

The complaint

Mrs M has a commercial buildings insurance policy with AXA Insurance UK Plc (AXA) in her name. She complains that it declined a claim for storm damage to one of the buildings covered under this policy.

What happened

At the end of September 2022, a wall, that formed the front elevation of one of the buildings covered under Mrs M's policy, partially collapsed during a storm. AXA declined the claim as it determined the collapse was the result of an ongoing cause. Mrs M says there had been a number of storms during the policy year, which was ignored by AXA. She says that damage had potentially been caused during these storms that wasn't immediately apparent.

In its response to Mrs M's complaint AXA refers to the survey she commissioned. It says this highlights water ingress to the collapsed wall, that had washed away mortar and rubble from its inner section. It says this coincides with the view of the structural engineer it appointed. Specifically, that the failure of the wall was the result of long-term deterioration of the fabric of the building rather than a storm event.

Mrs M disagreed with this outcome and referred the matter to our service. Our investigator didn't uphold her complaint. She says although storm conditions preceded Mrs M's loss, this wasn't the underlying cause of the collapsed wall. Our investigator thought the surveyor and structural engineer reports supported a gradual cause as the underlying reason for the collapse.

Our investigator says a loss, under a storm cause, must be attributable to a one-off storm event, not multiple storms. She says damage caused by multiple storms will occur over time, not from a single event. This isn't covered as an insurable cause under Mrs M's policy.

Mrs M didn't think this was fair and asked for an ombudsman to consider her complaint. She says AXA dealt with a previous claim in 2020. It had the opportunity to highlight concerns with the condition of the building at this time – but didn't. She says our service has published a decision where we upheld a complaint involving multiple storms as the cause of a loss. She says the ombudsman in that case overturned the insurer's decision to decline the claim.

As Mrs M didn't agree with our investigator's findings the matter has 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.

Having done so I'm not upholding Mrs M's complaint. I'm sorry to disappoint her but I will explain why I think my decision is fair.

Our investigator explained there are three questions we take into consideration when determining whether a claim for damage relates to a storm. These are:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?
- Is the damage claimed for consistent with damage a storm typically causes?
- Were the storm conditions the main cause of damage?

If any of the answers to the above questions are no then an insurer can generally, reasonably decline a claim.

AXA doesn't dispute that storm conditions were experienced at the time of Mrs M's loss. It says the available weather data showed wind speeds up to 64mph near to where the damaged building is located. I can't see that its policy defines what a storm is. But these wind speeds are something we'd reasonably consider as storm force. In this case I think it's clear there was a storm around the time the damage occurred. So, the answer to question one is yes.

Structural damage including the collapse of a wall is, I think, reasonably typical of damage that can result from a storm. So, I'm satisfied the answer to question two is also yes.

The final point I must be satisfied with is that the storm conditions were the main cause of the damage.

I've read the surveyor's report Mrs M obtained. I've copied relevant excerpts from this report below:

"View from the road of collapsed section of wall Approximate half width of outer section of wall collapsed away from inner...Collapse localised to central section only It is not clear if the brickwork section had been to replace a similar type of collapse... It is understood that the section of wall had collapsed on the 30th September 2022 during a storm. It is understood that both heavy rainfall and high wind had occurred during this time. Given the construction of the wall it is reasonable to conclude that heavy rain would have resulted in water ingress to the wall washing away mortar and rubble from the inner section resulting in loss of bond with the outer section of stone that has subsequently fallen away from the building. Given the layout of buildings in the area it is feasible that once that [sic] the outer section of the wall had been weakened by the water ingress high wind suction forces increased by the storm and funnelling had pulled the outer section of wall away resulting in the collapse."

I've also read AXA's loss adjustor's report. This says:

"Reference to meteorological data confirms that the maximum recorded gust at the [local] monitoring station, 13 miles from the risk premises, was 64 mph. Whilst we accept the Insured's contention that damage to the wall was largely latent, we do not consider that wind speeds at this level would have been sufficient to result in a collapse, had the masonry been in good pre-incident condition."

Also, to the right of the collapsed section, an area of brickwork is evident suggesting this is not the first occasion on which partial failure of the masonry has taken place. On the balance of probabilities, we believe that the damage is consistent with a process of gradual degradation of the central core of lime mortar, possibly accelerated by an ingress of water/frost damage, which has in turn led to a delamination of the outer skin of masonry."

