The complaint

Mr and Mrs S complain that AXA Insurance UK Plc turned down their building insurance claim.

What happened

Mr and Mrs S hold building insurance cover with AXA. At the rear of their garden there's a retaining wall which runs alongside a river/brook. The wall is shared with their neighbours, with each neighbour responsible for their own section of the wall.

On 9/10 February 2024, part of the wall collapsed, including the section owned by Mr and Mrs S. They therefore made a claim to AXA for the damage.

AXA assessed the claim. After arranging for a structural engineer's inspection, it turned down the claim by relying on policy exclusions. Unhappy with this, Mr and Mrs S brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought it had been reasonable for AXA to turn down the claim.

Mr and Mrs S didn't accept our investigator's findings and so the matter has been passed to me for a 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.

A report from a structural engineering firm (P) was obtained by AXA. P made the following observations and conclusions:

- The wall had collapsed across the rear of three to four properties and had collapsed due to a combination of factors.
- Firstly, there was a significant increase in earth pressure on an older drystone wall as a result of a newer wall being built on top of it. They thought it unlikely that any design consideration had been given to this.
- Secondly, there was no consistent spacing of weepholes and there was a clay fill to the retained earth. They thought it likely that water had been discharging into the retained subsoils and became trapped by the mortar pointed modern section of wall. They made the point that the pointing didn't allow water to escape through the wall, causing hydrostatic pressure to build up and lead to outward movement and rotation of the wall. They thought this had likely been the case since construction.
- Thirdly, they thought it likely the older drystone wall had suffered historic movement as evidenced by the gaps and distortion to the masonry downstream.

AXA had a further conversation with P, and it was clarified that they didn't think storm conditions could have caused the collapse of the wall. This conclusion was based on weather reports and a lack of scour along the base of the drystone wall.

I've seen an email from the Environment Agency which says they routinely carry out visual inspections of watercourses, and in doing so, often inspect privately owned structures such as walls. And where their inspections note damage to privately owned elements, such as the boundary wall here, they will endeavour to write to the landowners. They then confirmed the river behind the property is inspected on an annual basis, and whilst there are records of two collapses that have taken place, no defects or damage was noted before those events. However, they also said they were limited to what they could access and visually inspect.

Whilst I appreciate the Environment Agency hadn't noticed any damage to the wall during their annual inspections of the river/brook, their email doesn't persuade me that P's conclusions were wrong. If there were build up of earth pressure on the older wall from the modern wall above as well as a build up of hydrostatic pressure, presumably this wouldn't be visible. Therefore, even if we knew for certain that the Environment Agency had visually inspected this retaining wall in the year before the collapse, they likely couldn't have predicted the wall would fail.

AXA considered the claim against the storm cover and accidental damage cover. Our investigator also thought about whether the damage would be covered under the subsidence peril, but concluded it wasn't. I've therefore considered each of these sections of cover in the policy, as well as the exclusions that AXA has relied upon.

The policy defines 'storm' to mean:

'A period of violent weather defined as: wind speeds with gusts of at least 48 knots (55 mph, equivalent to storm force 10 on the internationally recognised Beaufort Scale), or torrential rainfall at a rate of at least 25mm per hour, snow to a depth of at least one foot (30cm) in 24 hours or hail of such intensity that it causes damage to hard surfaces or breaks glass.'

As our investigator has explained, when considering a claim for storm damage, we will ask three questions. If the answer to any of these questions is no, it's unlikely we'd expect an insurer to accept a claim for storm damage. The questions are:

1 – were there storm conditions on or around the date the damage happened?
2 – is the damage consistent with damage a storm typically causes?
3 – were storm conditions the main cause of the damage?

The wall collapsed on 9/10 February 2024. I've looked at the weather reports and there were no storm conditions on or immediately before this date. However, there were some storm conditions (storm force gusts) for a few days at the beginning of the month. So, the answer to question one is potentially yes, though this wasn't immediately before the damage was discovered.

Moving onto point two. I think storm force gusts of wind could cause a freestanding wall to collapse though this is probably less likely for a retaining wall. Nonetheless, the answer to question two is potentially yes.

Turning to point three. Mr and Mrs S say that the storms from the beginning of February 2024 could have potentially weakened the wall. However, P said the wall had collapsed due to a combination of factors (as listed above), and none of these included a storm. After AXA received P's report, it went back and asked P if they thought storm damage could have also been a cause, but P didn't think storm had been a factor.

