

## **The complaint**

Mr and Mrs M are complaining that AXA Insurance UK Plc hasn't covered all the losses they've suffered arising from a storm and resulting flood after they made a claim on their buildings insurance policy.

## **What happened**

In February 2020 Mr and Mrs M's property was damaged following storm Ciara. A neighbouring beck burst its banks which caused a flood. This meant a significant amount of water went into their house and also caused damage outside of their house –particularly the external cladding, door, driveway and caused a wall to collapse. AXA arranged for the internal damage to be repaired and covered Mr and Mrs M's contents claim. Mr and Mrs M haven't raised any concerns about the way AXA handled this aspect of the claim. But they're unhappy with AXA's handling of their claim for damage outside of their property.

AXA's representative arranged for an independent inspection of the damage. The engineer concluded the wall had collapsed due to wear and tear. He highlighted that many of the timber posts had suffered significant long-term rot at the base. AXA said the policy excluded loss or damage arising from a flood where the primary cause is gradual damage. So it said the policy didn't cover the cost of reinstating the wall.

AXA agreed to replace or repair the aspects of the cladding and doors that were damaged by the flood. But Mr and Mrs M wanted to have all the cladding replaced. AXA said that would mean carrying out work to areas that weren't damaged in the storm, which it said wasn't covered under the policy. Mr and Mrs M didn't think this was fair as they said it would result in a mismatch in the colour. They said that the door and 300mm above (the area AXA agreed to repair/replace) would be orange/brown, but the remaining feature would be its current ashen colour. And they didn't think that was fair. They also said that AXA wanted to jet wash the walls, but they said the paint was damaged. So they believe the entire outside wall needs repainting.

Mr and Mrs M also said that the flood had damaged their driveway as it had caused some of the paving flags to lift and crack. AXA agreed some of the flags on the driveway needed re-pointing in places, but it thought they were generally stable and didn't think they were damaged by the flood. It also said there was evidence of historic repairs to the drive. So it didn't think there was anything to show that the storm or flood had damaged the driveway.

Mr and Mrs M didn't agree with AXA's decision and arranged for their own surveyor to inspect the property. The surveyor acknowledged that there was existing damage and evidence of wear and tear to the wall, but he said it was structurally sound and supported. So he concluded that the primary cause to the wall's collapse is down to the beck bursting its banks and the sheer amount of water and debris that built up.

AXA maintained that the wall was in a poor state of repair and needed replacing before the storm. So still didn't agree to pay to repair or replace the wall. Mr and Mrs M still thought AXA was being unfair, so they referred their complaint to this Service to review. They highlighted that they had sent a large number of emails to AXA to try to resolve this matter

setting out why its decision was wrong. But they said it hadn't responded to the queries they've raised.

The investigator didn't uphold this complaint. He said he was more persuaded by the report commissioned by AXA. And he didn't think that it was unfair for AXA to say the damage to the wall was ultimately down to wear and tear, but the flood had simply highlighted existing issues. He also was satisfied AXA had agreed to replace the timber door and remove and repair the surrounding area up to the height of the damage, which he said was fair and in line with the policy terms. The investigator also noted that Mr and Mrs M had raised that AXA hadn't covered vermin access. But the investigator thought AXA had acted fairly as it had asked Mr and Mrs M for further evidence of the damage, but they hadn't provided it. So he didn't think AXA needed to cover this damage. Finally, he didn't think there was anything to show the storm or flood had caused damage to the patio and he thought it was fair for AXA to say it was pre-existing damage.

Mr and Mrs M didn't agree with the investigator, so the complaint's been passed 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.

I've decided to not uphold this complaint and I'll now explain why.

I should first set out that I acknowledge I've summarised Mr and Mrs M's complaint in a lot less detail than they've presented it. Mr and Mrs M has raised a number of reasons about why they're unhappy with the way AXA has handled this matter. I've not commented on each and every point they've raised, instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure Mr and Mrs M and AXA, however, that I have read and considered everything they've provided.

