional decision, even if I was satisfied it had been shown by AXA that poor workmanship was the cause of damage being claimed for – which I'm not – I'd then need to consider whether that exclusion could be fairly relied on to decline the claim. I then detailed in my provisional decision why I didn't think it could be. AXA hasn't responded to that part of my provisional decision, so my view on this point remains the same.

With the above and my provisional decision in mind, AXA hasn't sufficiently demonstrated the cause of damage was due to poor workmanship, or that it is fair or reasonable to decline the claim on this basis.

My final decision

It's my final decision that I uphold this complaint and direct AXA Insurance UK Plc to:

- Reconsider the claim in line with the remaining policy terms

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 June 2024.

Callum Milne
Ombudsman