

The complaint

Mr and Mrs T are unhappy their claim was declined by AXA Insurance UK Plc (“AXA”) when a storm caused the roofing cover from their flat roof to detach. AXA were providing a home insurance policy.

What happened

Following storm damage to their property, Mr and Mrs T made a claim to AXA under their policy.

AXA appointed a loss adjuster to review and validate the claim. Based upon the loss adjuster’s report, AXA decided to decline the claim based.

The loss adjuster explained the cause of loss as *“on investigation of the flat roof, we believe that the dry rot was not the result of a one-off event and was likely to have been the a result of ongoing water ingress due to the poor condition of the roof. The roof was over 20 years old and near the end of its life span with signs of general wear and tear”*.

The loss adjuster also referred to a design issue with the roof and said an exclusion clause in the policy meant the claim wouldn’t be covered. The stated clause was *“we do not cover physical loss of or damage to, or the cost necessary to replace, repair or rectify:*

- a. insured property which is in a defective condition due to a defect in design, plan, specification, materials, or workmanship or such insured property or any part of it.*
- b. insured property which is necessary to enable the replacement, repair or rectification of insured property excluded by (a) above”*.

Mr and Mrs T dispute the roof was end of life, they said they weren’t aware of the dry rot, and they don’t agree the roof was poorly designed. Mr and Mrs T were also unhappy with the survey carried out by the loss adjuster. They want their claim paid in full.

Our investigator decided to uphold the complaint. He didn’t think AXA had fairly relied on the exclusions in the policy to decline the claim. He thought AXA should settle the claim, plus 8% simple interest per annum until it is reimbursed. He thought AXA should pay £200 compensation for the distress and inconvenience caused. AXA disagreed, so the case has been referred to an ombudsman.

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.

As Mr and Mrs T had an *“all risks”* policy and they had evidenced damage to their property, AXA are liable for the claim unless they can show reasonably that it is fair for them to rely on any of the exclusion clauses set out in the policy.

The primary reason the loss adjuster gave in his preliminary report was dry rot. He also said the roof was over 20 years old, near the end of its life span with signs of wear and tear.

AXA said these reasons meant exclusion clauses applied. In this case:

“3. Wear and Tear

Loss, destruction, damage, financial loss or other expense liability, legal liability, claim or proceedings caused directly by or arising out of:

- (a) wear and tear, gradual deterioration,*
- (b) gradually developing defects,*
- (c) scratching or chipping of painted or polished surfaces,*
- (d) erosion or corrosion,*
- (e) tree roots,*

20. Pre-existing Damage and Defects

Loss, destruction, damage, financial loss or other expense, liability, legal liability claim or proceedings in respect of the existing structure caused by, or resulting from, any defect that existed prior to the commencement of the period of insurance.

For the purpose of this Exclusion, the term defect includes

- a. infestation by insects or woodworm.*
- b. wet or dry rot.*
- c. defective floors.*
- d. defective water apparatus.*

Where a home survey report has not been provided to us prior to the commencement of the period of insurance, the onus of proof will be upon you to prove that the loss or damage was not caused by, or did not result from, a pre-existing defect”.

I've carefully read through the information on file, and I don't think that it is fair that AXA has relied upon these exclusions.

From reading through the evidence, the dry rot was only visible once the roof layering had been detached in the storm. It wasn't visible externally or internally within the property. Therefore, I think it's unfair to reasonably have expected Mr and Mrs T to have known about any defects to do with dry rot, even if these occurred gradually.

AXA since declining the claim, has since raised points around the dry rot been pre-existing prior to the commencement of the insurance contract with it.

AXA has said the onus is on Mr and Mrs T to demonstrate the dry rot was pre-existing. I disagree. The onus on proving the use of the exclusion is on AXA as it has relied on the clause. It hasn't shown any evidence to show that the dry rot was pre-existing. Dry rot can establish rapidly, so without this evidence I don't think it's fair for AXA to rely on the exclusion.

Finally, within the loss adjuster's report there was a light reference to other wear and tear on the roof and that the roof was at the end of its life after 20 years. Although, the loss adjuster wrote this in his report, he hasn't provided any evidence or reasoning to support his findings. He's pointed to a conversation he had with Mr and Mrs T's own roofing contractor. Mr and Mrs T dispute their contractor said this. Mr and Mrs T raised concerns early on during the process about the knowledge of the loss adjuster. They said the loss adjuster had no knowledge of flat roofs and was trying to get input from their contractor. As AXA has relied on the opinions of the loss adjuster, the loss adjuster must clearly set out what evidence he has used to make his decision, photographs that support his findings and reasoning to demonstrate his findings were the main cause of damage.

Given there are different accounts of what verbal conversations were had, I don't think this is evidence that I can rely upon. Other than the dry rot, which I've covered, I haven't seen a reasoned argument around what other wear and tear is evident. I'm also conscious, that the loss adjuster has discussed the roof been at the end of its life at 20 years, when the actual covering of the roof has a normal life of around 50 years. As AXA hasn't been able to provide beyond a reasonable level of doubt of any wear and tear, I don't think it's reasonable in relying on these exclusions.

Finally, I have considered whether the loss adjuster has provided reasonable evidence to support the poor design of the roof. The preliminary report mentioned that Mr and Mrs T's contractor informed the loss adjuster *"that when the roof was originally installed the roof had not been fitted correctly as the insulation should be on the outside not the inside of the timber"*.

For the same reasons as before, I don't take think verbal representations are persuasive, especially when the other party involved disputes what has been said. I've also observed, that although the preliminary report raised this potential issue, it hasn't provided any reasoning at all as to how it may have contributed towards the damage caused.

Having read the final report from the surveyor, which took three and a half months to issue, which was just before the date of the final response letter, again, I haven't seen any reasoning from the surveyor as to how the design flaw led to the damage that occurred. Therefore, I don't find this report persuasive. I haven't felt the need to look at the comments provided in relation to the historic building regulations, as I don't think the surveyor has shown this has any relevance to the damage that was caused.

I don't think AXA has proven on the balance of probabilities, that wear and tear or poor design has been the major factor in the damage caused to the roof. I don't think it's fair to decline the claim for the dry rot as it wasn't visible and no-one would know whether it was pre-existing or not. Therefore, I uphold this complaint. As Mr and Mrs T have now had the roof replaced at their expense, I require AXA to settle the claim by reimbursing this expenditure, plus 8% simple interest (from the date the payment was made to when the settlement is received).

Both parties had accepted our investigator's recommendation of paying £200 compensation for the distress and inconvenience caused by the customer journey Mr and Mrs T experienced. As this is agreeable to both parties, I will stick by this recommendation. I don't think there is any need to consider this further.

My final decision

My final decision is that I uphold this complaint. I require AXA Insurance UK Plc to:

- Settle the claim by reimbursing this expenditure, plus 8% simple interest (from the date the payment was made to when the settlement is received).
- Pay Mr and Mrs T £200 compensation – for distress and inconvenience (if they haven't already).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 6 May 2025.

Pete Averill
Ombudsman