

## The complaint

Mrs K is complaining that AXA Insurance UK Plc has declined a claim she made on her commercial property insurance policy for damage to an outside pool house.

Mrs K has been represented by a third party in the handling of this complaint. But, for ease of reference, I shall refer to anything the representative has said on Mrs K's behalf as being said by Mrs K.

## What happened

In February 2020 Mrs K contacted AXA to say her outdoor pool house had been severely damaged in a storm and she wanted to claim for the damage on her commercial property insurance policy. AXA asked Mrs K to obtain quotes to carry out a temporary repair, but Mrs K later contacted AXA to say she was struggling to get anyone to provide an estimate. AXA reviewed the photos of the pool house that Mrs K provided and it had concerns over the claim as it thought the damage might be down to wear and tear. So it appointed a loss adjustor to investigate the claim.

The loss adjustor attended the property in July 2020 and confirmed there was substantial damage to the pool house. However, he thought the damage was down to wear and tear. So AXA declined Mrs K's claim. Mrs K didn't agree with AXA's claim decision so she arranged for a building surveyor to inspect the property twice, who concluded that the primary cause of the damage was the storm.

Following this, AXA appointed a forensic investigator who also inspected the property twice – in June 2021 and again in December 2021. The investigator concluded that the pool house was in a poor state of repair before the storm and hadn't been competently designed or installed. He concluded that it was this that was the primary cause of the damage – i.e. he said that he didn't think the building would have collapsed in the way it had if the building hadn't been in such a poor state of repair before the storm.

Mrs K didn't agree and highlighted that this report was based on an inspection that was carried out around 16 months after the damage occurred. So she didn't think much weight could be placed on this. She maintained that the property was fully maintained beforehand and the damage occurred because of the storm. She also highlighted a number of reasons why she disagreed with the investigator's conclusions. AXA referred Mrs K's response to the investigator who stood by his conclusions. He acknowledged that he'd inspected the property around 16 months after the storm. But he said the building had failed due to the fact that the wooden supports were external and would have been exposed since the structure was first built in around 1980.

In particular the investigator concluded:

*"For a structure to fail (as the pool house has, in this case by racking) the loads applied to that structure must be greater than the strength of the structure to withstand them. Thus, when considering a structural failure, it is important to look at both factors to assess whether the loads were unusually high, the strength was unusually low or a combination of the two."*

*In my view, wind forces were present but not unusually high. The structure was unusually weak. Therefore, the weakness of the structure was the main cause of the failure, not the strength of the wind in the storm."*

So AXA remained of the opinion that its initial conclusion was fair. Mrs K still disagreed with the decision so referred her complaint to this Service.

Our investigator didn't uphold this complaint. He said he was persuaded by the forensic investigator's opinion. He acknowledged that this report was based on an inspection carried out a long time after the storm. But he thought the investigator's conclusion was supported by the photos Mrs K took shortly after the damage occurred, which he thought showed the pool house to be in a poor condition. So he didn't think AXA's decision was unfair.

Mrs K didn't agree with the investigator and, in summary, raised the following points:

- She said AXA pre-empted the loss adjustor's visit by setting out its own opinion on the likely cause of the damage. She also didn't think the loss adjustor could have come to a fair conclusion based on just one visit to the property. She said, good loss adjusting practice should do no more than voice a possibility and recommend a specialist investigation. She thought it was unsafe for the loss adjustor to express a firm opinion in the circumstances of this claim and to do so exhibited poor skills in the basics of major claim management.
- She highlighted that her surveyor's report hadn't highlighted any concerns with the structural integrity of the supporting timbers and thought they were in good condition. She said they the surveyor concluded that there was no sign of any historic rot or deterioration that would lead to gradual movement.
- She said that the forensic investigator didn't definitively say that inherent structural weakness was the prime cause of the failure. She said all he said is that the design and weakness *possibly* caused the structure to be vulnerable to the storms such as experienced.
- She said it was for AXA to demonstrate that the damage was as a result of gradual deterioration and she didn't think it had done so.

As Mrs K didn't agree with the investigator, 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 Mrs K's complaint in a lot less detail than she has presented it. Mrs K has raised a number of reasons about why she's unhappy with the way AXA has handled this matter. I've not commented on each and every point she's raised but, 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 Mrs K, however, that I have read and considered everything she and her representative have provided.

The terms of the insurance policy cover Mrs K for loss or damage arising from a storm. But, they also set out that AXA won't cover loss or damage that happens gradually – i.e. where it's primarily caused by wear and tear. AXA believes the damage occurred because it thinks the pool house was in a poor state of repair immediately before the storm and it thinks this is the primary cause of the damage.