Mr and Mrs S say that AXA needs to provide compelling evidence beyond P's subjective assessment. Though as a structural engineering firm, P is an expert in this area and therefore best placed to provide an opinion on the cause of damage. Mr and Mrs S were advised by AXA they could obtain their own expert's opinion but chose not to do so. In the absence of any expert opinion confirming the main cause of damage was a storm, I'm satisfied it was reasonable for AXA to rely on P's findings.

So, the answer to question three is no.

As the answer to one of the three questions is 'no', I'm satisfied that Mr and Mrs S don't have a valid claim under the storm section of cover.

The policy also covers subsidence, landslip or heave. However, it excludes claims for damage to walls unless the main building is damaged at the same time by the same cause. Mr and Mrs S's property shows no sign of damage. Therefore, there's no cover under the subsidence section of the policy.

Finally, Mr and Mrs S's policy includes accidental damage. The policy terms say this means 'S*udden, unexpected and physical damage from an external identifiable cause which has not been caused on purpose.'*

As our investigator has said, out of the various factors identified by P that caused the wall to collapse, hydrostatic pressure would be considered an external factor. Therefore, on the face of it, the claim could be considered accidental damage.

However, AXA has relied on some exclusions within the policy. The policy excludes:

'Loss or damage caused by wear and tear or any other ***gradual causes****…'.*

And:

'Any loss or damage arising from defective design, defective materials, faulty workmanship or failure to follow manufacturers' instructions.'

'Gradual causes' is specifically defined in the policy as:

'Anything that happens gradually over a period of time…'

It then gives some examples, including wear and tear, settlement and river or coastal erosion.

I've therefore considered each of the factors listed by P that led to the collapse of the wall against the policy exclusions.

The older drystone wall is believed to be over 100 years old. The modern wall was built on top of it over 20 years ago by the developer of the housing estate. I appreciate there have been no issues with the modern wall since it was built, but it was P's opinion that the modern wall placed too much pressure on the older wall, and it was this that partly led to its collapse. P thought it unlikely that any design consideration had been given to building the newer wall on top of the much older wall.

In the absence of any evidence showing that P's conclusions were wrong here, I think it was reasonable for AXA to rely on this information and say there was defective design or faulty workmanship.

P also said there was no consistent spacing of weepholes, which meant that water was discharging into the retained earth and became trapped. The pointing in the modern section of the wall didn't then allow water to escape, and this led to hydrostatic pressure to build up and cause the wall to move. Again, this seems to be faulty workmanship or defective design, as well as possibly a gradual cause – all of which are excluded under the policy.

Finally, P said there had been historic movement to the older drystone wall (due to the visible gaps and distortion to this wall). Given the age of the drystone wall, it doesn't seem unreasonable for AXA to conclude this happened gradually over time.

Overall, I'm satisfied it was reasonable for AXA to refuse the claim under the accidental damage section of cover.

Mr and Mrs S have recently told this service that after AXA made its claims decision, they noticed some sunken ground in their rear garden. They made a claim with their current insurer, and drainage investigations found an escape of water from the drainage system due to displaced joints.

Mr and Mrs S have argued that because water wasn't going into the drain as it should have been, they think it was instead seeping into the garden and therefore pushing the wall away. They seem to be suggesting this could have caused the collapse of the wall.

We shared the drainage report with AXA but this didn't change its view on matters. It said the drainage report only commented on the drainage, whereas P commented on the cause of the wall's collapse.

I've looked at the drainage report, and it says the cause of damage (the damage being open/displaced joints to the pipework) was consistent with an external force being applied, and they concluded this was due to ground movement. So, it seems to me the collapse of the wall likely caused the ground movement which in turn caused the damage to the pipes. Also, if the escape of water had caused the wall to collapse, I think Mr and Mrs S would have seen evidence of the escape of water much sooner than they did.

So, the new information provided by Mr and Mrs S doesn't persuade me that an escape of water in their garden caused the wall to collapse.

I recognise my decision will disappoint Mr and Mrs S, but I don't require AXA to accept the claim.

Mr and Mrs S also complained to AXA about its handling of their claim. AXA accepted there had been a delay in assessing the claim and responding to their complaint, and that this had caused Mr and Mrs S some unnecessary inconvenience. I agree it took some time for AXA to make a claims decision, though it's also the case that AXA had involved a number of parties in discussions before making a claims decision, and did so in order to see if there was any basis upon which it could accept the claim. I think that was reasonable. I'm satisfied that the £350 compensation AXA has paid was appropriate in the circumstances and reflected the level of impact to Mr and Mrs S for the time taken to assess their claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 20 August 2025.

Chantelle Hurn-Ryan
Ombudsman