

The complaint

Miss B complains AXA Insurance Plc unfairly declined her claim for damage to her property.

AXA's been represented by agents during the claim. For simplicity I've generally referred to the actions of the agents as being AXA's own.

What happened

Miss B rents out a flat. On 2 November 2022 her tenants reported part of a gable wall leaning outwards. The following day the roof partially collapsed. Miss B made a claim against her AXA property owner's insurance policy. AXA went on to decline the claim. It didn't accept the main cause of damage to the building to be an insured peril, for example storm. Instead it felt the cause was one excluded by the policy terms.

Miss B raised a complaint about that decision. AXA continued to decline the claim. It focused on storm as a possible insured peril, but didn't accept it as the main cause. AXA said the likely cause was excluded by the policy terms – in summary a gradually operating one. It referred to a failure to strengthen the roof to support new concrete tiles and deterioration of the buildings structure over time. AXA considered accidental damage (AD) as a possible cause. However, it said there was no outside force as required by the policy – and in any event would likely be excluded anyway.

Miss B referred that complaint to the Financial Ombudsman Service. In April 2023 a different Ombudsman issued a final decision. The Ombudsman set out that he was only considering AXA's response to Miss B's complaint about her claim for 'roof damage'. He noted Miss B had queried why AXA wasn't covering damage to the internal elements of the property following the collapse of the roof or settling a local authority invoice for making the property safe. He said AXA would need to respond to these issues before this Service could consider them.

When considering the roof damage the Ombudsman said AXA had accepted there was a storm condition, resulting in high winds and rainfall, around the time Miss B's roof collapsed. However, he wasn't persuaded storm was the main or dominant cause of damage to the roof. He agreed with AXA that the main cause was most likely one excluded by the policy terms. So the Ombudsman found AXA had fairly declined Miss B's claim for damage to the roof.

Following that Ombudsman's decision Miss B contacted AXA. She said it hadn't considered a claim for damage to the internal parts of her property. This includes ceilings, floors, walls, kitchen fittings, electrics and furniture. She asked that this be covered under a term in her policy that sets out cover for 'subsequent damage'.

AXA didn't accept that part of Miss B's claim either. It wasn't persuaded there was any significant subsequent damage. It said water damage would have inevitably occurred at the very same time the roof collapsed with the premises becoming exposed to the elements. AXA added that for subsequent damage cover to be triggered, following the collapse of the roof, it would need to be caused by perils 1-10 of the policy. These include storm and flood.

AXA didn't accept any of the relevant perils had caused subsequent damage. Further it said Buildings AD excluded damage caused by wear and tear or other gradually operating causes.

Miss B wasn't satisfied so raised a further complaint. She contested AXA's 'subsequent damage' decision. AXA issued a response in August 2023. It continued to decline her subsequent damage claim. Neither did it accept Miss B's complaint that it was obliged to settle or contribute towards her local authority's charge for making the property safe. So Miss B referred her complaint to this Service.

Our Investigator considered the issues addressed in the August 2023 complaint response. He didn't uphold Miss B's complaint. He wasn't persuaded AXA should pay for any internal damage under the subsequent damage, or any other, cover. Neither did he recommend it reimburse any cost related to making the property safe. Miss B didn't accept that outcome, so the complaint was passed to me.

For clarity I consider the previous Ombudsman's decision to have focused on Miss B's complaint about AXA's consideration of her claim for damage to the structure (roof structure, covering materials and brickwork) of the property. This decision considers first her complaint about AXA's decision on the part of her claim focused on damage to the internal parts (bathroom, flooring, kitchen, internal wall, furniture etc). It also considers her concerns around the use of the local authority to make the property safe.