I'm aware that a lot has happened throughout this claim's journey as it was a significant claim and a lot of damage occurred to both inside and outside Mr and Mrs M's property. However, in this decision, I'm only focussing on the areas in contention. It seems to me that these issues are:

- Damage to the outside retaining wall
- Damage to the patio/driveway
- AXA won't replace the entire cladding section or repaint the outside wall
- AXA hasn't repaired rodent damage

I shall consider each point separately.

#### **Retaining wall**

The wall in question is around 20m long and which retains the driveway, garden and decking on Mr and Mrs M's property. After the beck burst its banks, part of the wall collapsed as a result of the high flow of water and debris. I understand the water level rose around 60-70cm above the decking level. Mr and Mrs M believe the wall collapsed because of the amount of debris that ended up on top of the wall as a result of the flood. However, AXA says the primary reason the wall failed is because of the fact it was in a poor condition beforehand.

The terms of the insurance policy cover Mr and Mrs M for loss or damage arising from a flood. However, the terms of the policy also set out that AXA won't cover loss or damage that happens gradually. As I said AXA believes the wall collapsed because of gradual damage to the wall supports.

In thinking about this, I've asked myself three questions:

1. Was there a flood as defined under the terms of the insurance policy?
2. Is the damage claimed for consistent with damage a flood typically causes?
3. Was the flood the main cause of the damage?

There is no dispute there was a flood at the time as the neighbouring beck burst its banks and water flowed across Mr and Mrs M's property and I don't think the resulting damage is necessarily unusual for such an event. So I'm satisfied the answer to questions (1) and (2) is "yes". This also isn't in dispute. But the issue for me to consider is whether the flood was the main reason the wall collapsed.

In this case there are two expert reports setting out their respective opinions on the primary cause of the wall collapsing. Crucially both experts agree that the wall showed evidence of decay and pre-existing damage. Mr and Mrs M think the core question is whether the wall would still be standing but for the flood, but I don't agree. I think the critical question I must ask is whether I think it's *most* likely the wall would have collapsed even if the existing damage was present before the flood. And this is where I think the experts disagree. So I need to decide which of the reports I find most persuasive.

The expert instructed by AXA – who I shall refer to as P – made the following conclusions:

- *The timber post retaining wall leaned outward by up to 100mm in 1200mm, however, if all of this movement had occurred as a consequence of the recent flood then there would be evidence of significant movement to the timber fence adjacent wall, the decking at the front left corner of the extension, and a slump in the retained earth behind the wall.*
- *Many of the timber posts had suffered significant long-term rot at the base. Some of the posts could be moved easily by hand and this revealed significant rot and deterioration to the rear, retaining side of the posts. This has then been exacerbated by the recent flooding causing the localised movement to the decking and further rotational movement, and possible failure, of the timber post retaining wall adjacent to the rear left corner of the extension.*
- *Along the bottom of the wall, stone units had been placed up to a height of 550mm from the top of the retaining wall. Adjacent to the stonework wall the concrete base/foundation to the timber posts was exposed which had a projection of up to 300mm and measured approximately 300mm thick from the beck bed.*
- *Across the rear boundary is a 700mm high, 450mm thick stonework wall which terminates at the boundary. Approximately 700mm from the left-hand end of the wall was a vertical crack up to 7mm wide which tapered towards ground level. The crack appeared weathered and old. Some of the coping stones were loose to the top of the wall.*
- *It is evident that significant rotational movement, long-term rot and deterioration have generally occurred to the timber post retaining wall along its length which, in our opinion, is of an historic nature. The wall leans outward by up to 100mm.*

So it was P's conclusion that he thought the wall was likely to have shown signs of leaning before the flood occurred which he thought was a consequence of long-term deterioration of the timber posts. And it's provided a number of photographs in support of its stance. He was

ultimately of the opinion that long-term rot and deterioration had weakened the structure. And it said that the flood had exacerbated the damage.

