

The complaint

Mrs M complains about AXA Insurance UK Plc (AXA) declining a claim under her home insurance policy for damage to a ceiling at her property during bad weather.

References to AXA include their agents who administer the policy and assess claims.

What happened

At the beginning of January 2024, at the time of Storm Henk, rainwater entered the roof of Mrs M's property during high winds. This caused a ceiling to bulge and then collapse. Mrs M contacted AXA to tell them about the damage. AXA appointed a firm (CCA) to assess the claim. CCA's surveyor inspected the property at the beginning of the following month, taking photographs of the roof and the collapsed ceiling. However, they couldn't find any evidence of damage to the roof, such as displaced tiles.

Because there was no evidence of damage to the roof, AXA declined Mrs M's claim for the damage. They said it was possible rainwater entered the property had exposed an existing defect with the property, during periods of rain and wind. AXA said that for a claim to be accepted, the property would have had to have suffered damage solely and directly because of an insured event, such as storm. While there were storm conditions, there was no evidence the property suffered external damage solely and directly because of a storm, so any internal damage wouldn't be covered.

AXA also said CCA observed the flashing detail adjoining the pitched roof showed some evidence of historical lifting, which he thought caused the rainwater ingress. Mrs M disagreed, saying the historical lifting hadn't been mentioned by CCA in any previous communication and nor was it borne out by the photographic evidence. So she complained to AXA.

AXA upheld the complaint in part. In their final response, they referred to the policy definition of storm and to CCA's inspection which didn't find any evidence of storm displacement (such as tiles) but saw some evidence of historical lifting of the flashing detail adjoining the pitched roof, causing rainwater ingress. So, AXA maintained their decline of the claim. But AXA did accept there was a delay contacting Mrs M after she made her claim, apologising and awarding £75 compensation for the inconvenience.

Mrs M then complained to this Service, unhappy at the decline of her claim. She disagreed with AXA's conclusion because there was no visible external damage it couldn't have been storm damage. She thought the collapsed ceiling was clear evidence of storm damage, regardless of whether the external point of entry could be seen.. She wanted AXA to accept her claim.

Our investigator upheld the complaint, concluding AXA hadn't reasonably demonstrated they could rely on the wear and tear exclusion to decline the claim. Having reviewed the weather data for Mrs M's area around the date of the incident, the highest wind speed recorded was 55mph, meeting the policy definition of storm conditions. CCA's report included mention of rainwater, driven by gale force winds, penetrating the ceiling, causing part of it to collapse..

So, the damage was consistent with storm damage. But the investigator wasn't persuaded AXA had demonstrated the historical flashing issue was the cause of the rainwater entering (it was only 'possible' it was the cause. To put things right, the investigator thought AXA should re-assess the claim, without relying on the exclusion to decline the claim. But the investigator thought AXA's proposed compensation for delays in communication was fair.

AXA disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. They said for a claim to succeed, the property must have suffered damage solely and directly because of an insured event, including storm. While there were storm conditions present, AXA (CCA) hadn't found any evidence the damage to the property (the collapsed ceiling) was caused solely and directly because of the storm. The storm conditions had served only to highlight an existing defect, so was the occasion of the damage, rather than the cause. There was no evidence to indicate the property suffered external damage sufficient to allow rainwater ingress solely and directly as a result of such damage (whether by storm or any other cause). The internal damage (to the ceiling) wouldn't be considered in the absence of any exterior damage caused solely and directly from storm.

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.

My role here is to decide whether AXA have acted fairly towards Mrs M.

The main element of Mrs M's complaint is that AXA unfairly declined her claim, on the grounds there was no physical evidence of storm damage (and that historical lifting of flashing may have been the cause of the rainwater ingress). Mrs M disagrees, maintain the collapsed ceiling is clear evidence of storm damage.

As the claim was considered under the storm section of the policy, I've considered this issue, whether the damage resulted from a storm, against the three key issues we consider:

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

On the first question, I've then considered what would constitute a 'storm'. The definition of storm in the policy is as follows:

"Storm

A period of violent weather with wind speeds of at least 47mph, 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."

AXA didn't specifically mention the weather conditions at the time of the incident in their final response (they refer to the weather service from which they obtain data). But in their earlier decline of the claim they acknowledged there were storm conditions. And data from their weather service supports this conclusion, as does data from the weather service used by this Service.

So, I think it reasonable to conclude there were storm conditions on or around the date of the incident.

Moving on to the second question, water ingress is something we would expect to see from storm conditions, so I think the answer to this question would be 'yes'.