I've read the structural engineer's report that AXA commissioned. It goes into some detail regarding the causes of damage that were determined to have occurred over a long period

of time. I've copied the engineer's final conclusion below:

"On the basis of my inspection of the exterior of the subject building, and the apparent widespread problems associated with the external wall structures, I am of the opinion that the recent partial collapse resulted from long-term deterioration of the building fabric. Although ultimate collapse was prompted by storm conditions, this exploited the inherent weakness of the structure rather than the failure being the result of a single extreme storm event. Extensive remedial works will be required to prevent continuation of such failures."

Mrs M supplied a further report from the surveyor she commissioned. In this he responds to the structural engineer's findings. This report contains photos taken in September 2021, prior to the wall collapse. The surveyor's report says:

"The report is written in response to [structural engineer's] assessment of storm damage to the barn dated November 2022. The report addresses the nature of a localised collapse to a wall of the building."

View of the front the elevation of building prior to recent localised collapse. No visible indication that the front façade in danger of either full or partial collapse... Further view of the building taken to enable extent of distortion to be assessed. The observed distortion was typical for a building of this age and construction... Further view of wall at time of inspection. Observed to be reasonably plumb and not thought to be in danger of imminent full or partial collapse... Further view of building. Limited distortion of wall visible."

In his conclusion the surveyor says:

"Our original report included recommendations for the repair and strengthening of the existing walls such that they would be suitable for the incorporation into the conversion to residential use. Bow and distortion were highlighted in our original report however the area that has now collapsed did not appear to be in imminent danger of such collapse."

No internal inspection of the building has been carried out to confirm either the construction or condition of the roof structure or internal cross walls. Although both could have contributed to the bow and distortion to the wall the overall contribution towards the collapse is uncertain."

Following the planning report, the following storms have occurred (Taken from Met Office data) without any collapses during or immediately after. Nature and classification of storms to be confirmed independently."

Arwen	25 th - 27 th November 2021
Burra	7 th - 8 th December 2021
Dudley	16 th - 17 th February 2022
Eunice	20 th - 21 st February 2022

We are advised by our client that the recent collapse in October 2022 occurred during storm conditions when subjected to both high wind loading and heavy rainfall. In total the building was subject to five storms between our original report and collapse in 2022. It is possible that the cumulative effect of these storms resulted in the partial collapse."

I've read all of these reports in detail. Mrs M's surveyor highlights the effect of water ingress to the damaged wall - washing away mortar and rubble – resulting in a loss of bond with the outer section of wall, causing the collapse during the storm. AXA's loss adjustor and structural engineer reported a similar cause of the collapse. They concluded the effect of the water ingress had been gradual, and the strong winds had acted to highlight the deteriorated

condition of the wall.

Both the loss adjustor and engineer refer to evidence of earlier repairs to the building. This includes a now brick section of wall adjacent to where the collapse occurred. And the gable end where a large section of new render had been added. Photos taken from March 2009 (within the engineer's report) show the gable end to be in a deteriorated state prior to the addition of the render. The engineer also points to evidence of previous repairs to the rear wall of the building. Highlighting structural defects and evidence of repairs, which he describes as, *"coincident with the partial collapse on the SW [front] elevation"*.

In his report the structural engineer describes how delamination can occur. He says this is what caused the partial collapse of the wall here. He comments that the stonework is widely degraded, which he says is, *"a significant factor in the historical and ongoing structural problems associated with this building"*.

I acknowledge Mrs M's surveyor's point that four named storms occurred between November 2021 and February 2022. He says it's possible the cumulative effect of these storms caused the collapse. I understand the point being made. But I don't reasonably think that storm, as an insured cause, can be applied to multiple events over an extended period of time. Our services long standing approach here, is to consider whether it was the storm that immediately preceded the loss (in September 2022) that was the main cause of the damage. Based on the evidence - I don't think it was.

The photos provided by the structural engineer show the building's walls had been repaired previously, in several areas, and to a significant extent. I'm persuaded by the engineer's comments that this indicates problems with the structure of the building had been ongoing for some time.