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

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

All parties agree that there were storm conditions at the time and that the damage claimed for is consistent with damage a storm typically causes, so I won't comment on this further. The issue is whether the storm was the main cause of the damage.

Both parties have provided a lot of evidence in support of their respective positions. But in particular they've both provided expert reports that come to different conclusions. I've particularly focussed on the reports by the surveyor Mrs K instructed and the forensic investigator AXA instructed as I consider them to be the most qualified to make a fair and sufficiently persuasive assessment of what's most likely to have happened. In deciding this complaint I need to think about which report I find the most persuasive as they've both come to different conclusions.

I'm conscious the various reports they have both compiled present a lot of commentary and findings. I also assure all parties I have thought and reflected on what they've said, but for the same reasons I've set out above, I've not commented on everything they've said. But I've focussed on what I consider to be the core and most critical findings.

I recognise Mrs K's concerns that the forensic investigator's report is based upon an inspection around 16 months after the storm. But I'm persuaded that he was able to carry out a sufficiently suitable inspection of the condition of the property to make an informed choice. I find myself agreeing with the investigator that it's hard to see how a building could fail to such the extent it did without there being an inherent weakness beforehand. He says he *"would have expected an adequately designed and built permanent structure (such as a pool house) that had been maintained (i.e. that was in a good state of repair) to have been able to withstand such a storm"*. And I think this is an entirely fair comment to make and I think goes to the crux of this matter – i.e. how could the pool house that would generally be designed to withstand adverse weather conditions – and has done so over the preceding 30 years – have failed to the extent it has.

The photographs Mrs K provided immediately after the storm showed that the pool house was in a poor state of repair at the time. The photographs AXA has provided, that were taken a couple of months after the storm, show that there was a lot of vegetation growing throughout the pool house and highlight the pool house to be in a poor condition.

I have considered Mrs K's comment that the forensic investigator wasn't able to complete a thorough and accurate investigation due to the fact that the structure had been subject to substantial vegetation growth, water ingress and a lack of maintenance over two years, which she says will have accelerated the decay of the structure. And I agree that, ideally, AXA would have obtained such a report closer to the date of loss. But, as I said, I'm satisfied the forensic investigator was able to complete a fair inspection of the property and his report is supported by contemporaneous photographs from the date of loss and months immediately following the storm. He has also been able to take photographs of the support structure, so I'm satisfied he was able to suitably inspect the pool house.

I note Mrs K's surveyor has said that the structure stood for decades after construction without report of any structural movement until the storm and has stood the test of time. And I, of course, have taken this into consideration. But this doesn't mean that the structure hasn't deteriorated over this time. And I note that the surveyor hasn't made any reference to

the photographic evidence of the condition of the structure immediately preceding the storm.

I note the forensic investigator said *“the exposed moment connections could probably have been maintained to prolong their service life. This would have involved a regular schedule of inspection and application of surface preservatives (such as paint or varnish), and possibly periodic renewal or strengthening of the material around the connection. My understanding is that no such regular maintenance was undertaken.”* And I understand Mrs K has confirmed the maintenance that was carried out was to the vegetation.

I’ve found the detailed explanation by the forensic investigator as to how the support structure will have failed over a prolonged period of time, if not adequately, maintained to be particularly persuasive. And it seems to me that this has contributed to the deterioration of the pool house’s support structure.

Ultimately, I cannot ignore that the photographs Mrs K provided show the pool house was in a poor condition at the time of the storm. Mrs K is right that it’s for AXA to demonstrate the primary cause of the pool house’s structural failure is gradual deterioration or wear and tear. But the test is whether it has shown it’s *most likely* that the primary cause was to an inherent fault or deterioration of the building’s structure and I’ve found the analysis of the forensic investigator appointed by AXA to be the most persuasive and likely cause of the damage.

I’m sufficiently satisfied that AXA has provided enough to demonstrate the primary cause of the damage Mrs K is claiming for is a gradual deterioration of the buildings structure. And it seems to me that the storm has simply highlighted the inherent issues that were present at the time.

As I said, I do think AXA should have considered arranging an expert assessment sooner. And I think it could have been more pro-active in its handling of the claim. But I recognise that some of this was down to the impact of Covid-19 and I’m also not persuaded Mrs K has lost out as a result of this. Ultimately, while I naturally sympathise with the situation Mrs K has found herself in, for the reasons I’ve set out, I’m satisfied that it was fair for AXA to not cover the claim Mrs K made.

### **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 Mrs K to accept or reject my decision before 9 December 2023.

Guy Mitchell

**Ombudsman**