

The complaint

S – a limited company – is complaining that AXA Insurance UK Plc ('AXA') declined a claim it made on its commercial property insurance policy after masonry fell from a block of flats it owns during a storm.

Both S and AXA have been represented by separate companies in the handling of this claim. But, for ease of reference, I shall refer to anything the representatives have said or done as being done by S or AXA respectively.

What happened

In December 2023 S contacted AXA to say masonry had come away from a block of flats it owned and said it wanted to claim for the damage against its commercial property insurance policy.

S arranged for a surveyor to inspect the damage. Following receipt of the surveyor's report, AXA said it believed the wall had failed due to gradual wear and tear. So it didn't think the damage was covered.

S didn't think this was fair. It said the surveyor's report has said that the building was well maintained. It said there were high winds on the day and the funnelling effect of the location is what caused the damage.

AXA maintained the damage occurred due to long term deterioration. It said there may have been storm conditions present on the date of loss, but it was of the opinion that this damage has merely highlighted the pre-existing issues and it believes it's those conditions that are the proximate cause of the damage.

Our Investigator didn't uphold this complaint as he was satisfied the damage was down to gradual deterioration. S didn't agree with the Investigator and raised the following:

- It maintained the damage arose during a major storm. So it disagreed that the gradual damage term applied.
- It said the surveyor's report said the cavity wall ties and header masonry have snapped under the suction load applied by the strong winds, so then allowing the masonry to be pulled away from the building.
- It said the surveyor had commented that he generally thought the building was in reasonable structural condition, although significant works were now required to address the issues.
- If lack of maintenance is a factor in this case, it is only contributory, and not fundamental. It said AXA was relying on clauses dealing with gradual wear and tear as though that was the principal cause of the collapse. But S said it was not; the storm is what brought down the wall panels as clearly stated in the surveyor's report.
- Every building that is 80+ years old suffers wear and tear and undergoes maintenance programs, which it said was happening with the building at this time. It said if insurers are justified in refusing claims because maintenance work needs to be undertaken, claims in respect of old buildings could easily be refused.

As S didn't agree with the Investigator's opinion, the complaint's 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.

I've decided to not uphold this complaint and I'll now explain why.

In respect to the buildings insurance aspect of the insurance policy, S had an all risks policy. This means AXA is required to cover any loss or damage arising to the building unless it can show an exclusion clause applies. The terms of the policy set out that AXA won't cover loss or damage that happens gradually – i.e. it's down to wear and tear. AXA says the damage was ultimately down to gradual damage. I've thought about whether that's fair.

Ultimately the fundamental question for me to think about is whether the surveyor report sets out the fundamental reason the masonry came down was because of a storm or as a result of gradual damage.

All parties accept that the masonry has come away during a storm and I recognise the surveyor has said *"The cavity wall ties and header masonry have snapped under the suction load applied by the strong winds."* But his fundamental finding is that the ties were corroded and *"the corrosion of the ties had weakened them to the point where those closest to the exposed edge of the panels adjacent to the full height window snapped when the strong winds pulled on the masonry."*

The surveyor has highlighted that, in addition to the storm damage there are wider areas requiring maintenance. Such as *"weathering deterioration to the masonry and mortar with spalling to the face of some brickwork."*

AXA has concluded that the surveyor's findings are that the storm has essentially highlighted a pre-existing issue with the masonry due to a gradual deterioration of the ties holding them in place. I cannot say that's unreasonable given the surveyor's comments. So, while I accept the masonry came away during a storm I don't think this would have happened were it not for the issues the surveyor has highlighted. And it seems to me that the fundamental cause of the masonry coming away is gradual damage. And, as I said, the terms of the policy exclude damage arising from this.

I note S has said if insurers are justified in refusing claims because maintenance work needs to be undertaken, claims in respect of old buildings could easily be refused. But this is a standard term in all insurance policies. Fundamentally, insurers don't want to cover liabilities that come as a result of standard maintenance requirements from owning a property. And I don't think that's unfair.

So, while I recognise the impact this matter has had on S and the residents of the building, I cannot say it was unfair for AXA to have declined the claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 14 April 2025.

Guy Mitchell

Ombudsman