The exclusion section relating to the buildings cover in Mrs M's policy terms and conditions says:

"This Section does not cover

Wear and Tear

Loss, destruction or damage solely due to

- a) wear and tear, gradual deterioration or rust*
- b) gradually developing defects."*

I think its clear from the expert opinion provided that the underlying cause of the damage was the long-term deterioration of the fabric of the building. AXA's policy terms exclude gradual causes, so I think it acted fairly to decline Mrs M's claim for the reason it gave.

Mrs M has since commissioned a report from a loss adjustor. She received this information in September 2023 and provided a copy to our service. I've considered the report. A copy was sent to AXA to see if this changes its view of Mrs M's claim. It didn't respond with any comments within the timeframe advised.

I've copied the loss adjustor's conclusion below:

"I can confirm that storm conditions prevailed on the date of collapse (64mph max gust & 50.8mm rainfall.

The nature of damage is consistent with storm i.e., the suction effect to a localised area of wall only and a small defined section of collapse only not the entire wall. The Insured can demonstrate a proven track record of maintenance of the building and knowledge of

defects and hence a cognisance to the absolute requirement of ongoing maintenance/upkeep of such buildings.

Also, the buildings and wall in question had been subject to surveys by Insurers surveyors in 2020 and her own surveyors re planning application for conversion in 2021. Neither survey raised any concerns re the structural integrity of the collapsed section of wall.

Finally, the location of the wall overlooking the highway is the most conclusive evidence that the collapsed section of wall was free from structural defect indicating delamination/pre incident wear and tear in that Highways Inspectorate Teams, the Police, neighbours would have immediately raised safety concerns had any defect been apparent.

Accordingly, it is my considered opinion based on the “facts” appertaining to this particular section of wall, on the night in question extreme Storm conditions prevailing (wind & rain), had the storm not occurred that evening the wall would not have collapsed.

Furthermore, discussions with the Insured also somewhat critically confirm the Sedgwick adjuster appeared convinced from the outset that the collapse was wear & tear related and would not engage with the Insured in respect of the overwhelming weight of evidence available that the wall was free from apparent defect prior to its collapse.”

I've read the loss adjustor's full report in detail. This doesn't persuade me that the underlying cause of the collapsed wall was the storm conditions in September 2022. The report refers to a record of ongoing maintenance. I acknowledge the point made. But I'm more persuaded by the structural engineer's expert view that previous repairs are evidence of earlier partial collapses of the building's walls. And that extensive remedial repairs are needed to prevent further collapses occurring.

The loss adjustor says AXA didn't highlight issues with the building during surveys in 2020. I acknowledge his comments. Mrs M also makes this point in her earlier submissions. But its Mrs M who is responsible for ensuring her property is maintained. AXA's terms and condition explain that cover isn't provided for damage resulting from gradual causes. The expert opinion demonstrates significant and longstanding issues with the structure of the building. This was the underlying cause of the collapsed wall.

I note the loss adjustor's comments that no safety concerns were raised by the police, or the highways inspectorate teams, or the building's neighbours about defects with the now collapsed wall. I understand the point being made. But I'm not persuaded that this demonstrates the underlying cause of the collapse was purely down to a one-off storm event – given the evidence to the contrary.

Mrs M's loss adjustor refers to AXA's loss adjustor not engaging with the 'overwhelming' evidence that the wall was free from apparent defects prior to its collapse. I note his comments. But I'm more persuaded that the expert opinion points to an ongoing gradual cause as the reason for the collapse not a one-off storm event.

I acknowledge Mrs M's reference to our service's guidance on storm claims. In her email she has provided the following excerpt, which says “*we might uphold the complaint if we see evidence that there were a number of storms over a period and we decide that the damage was caused by one of these*”.

I've read the guidance this excerpt was taken from on our website. But this doesn't say we will consider the cumulative effect of multiple storms in support of there being a valid storm claim. A storm cause must be a one-off event that is the underlying cause of the loss suffered. This isn't the case here. A storm did occur – but the underlying cause of the

damage was the deterioration of Mrs M's building over a long period.

In summary, although I'm sorry Mrs M's loss isn't covered by her policy, I don't think AXA treated her unfairly when declining her claim for the reasons it gave, So I can't reasonably ask it to do anymore.

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 Mrs M to accept or reject my decision before 24 October 2023.

Mike Waldron
Ombudsman