

The complaint

Miss M and Mr T complain AXA Insurance UK Plc (“AXA”) unfairly declined a claim made on their buildings insurance policy. They’re also unhappy AXA said they’d misrepresented information.

Any reference to AXA includes the action of its agent. As Mr T has been leading on this complaint, for ease, I’ve referred to him throughout.

What happened

The circumstances of this complaint are well known between the parties. And as our Investigator previously explained what happened, I won’t repeat events in the same detail here.

In summary, in August 2023, Mr T made a claim on his policy for damage he’d discovered in July 2023 to a structural wall. He said the damage was attributable to a flood which happened in 2019.

When validating the claim, AXA said Mr T hadn’t informed it of the flood when the policy renewed. It considered Mr T to have carelessly misrepresented information and said had it known about the flood, it would have offered the policy on different terms (by increasing the flood excess to £2,500) and charged a higher premium. It said any claim would, therefore, be settled proportionality.

Mr T disagreed saying he didn’t consider the events in 2019 to amount to a “flood” – and so, hadn’t intentionally withheld information.

AXA went on to consider the claim but declined it saying the damage wasn’t the result of the flood or another insured peril. It said it was instead due to wear and tear, faulty design, and workmanship. Mr T disagreed, saying he’d taken steps to maintain his property.

Mr T brought a complaint to this Service. An Investigator considered it and didn’t uphold it. Because Mr T disagreed, the complaint has been passed to me for an Ombudsman’s decision.

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’ve also kept in mind AXA’s responsibilities as an insurer to handle claims fairly, promptly and to not unreasonably decline a claim. And whilst I have reviewed all the evidence provided by both parties, I’ve focussed on the issues I consider relevant to deciding this complaint.

Declination of the claim

The first issue to be decided is whether AXA’s decision to decline the claim - because it’s

satisfied the damage isn't caused by an insured peril - is fair and reasonable in the circumstances.

It's for Mr T to show the damage was caused by an insured peril. He says the damage to the gable end wall occurred because of the flood in 2019 – where water surrounded the base of the wall.

AXA has considered the claim but declined it saying there wasn't evidence of ground movement, or a flood having caused the damaged. Rather, it said the failure of the wall and the outward movement of the top section of the gable wall was due to wear and tear and the application of inappropriate cement render which failed over time – both of which aren't covered under the policy.

Mr T disagreed with this conclusion, and so AXA referred the claim to a surveyor specialising in complex claims who, having visited the property, reported:

“Whilst degradation of the cob was found following removal of the cement-based render, it is unlikely the direct result of a single flood event but may have been exacerbated by the localised 2019 flood.

It is more likely that the render trapped moisture for an extended period of time (at least 11 years), resulting in ongoing degradation of the cob. In addition to the above, the render was removed with aggressive SDS drills which likely caused further degradation and destabilisation of the wall.”

Adding:

“The bulging observed externally, coupled with the delamination of the render and paint layer are indicative of ongoing damp conditions, however it is unlikely related to the localised flood in 2019. The lime-based render was installed late last year and the damage observed during our site visit was most likely caused by its inability to cure before becoming saturated and/or susceptible to frost”

“The concrete plinth appears to have been laid to direct water away from the base of the wall and is of suitable height to overcome the suggested 100mm water depth during the flood event. However, given the poor quality of installation and lack of waterproofing membrane, it is possible that water may have become trapped between the plinth and wall which could add to the observed rising damp.”

In summary, the surveyor isn't persuaded the flood was the main cause of the damage. Instead concluding the damage occurred because of a gradually operating cause – since before the property was purchased – and which was exacerbated by recent works to the render.

So, I've looked at the other available evidence to see if this supports or contradicts the surveyor's findings.

The pre-purchase report from 2011 says render at low level to the original cob section of the cottage needed to be carefully removed and required early attention. This was because the render coating had been taken down over the plinth meaning any rising ground moisture would be trapped and not able to evaporate. The surveyor explained:

“Excessive water content to clay cob structures can result in significant deterioration

and collapse.”

So, I'm satisfied there was a known issue with the render at the time of purchase which required remedial action, and that if it wasn't addressed, would likely lead to significant damage.

In 2021, Mr T contacted a contractor (“G”) specialising in cob properties about the rendering. The contractor said:

“Externally, the elevations of the house have been rendered in cement and painted in a modern paint. These materials lead to higher levels of moisture within the walls. This is all contrary to the original design of the house which was to allow the walls to breath.

And G made the same observation as in the pre-survey report that the render extending down to the ground, covering the masonry plinth, further prevents drying of the walls.

Notably, these observations were made in 2021. So, it's reasonable for AXA to conclude remedial work identified in the pre-purchase survey – ten years earlier – hadn't been carried out *before* the flood incident occurred in 2019.

Mr T had remedial works carried out by G in 2022, but in March 2023 sought a surveyor's opinion because he had concerns about the render and possible movement to his property. That surveyor raised concerns about how the render had been removed by G – saying the aggressive use of SDS drills *“could well have destabilized the gable wall”*.

The surveyor also said the render hadn't been given sufficient time to set before being painted, and so wasn't able to resist freeze thaw cycles and wet weather which followed soon after. This tallies with AXA's surveyor's findings, who also identified the damage observed to the render was likely the result of insufficient curing time.

The surveyor also comments on the concrete flaunching at the base of the wall, saying it would be *“entrapping moisture and forcing it up and out of the box”*. The surveyor explains the gable end wall – based on photographs he'd seen from 2022 – was already leaning outward, and that disturbance to the cob may have exacerbated this toppling effect. But what's notable, is that there is no mention of the flood from 2019, having caused the problems Mr T was facing with his property.

I've taken on board Mr T's detailed comments - including that his property had stood for years without issue. But my role is to determine, based on the evidence, whether AXA has shown, on the balance of the probabilities that the cause of damage was most likely due to wear and tear, faulty design, and/or workmanship. Based on what I've seen, I'm satisfied it has, and that Mr T hasn't been able to demonstrate the cause of damage was a flood or other insured event. And so, I consider AXA's decision to decline the claim to be fair and reasonable in the circumstances.

Misrepresentation

The Investigator explained in detail how The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) applies to this complaint, so I won't set this out again. But to summarise, I find:

- the questions AXA asked Mr T (which he had to review at renewal and notify AXA of any changes to his previous answers) were clear;
- the answers Mr T gave were incorrect;
- Mr T didn't take reasonable care not to make a misrepresentation;
- Mr T made a qualifying misrepresentation because AXA would have covered on different terms if he'd taken reasonable care; and
- it was reasonable for AXA to consider Mr T's qualifying misrepresentation as careless rather than deliberate or reckless.

Mr T accepted as much in his response to the Investigator's recommended outcome. It follows AXA had remedies available to it under CIDRA. However, given there's no claim - because it's been fairly declined - and Mr T has said he changed insurance providers in November 2023, the remedies available to AXA under CIDRA have no material impact on the policy.

I say this because there is no claim for AXA to settle on a reduced basis, and the policy remained unchanged until cover ended. So, I don't consider there is a need for me to consider this matter further.

Compensation

For completeness, whilst I understand Mr T feels AXA's handling of matters could have been better, I find the customer service it provided was satisfactory. And so, I'm not requiring it to pay Mr T compensation for how the claim was handled.

I understand my decision will be disappointing for Mr T, and I don't doubt this has been a difficult time for him and Miss M, but for the reasons set out above, I'm not upholding it.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr T to accept or reject my decision before 7 May 2025.

Nicola Beakhust
Ombudsman