

## **The complaint**

G complains that AXIS Specialty Europe SE (AXIS) unfairly declined its commercial property insurance claim and caused unnecessary delays. Any reference to AXIS in this final decision includes its respective agents unless specified otherwise.

## **What happened**

The background of this complaint is known in detail to the parties involved, so I've summarised what I've found to be the key points.

- G made a claim on its commercial property insurance (underwritten by AXIS) for a collapsed ceiling at its insured property.
- During a site visit to assess the damage, AXIS found that the joists had failed because of gradual deterioration (most likely due to ongoing water ingress from the roof) which it said wasn't covered under the policy terms and conditions.
- AXIS therefore declined the claim for the collapsed ceiling. And it said that the subsequent damage from the joist failure, including the reinstatement of the ceilings and internal decorations would also not be covered as the accidental damage section of the policy also excludes damage arising from gradual deterioration or an inherent vice.
- G complained to AXIS about its decision. G said that the damage to the roof beams was ongoing and pre-existing before it purchased the insured property. G said it had two buildings surveys carried out prior to the property purchase which didn't pick up these issues, therefore it had no way of knowing about the ongoing problem and so it wasn't fair for AXIS to decline the claim for something that wasn't its fault.
- G was also unhappy with AXIS' handling of the claim. G said it took three months for AXIS to appoint a loss adjustor and when one was appointed, they refused to respond to emails and were unprofessional and caused unnecessary delays.
- AXIS maintained its position on the claim and didn't uphold G's complaint. G brought its complaint to this service.
- Our Investigator didn't think AXIS could fairly rely on the gradual damage exclusion. So, they upheld the complaint and said AXIS should reconsider the claim.
- Our Investigator also found that there were delays in AXIS appointing a loss adjustor and arranging a site visit and that it didn't communicate with G as they would've expected throughout early part of the claim process. Our Investigator said AXIS should pay £250 for the inconvenience this caused.
- AXIS disagreed with the Investigator's findings that it should reconsider the claim and asked that the complaint be referred to an Ombudsman. So, the case was passed to me to decide.

In December 2024, I issued a provisional decision on this case. I've included part of what I said in this below:

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

*Buildings insurance is designed to cover the cost of repairing or rebuilding the insured property if it's damaged or destroyed due to a type of unforeseen event – often known as an insured event or insured peril. And like most policies of this nature the cover available is subject to certain terms, conditions, and exclusions.*

*When making a claim, the onus is on the policyholder to show, on balance of probabilities, that an insured event most likely occurred. Once the policyholder has demonstrated this, the onus then shifts to the insurer and it should either accept the claim or, if it thinks an exclusion applies or that a condition has been breached, it must show, on balance of probabilities that this is most likely the case.*

*In this case, G made a claim under its commercial property insurance for a collapsed ceiling. AXIS appears to have considered the claim under the Accidental Damage part of the policy. Accidental Damage is defined in the policy as "damage caused by accidental and external means."*

*From what I've seen, AXIS doesn't appear to dispute that an insured event under the policy (accidental damage) occurred in this case, but it says the damage being claimed for has either arisen from or been caused by gradual deterioration and rot which is excluded under the policy. Therefore, it says it's fairly relied on this exclusion to decline the claim in line with the policy terms and conditions. So, I've looked at what the terms and conditions say.*

*Under the "Accidental Damage to Buildings" part of the policy terms and conditions it states that cover for Accidental Damage excludes damage caused by or arising from "atmospheric or climatic conditions or any other gradually operating cause, rot, fungus, rust, corrosion, woodworm, moths, insects, vermin or pests."*

*From what I've seen, the damage being claimed for in this case was as the result of rotten roof joists, most likely due to long term deterioration from water ingress from the roof on the insured property. This type of damage is excluded under the policy. So, on the face of it, the claim has fairly been declined in line with the policy terms and conditions.*

*G doesn't appear to dispute that the damage happened gradually over time, but it says it couldn't reasonably have been aware of it, so it thinks it's unfair for AXIS to decline the claim. And it's noted previous decisions issued by this service where it says we've decided in the consumer's favour because they could not reasonably have been aware of the damage happening gradually. So, it thinks the same approach should apply in this case.*