In contrast, the expert instructed by Mr and Mrs M – who I shall refer to as MPA – made the following conclusion:

- *Notwithstanding the obvious commencement of deterioration to the base of the stoops, the majority of the stoops between chainage 0-4 metres still have a reasonable fixity at the base and the lower concrete stonework construction.*
- *Total collapse of the wall has occurred between chainage 4-6 metres induced by severe water pressures upstream of chainage 6 metres, where obvious constriction in the cross section width of the channel has occurred.*
- *Given the head of water during the storm conditions (circa 2 metres above invert level approximately) and the severe constriction chainage 6 metres, the build up of pressure would be considerable resulting in the total collapse of the wall structure between chainage 4-6 metres.*
- *The partial deterioration to some of the timber members of the beck wall has not had any significant effect on the overall scope of damage to the property and environs, although any reinstatement costs with regard to the original construction would be on a like for like basis.*

So it was MPA's conclusion the deterioration of some of the timber posts didn't have a significant effect on the level of damage. And he thought it was the significant pressure of the water as a result of the amount of water flowing from the beck.

It's not for me to decide what ultimately was the cause of the failure. My role is to consider all the evidence available and to decide whether AXA's conclusion was fair. I've considered everything, but ultimately I'm more persuaded by P's report. It ultimately can't be ignored that a number of the timber posts have suffered significant rot which have had a significant impact on their structural integrity. I acknowledge MPA's comments that the posts were still secured in place by chainage, but it's accepted by both experts that there's clear evidence of long term deterioration due to rot to the base and throughout some of the posts.

I'm also persuaded by what P has said that it's likely the wall was leaning before the flood. I note Mr and Mrs M have disputed this and I've considered the photographs they've provided. But, P has said that, if this movement had occurred as a result of the flood, then there would be evidence of significant movement to the timber fence adjacent to the wall, the decking at the front left corner of the extension, and a slump in the retained earth behind the wall. I'm persuaded by this. Given this, the photographs P's also provided and his expert testimony, I can't say it was unreasonable for AXA to think the wall was already failing before the event.

I do not dispute that there was a significant of water and debris falling on the wall. But AXA is entitled under the terms of the policy to consider whether wear and tear to the wall was a major factor in the wall collapsing.

Ultimately, AXA has arranged for an independent inspection, it has considered the report carried out by MPA and concluded that the flood has merely highlighted an existing fault. For the reasons I've set out above, I can't say this was unfair. As I said, it's clear that the wall was in a poor state of repair before the flood and I think this was ultimately the primary reason for it collapsing. As a result, I can't say it was unfair for AXA to say the damage to the wall wasn't covered under the terms of the insurance policy.

### Damage to the driveway/patio

Mr and Mrs M are unhappy that AXA hasn't covered damage to the driveway and patio. AXA doesn't believe there was anything to show the driveway was damaged in the flood. P, in his report, set out that there was evidence of slight movement to the paved driveway with cracking and separation between the kerb and edge paving. But he also said there was evidence of previous pointing on the driveway. However, critically, he concluded as follows:

*"It is possible some slight movement has occurred to the front section of the wall to cause the cracking to the mortar joints in the paving and step, however, the paving has been previously repointed in localised areas, suggesting previous movement has occurred to the paved driveway. It is also possible that the slight movement has occurred as the subsoil may have been saturated or heaved due to the flooding followed by slight shrinkage as the subsoil returned to normal moisture levels. A further possibility is slight subsoil shrinkage due to moisture extraction through tree root action from the nearby tree adjacent to the front wall."*

Mr and Mrs M have set out that the previous pointing was around four metres from the problem area which they said was down to repeated parking of their car, which caused movement. They acknowledged they had this area repointed, but maintain that it has absolutely no relevance whatsoever with the claim. So they think it's unfair that AXA has taken it into consideration.

I note what Mr and Mrs M have said, but it's ultimately for them to show that, on balance, the driveway was damaged by the flood. P has said it was a possibility that this could be related to the flood, but it could also be down to other factors. Ultimately, I don't think I have enough for me to say that it was unfair for AXA to say that there isn't anything to show that the flood has damaged the driveway.