I issued a provisional decision. As its reasoning forms part of this final decision I've copied it in below. In it I explained why I didn't intend to require AXA to cover any losses under the subsequent damage term or Buildings AD. I also set out why I didn't intend to require it to cover the cost of the make safe work or additional costs requested by Miss B. I also invited her and AXA to provide any further comments or evidence for me to consider before issuing a final decision. AXA had nothing further to add. Miss B didn't accept the findings or outcome proposed in my provisional decision. She provided further comments and evidence. I've addressed those, where I feel it necessary to, below.

what I've provisionally 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 realise this will be very frustrating for Miss B. But having done so, I don't intend to require AXA to settle her claim or to do anything differently.

As this is an informal service I'm not going to respond here to every point or piece of evidence Miss B and AXA provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted – including legal opinions and previous decisions issued by this Service.

'Subsequent damage'

The subsequent damage term is found under the heading 'Wear and Tear Deterioration'. The full term is:

'Notwithstanding any provision to the contrary with Your Policy, except for any cover provided under Section 1 Buildings – K – Property Owners Liability and L – Employers Liability, We will not cover You for 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 We will cover subsequent Damage caused by perils 1 to 10 (Sections 1 Buildings and Sections 2 Contents, as applicable).'

Miss B feels AXA should cover, what she's described as 'internal damage', under the 'subsequent damage' term. That includes damage to the kitchen, walls, flooring and bathroom.

I've first considered the term itself. 'Subsequent damage' must refer to different damage to the initial damage. So damage that came afterwards and that can be distinguished in some way from the original damage. And it must have been caused by perils 1 – 10 of the policy.

Miss B says the cause of the subsequent damage was storm. That's one of the perils found in 1-10. The only other peril that seems potentially relevant is flood.

So there needs to have been damage by storm or flood, to the internal parts of the property, that happened after, and that can be distinguished from, the original damage.

I've first considered storm. As the damage must be subsequent, or after, the original damage the timeline of events is important. I need to decide when the roof was damaged to such an extent that storm, through water ingress or other, could cause damage to the internal elements.

AXA said the roof collapsed on the 3 November 2022. Miss B says the damage or collapse occurred in two stages. An initial stage happened across the evening of the 1 November 2022 into 2 November 2022. With the final collapse happening on the 3 November 2022.

I'm satisfied it was a two-stage process. Miss B logged a claim for damage on 2 November 2022. She provided photos to AXA. These show the roof gable's brickwork bowing outwards. Unfortunately the photos only show the front of the property. But the little of the roof that can be seen appears to be intact at that point.

Emergency services were called out around 9.30am on 3 November 2022. Photos show the rear section of the pitched roof having collapsed. Miss B says that happened on the evening of 2 November 2022.

Based on what I've seen so far, including internal photos, water ingress or other storm related damage would only have been likely following the second stage of roof damage. If I accept Miss B's timeline for that event then the window, or relevant period, for storm damage was from the evening of 2 November 2022 to 19 November 2022. A temporary roof was fitted on that later date.

It's important to remember that the damage, for the subsequent damage term to be met, must have been caused by storm (or other relevant peril). Water ingress through rainfall alone wouldn't be sufficient. It must have been water ingress or other occurring from storm conditions. The policy terms don't provide a definition of storm. In the absence I consider storm to generally involve violent winds, accompanied by rain, hail or snow.

AXA appears to accept storm conditions for 1 November 2022. But that's prior to the relevant period. So internal damage can't have been caused by that storm. AXA doesn't accept there were storm conditions on or after 2 November 2022. It feels any

internal damage would have been caused by a combination of normal weather conditions – rather than storm.

I've checked the weather reports for the location of the property for the relevant period. The strongest winds recorded in the relevant period are strong breezes or gales. There's no record of winds at a speed I'd consider to be storm force. There was rain during the relevant period. But the weather reports don't show rainfall of such an intensity that I'd consider there to have been storm conditions. Neither does there appear to have been a combination of rain and wind conditions that could be considered as storm.

So as there wasn't storm conditions in the relevant period it follows any subsequent damage couldn't have been caused by storm.

