DRN-5469755

The complaint

Mrs K complains that AXA Insurance UK Plc turned down her landlord buildings insurance claim.

What happened

Mrs K holds landlord buildings insurance cover with AXA for a property she rents out. At the rear of the garden there's a retaining wall which runs alongside a river/brook. The wall is shared with her 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 Mrs K. She therefore made a claim to AXA for the damage.

AXA assessed the claim. However, after considering a structural engineer's report, it turned down the claim by relying on policy exclusions. Unhappy with this, Mrs K 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.

Mrs K 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. This had been initially obtained for one of Mrs K's neighbours, also insured by AXA. Their section of the wall had also collapsed, and as it commented on the same issue, AXA also relied on the report when considering Mrs K's claim. 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.

Based on this report, as well as their own observations of the damage, AXA's loss adjuster thought the collapse had happened due to poor construction of the wall, as well as the gradual deterioration of the wall's foundations.

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 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:

'We consider storm to mean strong winds of over 55mph, or damage by extreme rain or snow. Rainfall is extreme if more than an inch falls in an hour. Snowfall is extreme if 12 inches or more falls in a 24- hour period."

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 but this is much less likely for a retaining wall. Nonetheless, the answer to question two is potentially yes.

Turning to point three. P said the wall had collapsed due to a combination of factors (as listed above), and none of these included a storm. So, the answer to question three is no.

As the answer to one of the three questions is 'no', I'm satisfied that Mrs K doesn'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. Mrs K's property shows no sign of damage. Therefore, there's no cover under the subsidence section of the policy.

Finally, Mrs K's policy includes accidental damage. The policy terms say this means '*Sudden and unexpected damage occurring at a specific time and caused by external means'*.

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 cover for accidental damage excludes *'Loss or damage caused by…faulty workmanship or design'*.

There's also a general exclusion which says:

'We will not cover You for damage caused by or consisting of inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table level or its own faulty or defective design or materials.'

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, and 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 faulty workmanship or design.

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 design, as well as possibly gradual deterioration.

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.

AXA's loss adjuster also thought there may have been gradual deterioration of the wall's foundations due to river erosion, though again AXA thought this was excluded as gradual damage.

Having looked at the weather conditions, as well as the river levels around the date the wall collapsed, there was no rainstorm or extreme flooding event that could be said to have caused acute erosion beneath the wall. So, if erosion did contribute to the collapse of the wall, it’s reasonable for AXA to say this happened over time. That means it wouldn’t fall under the definition of accidental damage, but even if it did, it would be excluded as gradual deterioration.

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

I recognise my decision will disappoint Mrs K, but I don’t require AXA to accept the 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 Mrs K to accept or reject my decision before 20 August 2025.

Chantelle Hurn-Ryan
Ombudsman