### Damage to the cladding/outside wall

AXA has set out that it's only required to repair or replace anything that was damaged by the flood. And this isn't unfair as the policy only covers areas actually damage by the flood. I note Mr and Mrs M think that this is unfair as this was mean there's a mismatch in colour as part of the wall will have the weather "ashen" look, but the part that AXA replaces will be orange/brown when newly fitted until it "ashens" over time.

I do understand their concerns in this regard. But this area wasn't damaged and, requiring AXA to replace the entirety of the cladding, would put Mr and Mrs M in a better position than they were in prior to the flood – a concept known as betterment. While I do naturally sympathise with Mr and Mrs M here, I can't say it was unfair for AXA to say it's not required to replace the undamaged sections of the cladding.

Mr and Mrs M are also unhappy that AXA won't pay to repaint the wall, but will only jet wash it. They've said the flood damaged the paint, but I don't think they've given anything to support this. So I can't reasonably require AXA to pay to repaint the wall. That said, if after the wall is jet washed, if becomes apparent there is damage to the paint, AXA would be contractually required to consider this. But, at this point, there isn't anything to show that the paintwork is damaged.

### Vermin damage

After the flood occurred, Mr and Mrs M reported that rats had entered the property and were causing damage. AXA arranged for the rats to be exterminated. But Mr and Mrs M say there

must be damage to the property allowing the rats to gain entry and they want AXA to locate and fix this damage.

Mr and Mrs M's policy covers loss or damage arising from a number of specific scenarios – including accidental damage where the consumer chooses to take it out. Mr and Mrs M didn't take out accidental damage cover for their building. But, even if they did, like most buildings insurance policies, the terms of this policy specifically exclude loss or damage caused "*by infestation, chewing, scratching, tearing or fouling by insects or vermin.*" So they need to demonstrate that any damage to the property which was allowing the rats to gain entry was down to the flood.

I can see AXA has said that there isn't anything to show any evidence of flood related damage to the property which was enabling the rats to gain access to the house. And it's asked Mr and Mrs M to evidence this. However, Mr and Mrs M have said that, to obtain this evidence, they would need the wooden walkway around the side of the property removed. They want AXA to pay for this. But, as I said above, it's ultimately for Mr and Mrs M to demonstrate that any loss or damage is caused by an insured event. So it would be for Mr and Mrs M to demonstrate this and, if this requires the moving of the fence, then it would be at their expense. And this is what AXA has asked Mr and Mrs M to do. So I can't say that AXA's treated them unfairly in this regard. If, after removing the fence, it becomes apparent there was further flood related damage, then they could claim for the cost of removing the fence. But I can't reasonably say it was unfair for AXA to say it wasn't liable for this cost in the first instance.

### Customer Service

Mr and Mrs M have already set out that they're unhappy with the way AXA and its agents have handled the claim. They've set out that they have sent a number of emails to AXA to try to resolve this matter, which they say AXA hasn't responded to. They've said that the mental impact this whole claim and resulting issues has had on them is significant. They're also unhappy that they've had to pay for two expert reports to get a fair outcome.

I recognise Mr and Mrs M feel strongly that AXA has treated them unfairly. And I have no doubt that this matter has had a significant and profound impact on them. But it was a major claim that required extensive work to their property, which was exasperated by the impact of Covid-19. And I naturally sympathise with the situation they found themselves in. I can't hold AXA responsible for the impact the claim has had on them – particularly for having to be in alternative accommodation for 16 months – as this is ultimately an unfortunate consequence of the claim and the difficult time the world was in at this point.

I appreciate Mr and Mrs M were unhappy with the way AXA and its agents communicated with them. But I think this is because they strongly disagree with what AXA is saying to them in regard to the external damage to the property. I've not seen anything to show that AXA or its agents have ignored or failed to respond to a number of the emails Mr and Mrs M have sent. I realise that they don't agree with what AXA has said in response. But for all the reasons I've set out above, I can't reasonably say that it's acted unfairly taking into account the terms and conditions of the insurance policy and what's fair and reasonable.

### **My final decision**

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 28 December 2023.

Guy Mitchell

**Ombudsman**