*In general, when a claim is being considered under accidental damage (as in this case), the usual considerations I may take into account regarding a consumer's awareness of the issue of the damage happening gradually don't usually apply. This is partly because by doing so it could mean insurers would have to pay for a wide variety of situations they never intended to cover. Therefore, G's points in relation to this don't change my provisional conclusion.*

*It follows, based on the information I've seen so far, I don't think AXIS has acted unfairly by relying on the exclusion it has to decline G's claim in the specific circumstances of this case. So I don't intend to direct it to reconsider or pay the claim.*

*G also complains about AXIS handling of the claim. And in their view, our Investigator found AXIS had caused avoidable delays and they recommended £250 compensation for the inconvenience this caused. G accepted the Investigator's findings and it's my understanding that AXIS has since paid this amount to G. So, I don't intend to interfere with this.*

#### *My provisional decision*

*For the reasons set out above, my provisional decision is that I don't uphold this complaint and don't intend to direct AXIS to do anything further in this case."*

Both parties were given a chance to respond to my provisional decision. AXIS agreed with my provisional findings and had nothing further to add but G did not agree.

In summary, G said that while the water ingress to the roof was gradual, the collapse of the joists was not. G maintained its position that as it hadn't owned the property for long and surveys failed to pick up the issues, it could not reasonably have been aware of the gradual damage, and it says we've previously upheld cases with similar circumstances. G also states that given it changed the roof three months after taking ownership of the property it's highly unlikely the gradual water ingress from the roof caused the collapse to the ceiling.

#### **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 can assure G that while my findings below are summarised to what I've found to be the crux of the complaint being considered in this final decision, I've read and fully considered the entirety of its response to my provisional findings. And having done so, my decision remains unchanged. I'll explain why.

G says that while the water ingress to the roof was gradual, the collapse of the joists wasn't. And it raises points around roof repairs making the water ingress an unlikely cause. However as set out in my provisional decision, the accidental damage cover under the policy excludes damage *caused by or arising from* gradually operating causes. I already explained that from the evidence I've seen in this case, I'm persuaded that the ceiling most likely collapsed because of a gradually operating cause. Therefore, I'm satisfied the exclusion applies in this case and these points don't change my conclusion.

G has pointed to previous decisions issued by this Service which relate to gradual damage complaints where an exclusion applies but we think the policyholder couldn't have reasonably known of the damage occurring and they took reasonable action as soon as they could. G thinks its complaint should be upheld as it has similar circumstances.

This Service does have an approach to gradual damage cases (details of which can be found on our website). And typically, under this approach, if we're satisfied the damage did happen gradually and an exclusion applies, we might still tell the insurer to pay the claim if we think the policyholder couldn't reasonably have been aware of the damage happening gradually and they made the claim or took reasonable action as soon as they knew about the problem.

However, this approach also sets out particularly relevant exceptions (also found on our website) – one of which states:

*"Accidental damage - Cover for accidental damage isn't usually a standard part of a policy. It tends to be available for customers to add to their standard policy for an additional*

*premium.*

*The extra cover provided by the accidental damage section of the policy can be much wider than the insured events. That's why we're unlikely to take the usual considerations into account around a consumer's awareness of the issue when we're deciding on a gradual damage complaint. Doing so could make insurers pay for a wide variety of situations they never intended to cover."*

Overall, my findings are in line with this approach, and I've not seen anything in the specific circumstances of this case to make me reasonably deviate from it. And I'm of the opinion that doing so would mean AXIS was paying for a claim that is most likely beyond the type of situation that accidental damage cover was designed for. I don't think this would be fair or reasonable in the specific circumstances of this case.

Therefore, my decision remains that as the claim is made under the accidental damage peril – which from what I've seen in this case, I'm satisfied is the only peril under the policy that could be engaged with in the circumstances – G's awareness of the damage happening gradually does not change my findings here.

It follows, based on the information I've seen, I don't think AXIS has acted unfairly by relying on the exclusion it has to decline G's claim in this case. So, I won't be directing it to reconsider or pay the claim.

I've considered all of G's comments, including its point that after conducting building surveys on the property it expected it to be of a reasonable standard and the fact that it appears not to be, isn't its fault. But this isn't the fault of AXIS either. And it's also not responsible for the findings of the buildings survey's G had carried out. So these points don't change my conclusion.

### **My final decision**

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 7 February 2025.

Rosie Osuji  
**Ombudsman**