

The complaint

A complaint has been brought by the director of P, a limited company, about AXA Insurance UK Plc ("AXA").

Any references to P in this decision include its director, and any references to AXA include its appointed agents.

P complains that AXA unfairly and unreasonably rejected its claim for external damage following water ingress into the insured property, a hotel it manages.

What happened

A claim was made in January 2024 under P's policy with AXA, when water ingress into the insured property caused damage, following adverse weather conditions. There was an initial delay in inspecting the damage, which forced P to take remedial action to prevent further damage as it was a functioning hotel and couldn't afford to have a leaking roof.

AXA accepted the claim for internal damage under the accidental damage peril in the policy, but declined the claim for external damage. It said the damage was gradual, not caused by a one-off event and therefore not covered under the policy.

P didn't accept this and made a complaint, saying the storm had caused the damage. AXA said there was insufficient evidence of storm – and when considering the claim under the accidental damage section of the policy, it said the damage had occurred gradually over time which meant there was no cover under the policy, as gradual damage was excluded.

The complaint was referred to this service, as P didn't accept what AXA had said. Our Investigator considered the complaint, and initially thought it should be upheld, as a report suggested the damage was the result of high winds lifting the felt off the roof, which in turn had caused the water ingress.

AXA responded to our Investigator with further comments and evidence. It said it had agreed to cover the internal damage. But it said the external weatherproofing of the roof had failed due to its own deterioration – which was a gradual cause. And that a roof in fair condition should be able to withstand much higher wind speeds than those at the time. So it was of the view that P hadn't shown that the external damage was caused by any insured peril, whether storm or accidental damage. And that even if it had been caused by an insured peril, there was an exclusion in the policy which meant gradual damage wasn't covered.

Our Investigator reviewed the case in light of AXA's comments. He told AXA that just because the weather conditions didn't meet the definition of a storm, it didn't mean they couldn't be the cause of accidental damage under the policy. AXA didn't accept what our Investigator had said and asked for an Ombudsman to review the complaint.

Following this, our Investigator reviewed the complaint again and asked P for further information including a roofer's report AXA had referred to. P sent this to us and our Investigator reconsidered the complaint, concluding that AXA's reliance on the gradual

deterioration exclusion seemed reasonable based on the evidence available.

P didn't agree with our Investigator's revised opinion and wanted the complaint reviewed afresh by an Ombudsman, so the matter has now come to me to decide.

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 this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence P and AXA have provided. Instead, I've focused on those I consider to be key or central to the issues in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. It should also settle claims promptly once settlement terms are agreed. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

P's policy covers it against a number of insured perils. These are listed in the policy terms as *"Fire, lightning, explosion, aircraft or other aerial devices or articles dropped from them, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons, theft, earthquake, storm, flood, escape of water from any tank, apparatus or pipe, leakage of oil from any fixed heating installation or impact by any road vehicle or animal."*

Under the buildings section of the policy, AXA sets out that it will not cover *"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"* – but it will cover subsequent damage which results from a defined peril.

When making a claim on an insurance policy, it is for the insured – so in this case P – to demonstrate it's suffered a loss that's covered by the policy. If it can do so, then the insurer will need to accept the claim unless it can show it can fairly rely on a valid exclusion to decline it. In this case, AXA has relied on the gradual damage exclusion to decline the claim. But it's also said there's no cover in the policy for what's happened here as the damage wasn't caused by a storm or any other defined peril. So I've considered both arguments.

I've checked to see whether there were storm conditions on or around the date the damage was discovered. P's position is that the weather conditions were severe and there were multiple eyewitness accounts and significant physical damage to the property following the adverse weather, which included heavy snow, wind and ice over several days.

But the more persuasive evidence I have is from the contemporaneous weather records I've checked, which show that there weren't storm conditions around the date of damage, as the maximum wind speeds were 35mph. Whilst there were higher wind speeds earlier, in December 2023, P has confirmed the roof was checked in January 2024 and was free from defects. So I don't consider the adverse weather in December to have constituted an insured event which caused the damage, as any such damage would've been apparent during the

January inspection. And I'm not persuaded that there were storm conditions after the inspection which caused the external damage from the records I've seen. So I've considered whether the external damage should've been covered under the accidental damage part of the policy instead.

The term "accidental damage" isn't specifically defined in the policy documents. So in line with our usual approach I've used the ordinary, everyday meaning of the term – which is something "unforeseen and unintentional".

The evidence presented by P includes a letter from the building manager which says that strong winds and uplift pressure caused the damage, resulting in the felt being ripped along the adjoining wall that runs along the apartments. The letter also says snow and ice frequently melts and refreezes along the flat roof, which can be triggered by snow being warmed by sunlight or by heat escaping from rooms during the day, followed by cooling at night. The letter explains that eventually, water ingress can occur. But I'm not persuaded by this report, because I don't consider the commentary to be independent – as it's from the building manager. And the cycle described in the letter seems to be a gradual one. I don't agree with the comments that the evidence suggests a rapid escalation of damage rather than a prolonged issue. I think it's more likely there was an ongoing issue of deterioration, which was then exacerbated by the weather conditions at the time, which did not meet the definition of a storm.

I say this because the photos I've seen show signs of water ingress which seems to have been occurring for some time, although coverings may have masked this. And I can't see from the photos provided, any evidence of the ripped felt referred to or an indication that the issue has been caused by snow and ice melting and seeping through the roof. A flat roof in a good state of repair should usually be able to withstand snow or ice melting and normal amounts of wind and rainfall. It therefore seems more likely based on the available evidence that there has been a gradual deterioration of the seals – rather than accidental damage caused by a one-off event. And I don't think in this case that any such gradual deterioration could be considered unforeseen and unexpected as this deterioration happens over time and requires regular maintenance; insurance policies are not designed to replace normal maintenance of a property or its roof.

Insurance policies also aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy.

Ultimately, I haven't seen enough in this case to persuade me that the external damage was caused by an insured peril. And even if it could be shown that the damage was caused by one of the listed policy events, I'm satisfied AXA hasn't applied the gradual deterioration exclusion unfairly, because there's evidence that the issue was occurring over time.

P also complains that AXA didn't assess the damage for several weeks and caused delays at a crucial time. Initially, AXA offered £50 for the distress and inconvenience it had caused. It later increased this to £150. I find the increased offer of compensation to be fair and reasonable in the circumstances as it reflects the fact that AXA's communication could've been better and it caused some delays of several weeks in its consideration of the claim.

I appreciate my decision will come as a disappointment to P. If P is able to provide any further, new evidence for consideration, for example from an independent roofer, regarding the condition of the roof before the damage occurred, or in relation to the cause of the damage – which differs from what AXA has said, then this evidence should be passed on to AXA in the first instance, and I'd expect AXA to consider it fairly and provide a response to P

without any undue delays.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 11 July 2025.

Ifrah Malik
Ombudsman