

The complaint

Mrs L and Mr L have complained that AXA Insurance UK Plc unfairly declined their claim for damage which they said was caused by a storm, but AXA said was caused by a flood. Mrs L's and Mr L's policy excludes cover for flood damage.

What happened

Mrs L and Mr L had buildings and contents insurance with AXA. While they're joint policyholders, Mrs L has been the primary point of contact for both the claim and the complaint to our service. So, for ease, I'll just refer to Mrs L in this decision.

In early September 2024, Mrs L contacted AXA because she suffered a flash flood at her home. AXA told her that she didn't have cover against flooding. And the weather conditions at the time didn't meet the policy criteria for a storm. So the incident was logged for information only and Mrs L arranged for work to be done to try and stop this happening again.

A couple of weeks later, Mrs L called AXA again. She reported torrential rainfall that day had overwhelmed the drains and had entered her basement. The call handler confirmed the conditions that day did meet the policy definition of a storm and the claim was logged. Mrs L asked for the matter to be prioritised, as she is asthmatic and this would be made worse by the house being damp.

AXA appointed a loss adjuster who inspected the property. They reported that the damage to the property had been caused by a flood, rather than the storm and highlighted Mrs L didn't have cover for flooding. Despite being told this, AXA continued to discuss the claim with Mrs L for a further two weeks.

At this point, AXA contacted Mrs L to explain they'd wrongly recorded the claim as a storm claim. They said the cause had been changed to flood, but without taking account of the fact her policy excluded flood damage. They said there had never been any cover for the damage to her home.

Mrs L complained. In their response, AXA apologised for the lack of clear communication and about the delays Mrs L had experienced and offered Mrs L £50 compensation for what had gone wrong.

Mrs L wasn't satisfied with AXA's response and brought the complaint to the Financial Ombudsman Service. Our investigator reviewed all the information provided by the parties and concluded AXA needed to do more to resolve it. She was satisfied there had been a storm which met the policy definition. But she said what had happened could fall either under this definition, or the definition of a flood. But she was satisfied that the water which entered Mrs L's home was heavy storm rain. So she said AXA should cover the damage.

I didn't agree with our investigator's view. So I made a provisional decision. I considered the policy definitions of "storm" and "flood" and concluded either could have caused water to enter the property. But I was satisfied that the proximate – or most direct – cause was the

overflowing drain outside the property – which I thought was more likely to have been caused by a rapid build up of water entering the property. This was consistent with the definition of a flood.

So I didn't think it was fair to say AXA should reassess the claim. But I noted they'd decided it was caused by a flood – so the damage wasn't covered – two weeks before they'd communicated that to Mrs L. I said AXA should pay £500 compensation for this.

Both parties were given time to comment on my provisional decision. AXA accepted it. Mrs L and Mr L didn't. The matter's now been passed back to me for further consideration.

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.

Having done that, I'm not persuaded I should change my provisional decision, which I've summarised above. I'll explain why.

We make decisions based on what we think is fair and reasonable in all the circumstances of a particular case, based on the evidence provided to us in that case. Unlike the courts, we're not bound by precedent. So we may reach different outcomes on similar cases. Or – as in this complaint – an ombudsman may reach a different conclusion from an investigator as to what is a fair and reasonable outcome.

Having said that, we will take caselaw into account where a court's made a decision which closely aligns with the circumstances of a complaint. Mrs L has provided details of a legal claim which I can see was based on very similar facts and in which it was argued that damage was caused by a storm. I appreciate the effort she's made. But that case was settled by mediation. So, I can't take that into account for two reasons. First, mediation doesn't involve the court making any findings of fact. And, second, resolutions achieved by mediation are private – so there's no record of what was taken into account for me to consider.

Mrs L has said the issue is caused by AXA's policy not setting out their terms and conditions clearly. I considered those terms in my provisional decision. But I've looked at them again here.

The policy defines a flood as:

“A sudden release or rapid build-up of water entering the Home or Outbuildings from the outside.”

The definition of a storm is:

“A period of violent weather, including either:

- *Winds of at least 47mph*
- *Rainfall of at least 25mm per hour*
- *Snowfall of at least 30cm in 24 hours*
- *Hail so intense that it damages hard surfaces or breaks glass”*

I've thought very carefully about this. There's not much evidence about exactly what happened. But what there is says that water escaped from a drain outside. That's consistent with the flood definition. On the other hand, there's no suggestion that the

rainwater entered the property as it fell. So, on balance, it remains my view that it was reasonable for AXA to say the damage to the property was caused by a flood.

Mrs L has suggested that the policy is confusing because it doesn't specifically state that damage from water from overflowing drains isn't classed as storm damage. I've thought about this, but I don't agree. Insurance policies provide cover in a wide range of circumstances. And, while I understand why Mrs L would have found such a statement helpful, it's not reasonable for me to say that the policy should have gone into this level of detail.

Mrs L has said that AXA should be held partly responsible for the fact that she and Mr L didn't have flood cover – as the investigator suggested in her view.

Insurance policies are sold on either an advised, or a non-advised basis. I've listened to Mrs L's call with AXA when she took out the policy. Even though she spoke to a member of AXA's staff, I'm satisfied this was a non-advised call, as Mrs L rang because she had queries about an online quote. The call consists of the adviser running through the questions in the online application. And the adviser tells Mrs L at several points in the call she needs to check everything to make sure she has the cover she needs.

It's clear from that conversation that Mrs L thought the policy didn't include flood cover and was happy to proceed on that basis. The adviser corrected that assumption and said that the cost of her cover may be reduced if she didn't want flood cover – but he didn't make any recommendation that she do this. And he reminded her twice that removing it would mean she wouldn't be covered in the event of a flood. Mrs L confirmed she was happy to proceed. In these circumstances, I can't agree that AXA were partly responsible for flood cover being excluded.

As I said in my provisional decision, while I don't think AXA need to accept and reassess the claim, I do think they need to pay Mrs L and Mr L compensation for their delay in telling them the damage to their home wasn't covered. That delay prevented Mrs L and Mr L from making alternative arrangements for remedial work. And AXA were aware that they were keen to minimise the time their house was damp because of the potential impact on Mrs L's health. I thought £500 was a reasonable amount of compensation for AXA to pay for this. AXA agreed.

Mrs L has said that AXA's actions have also led to financial losses. I've thought about this. But the costs Mrs L has detailed appear to me to be costs that had to be incurred to deal with the flood damage – so I think they would have been incurred in any event. And so I don't think AXA need to do more than pay the £500 compensation to resolve Mrs L's and Mr L's complaint.

My final decision

For the reasons I've explained, I'm upholding Mrs L's and Mr L's complaint in part and directing AXA Insurance UK Plc to pay them £500 compensation for the delay in correcting the mistake they made by initially accepting the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 1 August 2025.

Helen Stacey
Ombudsman