The key is therefore the third question, what is the main or dominant cause of the damage. The initial referral of the claim, ahead of the visit by CCA sets out the following in the section headed *Circumstances*:

During Storm Henk, which hit the south of England on the 2nd January, rainwater driven by gale force winds, managed to penetrate the ceiling of a downstairs room, causing a patch of ceiling in this room to collapse. The bedroom directly above the damaged ceiling, was unaffected."

CCA's subsequent report also sets out the circumstances, as follows:

"Damage was noticed within the ground floor bedroom, which is used as a home gym, in the form of a partially collapsed ceiling. The insured noticed water dripping through the ceiling which they suspected to be the result of recent adverse weather. The insured described the causation as 'rainwater driven by gale force winds'".

The report then describes the damage to the [ground floor] ceiling and Mrs M saying she didn't believe any heating pipes were in the ceiling area, ruling out the possibility of an escape of water. The report goes on to state:

"Externally we did not observe any evidence of physical storm disturbance to either the tiles roof or the flat dormer roof. The flashing detail adjoining the pitched roof shows some evidence of historic lifting to the far left-hand side, and it is possible that rain water is entering via either this or another hidden defect. In the absence of any attributable storm damage we do not deem that storm has been the proximate cause of damage."

The report concludes, in two sections:

"We did not observe evidence of any storm displacement as having taken place and based on the available evidence do not consider that a valid storm claim arises. We have repudiated the claim in accordance with the policy."

"We have repudiated the claim in question after deeming that the damage was not a result of a valid peril. This decision has been explained to the insured."

AXA don't refer to a policy exclusion in their decline, although their reference to historic lifting of flashing or another hidden defect would imply they consider the cause of the rainwater ingress to be an existing issue with the roof, which suggests they think the issue was gradual operating cause or wear and tear. The policy excludes cover for gradual damage or wear and tear under a heading *What is not covered* in a section titled *Getting Started: Conditions and Limitations That Apply to Your Policy*:

*"Your policy will **not cover** loss, damage, liability, costs, or expenses for claims in the following circumstances:*

- × Damage caused gradually by wear and tear; or failure to fix a known issue (e.g. a visible leak isn't fixed which causes further damage)..."*

What isn't in dispute is that the damage to the ceiling was due to rainwater ingress and it occurred at the time there were storm conditions. There's no indication the ceiling was damaged due to an internal escape of water, for example from a water pipe in the vicinity, and no evidence to support that conclusion.

So, the cause being rainwater ingress, then either the storm conditions – which aren't in dispute – were the cause, or (as AXA imply) an existing defect or issue (the historic flashing lifting) were the cause. I think it worth repeating the third of the three questions we ask as a Service is whether the storm conditions were the **main** (or **dominant**) cause of the damage (my emphasis). It isn't that the storm is, as AXA say, the **sole** cause of the damage.

AXA refer to some evidence of historic lifting of the flashing adjoining the pitched roof, but looking at the photographs, they don't indicate clear, obvious issues. And CCA's conclusion is tentative ('it is possible') rather than definitive, as is the reference to 'another hidden defect'. Which I don't find persuasive in the circumstances of this case.

That being the case and there not being doubt about the cause of the ceiling damage being rainwater ingress at the time of storm conditions, then on balance I'm persuaded the damage was the result of the storm conditions. That is, without the storm conditions the damage wouldn't have occurred.

I've also considered the general principle, where a policyholder makes a claim for damage or loss under a policy, the onus is on them to show there was an insured event that caused the damage or loss. In this case, given my conclusions above, I think it's reasonable to conclude there was an insured event (storm) that caused damage.

And while AXA haven't specifically sought to apply an exclusion (for gradual operating cause or wear and tear), where an insurer relies on an exclusion in the policy to decline a claim the onus is on them to show the exclusion applies. Looking at the available information and evidence, I don't think AXA would have done so in the circumstances of this case.

Taking all these conclusions into account, I've concluded AXA didn't act fairly and reasonably in declining Mrs M's claim for the damage to the ceiling at their property.

To put things right, AXA should re-assess the claim in line with the remaining terms and conditions of the policy.

AXA also awarded £75 compensation for communication delays to Mrs M. I've considered the circumstances of the case together with the published guidelines from this Service on awards for distress and inconvenience. Taking these into account, I think £75 compensation for distress and inconvenience would be fair and reasonable in the circumstances of this case, so I won't be asking them to make a further award..

My final decision

For the reasons set out above, it's my final decision to uphold Mrs M's complaint in part. I require AXA Insurance UK Plc to:

- Re-assess the claim for damage to the ceiling in line with the remaining terms and conditions of the policy.
- Pay Mrs M £75 compensation for distress and inconvenience.

AXA Insurance UK Plc must pay the compensation within 28 days of the date we tell them Mrs M accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 12 March 2025.

Paul King
Ombudsman