

The complaint

Mr and Mrs W complain that AXA Insurance UK Plc declined a claim on their buildings insurance policy.

What happened

Mr and Mrs W made a claim on their policy for damage to a septic tank. They share the use of the tank with some neighbouring properties and are responsible for a proportion of the cost of the tank.

AXA appointed an expert to carry out an inspection. After considering the expert's report, AXA declined the claim, saying the expert's advice was that the damage was due to poor installation and wear and tear.

Mr and Mrs W complained. They had obtained their own advice, and said this showed there was no evidence of wear and tear or poor workmanship, or that the septic tank was too small, as AXA had claimed.

AXA didn't change its decision so they referred the complaint to this Service. Our investigator said:

- AXA had relied on exclusions for wear and tear, and for faulty workmanship, design or material. It said the tank is undersized, based on the number of properties using it, and this was the underlying cause of damage.
- The onus is on AXA to show it is undersized and it hadn't done enough to show this. AXA should reassess the claim in line with the remaining terms of the policy or provide further information to show the tank is undersized.

AXA disagreed and provided further comments but the investigator wasn't satisfied it had done enough to show the exclusions it was relying on applied. She said she hadn't asked AXA to accept the claim but it needed to do more to show the exclusions applied.

The investigator asked AXA to reconsider the claim. AXA disagreed and requested an ombudsman's decision. I issued a provisional decision saying I was not minded to uphold the complaint. I set out my reasons as follows:

Provisional decision

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, and not unreasonably reject a claim.

The policy provides cover for accidental damage, which is defined as *"Unexpected and unintended damage caused by something sudden and external"*.

The cover is subject to the policy terms and conditions. There's a general condition that says

“This insurance does not cover normal day to day maintenance at your property that you should do, nor does it pay for replacing items that wear out over a period of time.”

And there are exclusions for accidental damage caused by *“wear and tear, loss of value or lack of maintenance...”* and *“faulty workmanship, design or material”*.

In the first instance, it's for the policyholder to show they have a claim. The neck of the tank is damaged and has imploded and split, and the baffles have fallen. There doesn't appear to be any dispute there was damage so on the face of it, an insured event has happened.

If AXA is relying on exclusions to decline the claim, the onus then falls on AXA to show it's fair to apply those exclusions.

AXA arranged an inspection of the septic tank. It has relied on expert advice, which includes the following:

- A section of the tank neck is damaged, and has imploded and split. This split will allow groundwater to enter the tank during rainfall and, as a result, will hydraulically overload the tank.
- Part of the neck is made from a section of plastic dustbin.
- The body of the tank is in good condition and not damaged, as shown on a CCTV recording. The baffles have not fallen due to the tank moving or being damaged.
- It is not possible for the baffles to receive an external force due to way the tank is designed.
- The only damage to the tank is the neck section and baffles – the use of a section of dustbin is clearly incorrect installation and the fallen baffles can be attributed to the age and wear and tear.

So AXA has expert advice to support its position. In the absence of any contrary evidence, I think it would be reasonable to rely on that advice. But Mr and Mrs W have provided their own expert advice. I've considered how persuasive that evidence is, and whether it would still be reasonable for AXA to decline the claim in the face of the contrary evidence Mr and Mrs W have submitted. I'm satisfied it is still reasonable for AXA to decline the claim, for the following reasons:

- Mr and Mrs W's expert says AXA has not shown the drainage installation did not meet building regulations at the time of construction and so hasn't proved the exclusion relating to this would apply. AXA has explained that, to meet Building Regulations, the tank would need to meet the relevant standards and it didn't meet those. In any event, it is not relying solely on this.
- Their expert says AXA hasn't shown the damage to the tank has been caused by "faulty workmanship, design or material". AXA's expert has explained the only damage to the tank is the damage to the section of the neck, made with the use of a section of dustbin, and the fallen baffles. Using a section of dustbin to extend the neck is not a correct installation and this is what caused the neck to fail.
- Mr and Mrs W's expert says the cause of the baffle collapsing is likely to be a trauma. Although they say this can happen when the tank is desludged, I don't find the evidence persuasive that's what actually happened in this case. AXA's expert addressed this, explaining that the tank itself is in good condition and not deformed or damaged. And, due to the design of the tank, it's not possible for the baffles to receive an external force. and they could only have become dislodged due to wear and tear.

- AXA said the water tank was undersized for the number of properties using it. Mr and Mrs W's case is that the size depends on the number people, not the number of properties, and AXA hasn't provided evidence that there are more than 12 full time residents using the tank. They don't believe there are more than 12 residents using it. It's difficult for AXA demonstrate exactly how many people use the tank, and the evidence about this is contradictory. But AXA isn't relying solely on this, and has provided evidence to support its explanation of how the tank failed.

AXA obtained a detailed report before making its decision. In response to Mr and Mrs W's evidence, AXA sought further comments from its expert who was able to address the issues they raised, and said the damage could not have been caused in the way their expert claims.

I appreciate it will be disappointing for Mr and Mrs W but, comparing the level of detail in the respective reports, and given that AXA has been able to address the points raised by Mr and Mrs W's expert, my provisional decision is that it was fair for AXA to decline the claim.

Replies to the provisional decision

AXA accepted the provisional decision and had no further comments to add.

Mr and Mrs W's representative has submitted a detailed response. I won't set the comments out in full but the key points include:

- The use of the tank and its infiltration drainage suddenly became impaired. This is the sort of sudden unexpected damage a policyholder would expect their home insurance to cover.
- The tank baffles are broken. AXA hasn't shown how the baffles could have only become dislodged due to "wear & tear" (as opposed to hydraulic pressure or overloading). The video shows the baffle was subjected to blunt trauma. This has nothing to do with the tank access shaft.
- AXA's expert's conclusion appears speculative, with no physical evidence or detailed visual analysis to substantiate it. In particular, there's no clear evidence confirming a causal link between the installation of the neck and the failure of the baffles.
- AXA says the installation didn't meet the building regulations at the time, but hasn't provided details of the regulations.

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 considered the additional comments carefully but they don't lead me to change my conclusions.

Mr and Mrs W's representative has set out why they don't agree with the findings of AXA's expert. They say AXA hasn't done enough to show how the baffles were damaged, or shown a direct link between the installation of the neck and the damage.

There's clearly difference of opinion about what has caused the problems. I can't say for certain what happened. In a situation like this, I need to consider what's more likely to have happened and whether the conclusion AXA reached was reasonable, based on the evidence available.

AXA's expert has explained that the tank was manufactured on the basis of a one metre inlet

invert (the measurement from the top of the tank access shaft to the inlet pipe) , but the inlet to the tank was longer than that. Because of the height difference, the neck of the tank, which was made of fiberglass, wasn't long enough. So a plastic bin was used to extend the shaft. This clearly would not have been what the manufacturer would have intended. The expert has also explained they could push a screwdriver through the plastic, which was surrounded by soil and no concrete.

The evidence shows it was the neck that imploded and in their view, this poor installation was responsible for the neck failing. This was an expert in drainage and underground services. I don't consider this to be purely speculative – it's based on their analysis of the physical evidence found when they inspected the tank.

Mr and Mrs W's representative also says AXA hasn't shown how the baffles could only have become dislodged due to wear & tear, but they did address this point and explained that, due to the design of the tank, it's not possible for the baffles to receive an external force.

As I've said, there is a difference of opinion about the cause of the problems but AXA's expert addressed the various points raised. On balance, I think their evidence is more persuasive and, in the circumstances, it was reasonable for AXA to rely on that evidence and decline the claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 16 June 2025.

Peter Whiteley
Ombudsman