

The complaint

Mr and Mrs M complain AXA Insurance UK Plc declined their claim for property damage under a landlord's buildings insurance policy.

Any references to AXA include its agents.

What happened

The details of the claim are well known to both parties, so I won't repeat them again in detail here. Instead, I'll summarise the background and focus on the reasons for my decision.

On 1 November 2021, Mr and Mrs M made a claim with AXA for damage to a property owned by them. There were wet patches likely due to recent heavy rainfall. AXA responded to say it couldn't help as the weather conditions did not meet the definition of a storm on or shortly before the time of the claim. Mr M told AXA he wasn't happy with this and explained he didn't know what the cause was – it could be a leak. AXA agreed to send a surveyor to assess the damage.

The surveyor attended on 22 November. His report said there was no evidence of an insured peril. This is because the cause of damage to the inside of the property was unclear and so further investigation would be required by Mr and Mrs M to establish the cause. As a result, AXA declined the claim.

Mr and Mrs M had sent the surveyor their own report but this didn't change his view. The surveyor said the images and videos from Mr and Mrs M's report showed it was more likely poor workmanship by the neighbours' contractor.

Mr and Mrs M complained to AXA about its decision to decline their claim. It said the weather didn't cause the damage, it merely highlighted a pre-existing problem with the roof. It referred to Mr M then trying to change the peril to malicious damage due to a neighbour completing works poorly. However, as it agreed it had taken too long to respond to the complaint, it paid them £25 compensation.

Mr and Mrs M disagreed with AXA's answer to their complaint and brought the matter to this service. They're unhappy with the service received and say this matter has increased their insurance premium significantly. Finally, Mr M says he didn't suggest changing the claim to malicious damage – the call handler asked him questions and made this change themselves.

The Investigator looked into matters. Ultimately, they thought Mr and Mrs M had been treated fairly when AXA declined the claim. So, they didn't uphold Mr and Mrs M's complaint. Mr and Mrs M disagreed. They make several points including the following:

- They had no issues since buying the property in 2013 and held insurance with AXA since 2018.
- There was no reason for the tenant to delay in telling Mr and Mrs M about this nor them reporting this claim to AXA. However, the damage may have occurred when we

were affected by the restrictions as a result of the Covid-19 pandemic. Also, there were wardrobes where the damaged walls were and so the damage wouldn't have been noticed as it was hidden.

- Mr M spoke to a contractor who says the damage may have been caused by the neighbours works to the roof - which were before 2018/9 - without any signs being visible to Mr and Mrs M.

The Investigator and Mr and Mrs M communicated about this but these points didn't change the Investigators view. This matter has now been passed to me for a decision.

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.

Where there's a dispute, I've based my decision on what I think's more likely to have happened in light of the evidence.

I recognise I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this and it reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to comment on every individual argument to be able to reach what I consider to be a fair outcome.

Having done so, I must tell Mr and Mrs M that I think the investigator has reached a fair outcome here. So, I don't uphold their complaint in this matter. I'll explain why.

Mr and Mrs M made a claim when they realised the inside of the property they rented out was water damaged on the ground floor. Initially, this was said to likely be due to heavy rainfall in the area. Later, Mr and Mrs M said they didn't know the cause, but it may have been an escape of water. More recently, they feel the cause may be the works to the connected roof and chimney carried out by the neighbour before 2018/9. This is because of the report they obtained themselves and a contractor they discussed this matter with.

The first place to start in a claims complaint like this is the insurance policy terms. Mr and Mrs M's insurance policy covers the property for certain insured perils such as storm, fire or flood. To prove a valid claim under the policy, it is for the policyholders – here, Mr and Mrs M - to show that an insured event has occurred. Once this is shown, the underwriter must consider the claim, taking into account any exclusions in the policy.

In the context of this matter, the policy sets out AXA will provide cover for the perils of storm, escape of water and malicious damage. I've set out the relevant policy terms below.

'4. Storm

A period of violent weather defined as;

- *Wind speeds with gusts of at least 48 knots (55mph), equivalent to storm force 10 of the Beaufort Scale, or*
- *Torrential rainfall at a rate of at least 25mm per hour, or*
- *Snow to a depth of at least one foot (30 cms) in 24 hours, or*
- *Hail of such intensity that it causes damage to hard surfaces or breaks glass'.*

'7. Escape of water from, or the freezing of water in washing machines, dishwashers or any fixed domestic water or heating installation'.

So, to prove they have a valid claim, Mr and Mrs M must show the internal water damage (isolated to the ground floor) was more likely caused by one of the three insured risks as described above. I'm not satisfied this has been done. I'll explain why taking each insured peril in turn.

Storm

When we look at a storm claim complaint like this, there are three main issues we consider to decide whether the claim relates to damage caused by the insured event – here a storm – and should therefore be met by the insurer. These are:

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

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

In light of the evidence from the surveyor that the issue causing the internal damage had been ongoing for around 3 – 6 months at the time of his inspection in November and wasn't as a result of any insured peril, I don't think it likely the rainstorm in late October was responsible for this. Therefore, the claim fails at question 1.

Even if I thought this question was satisfied by an earlier storm, for example, the evidence doesn't show the internal water damage (isolated to the ground floor) is consistent with the sudden and unexpected damage a storm usually causes. Nor does the evidence from either party support a storm being the likely main cause of the damage which is being claimed for.

Escape of Water

The surveyor considered whether the internal damage was caused by an insured peril when he visited the property. He concluded '*There is no clear cause of damage, further investigations are required*'. I also note Mr and Mrs M's contractor described a number of investigations he carried out – alongside a gas registered plumber – to find out what was causing the internal water damage, many of which related to a possible escape of water and ruled this out as the likely cause. So, I don't consider it likely the cause was an escape of water.

Instead, the evidence from both parties suggests the likely cause is poor workmanship and/or wear and tear of the chimney, ridges, flashing and surrounding area. I haven't seen any evidence to suggest this is an insured peril covered by Mr and Mrs M's policy. And the policy specifically excludes cover for damage caused by works of renovation/alteration and wear and tear.

Malicious damage

Although malicious damage isn't defined in the policy, I think it's reasonable to say this wouldn't include poor quality workmanship unless it could be shown there was some intention of the neighbour (or their contractor) – for example - to cause the damage. I haven't seen any such evidence in this case.

Summary

Taking everything into account, I'm satisfied AXA's decision to decline Mr and Mrs M's claim was fair and reasonable based on the information available to it. This is because I don't consider Mr and Mrs M have demonstrated it's more likely an insured event has occurred which has caused the internal water damage.

I think it's important to note AXA investigated whether the cause of the damage was an insured peril through the surveyor's visit and report. But I also wanted to acknowledge the time and effort Mr and Mrs M have spent to try to understand the cause of the damage and the thorough investigations their contractor carried out in pursuit of this.

I recognise Mr and Mrs M are unhappy with the impact this matter has had on their premiums. I understand AXA explained this is because the claim was open. I haven't seen anything to suggest this was unreasonable given the position of the claim when Mr and Mrs M's policy was due to be renewed. However, if Mr and Mrs M are unhappy with how this has been recorded once the claim has been finalised, it would need to be raised with AXA as a new complaint issue, giving it the opportunity to investigate and respond in the first instance.

I know Mr and Mrs M will be disappointed with this outcome. But my decision ends what we – in trying to resolve their dispute with AXA – can do for them. I hope it helps them to know someone independent has looked at the matter.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 1 November 2023.

Rebecca Ellis
Ombudsman