I've considered the peril of 'flood'. The policy definition for flood includes 'rain induced run off'. Run off is flooding that occurs when there's more rainwater than a ground surface can absorb. I don't consider that as likely in this case – the damage claimed for is to the first floor of a building.

It's worth noting here that even if I accepted rainwater had entered the property, causing damage internally, at the initial stage of the roof damage I still might not consider the 'subsequent damage' term to have been met. That's because the internal damage might be considered to be indistinguishable from the roof damage – as having happened at the same time and so from the same cause.

So I'm not currently persuaded AXA's decision not to cover any internal damage, under the subsequent damage term, was unfair. Its position that any internal damage was caused by normal weather conditions is reasonable.

AXA, in response to Miss B's internal damage claim, considered and declined cover under the peril of Buildings AD. Its not clear if she wants this Service to consider AXA's application of that peril to the internal damage. However, for completeness I've done so.

For the peril to apply I'd expect to see damage caused by a one-off inundation of rainwater. I've considered a range of factors – including photos of the inside of the property, the condition of the ceilings post-roof collapse, the extent of damage reported, the time the roof was open to elements and the pattern of rainfall during that time. Having done so, it seems more likely damage was caused across a longer-term period – rather than a sudden one-off event. So I don't intend to require AXA to cover any internal damage under the Buildings AD peril.

making the building safe costs

Miss B feels, based on its communications with her, that AXA is obliged to cover the costs for making the building safe that she's been charged by her local authority.

I've reviewed the emails and calls between AXA and Miss B from the time. I've also considered internal emails where AXA told its claims agent it was happy to go-ahead with the local authority. AXA, as its contractor could no longer attend, did advise Miss B to tell the local authority to go-ahead with making the property safe. It also told her to send it the invoice for that work.

However, I don't agree those actions mean AXA is required to cover those costs now it's declined the claim. It would have been more informative for Miss B if it had given her a proviso that it wasn't guaranteeing it would settle the invoice.

But even if it had done that Miss B would still need to cover the cost – as her claim was declined. I don't feel that telling her to send in the invoice is an acceptance of liability for, or a commitment to pay, the relevant costs. Insurers often request invoices as supporting evidence for claims before accepting any liability. It can be a practical step in effective claims handling.

Miss B feels that AXA advising her to tell the local authority to do the work caused her to lose out financially. I understand her point that had she had known AXA wouldn't cover the cost she might have found a cheaper contractor. She also complains the local authority's contractor caused her further costs by failing to preserve elements of stone and brickwork that could have been reinstated. Miss B's provided evidence in support of her position – including statements from stonemasons and her local authority's building control department.

AXA denied it acted unreasonably. It said Miss B was required by the local authority building control to make the building safe immediately. It added her stonemasons' statements don't confirm they could have made the property safe in the required time. Neither do they provide a cost to compare to that charged by the local authority. In addition AXA said Miss B didn't say at the time that she wanted any stonework preserved. In summary AXA says Miss B's position is based on hindsight.

To require AXA to cover the additional costs Miss B's outlined I'd need to be first persuaded it did something wrong. Second I'd need to feel it likely, if it hadn't, Miss B would have done something differently at the time (such as find and use her own contractor). Then I'd need to be persuaded Miss B would be in a better position than she is in now. I haven't considered the first aspect – that's because there's not enough to persuade me of the second and third.

AXA was unable to arrange a contractor to undertake the work in the required time. So without reasonable supporting evidence I can't say its most likely Miss B would have been able to.

Miss B hasn't provided enough to persuade me its most likely she would have been able to find one that would have met the various requirements. These include being suitable and available 'immediately', being cheaper than the local authority and being skilled enough to preserve the stonework. As AXA points out the stonemasons' statements don't provide any idea of availability at the relevant time. Neither do they provide any costs for the make safe or reinstatement work using preserved materials.

So I don't intend to require AXA to cover the cost of the make safe work or additional costs requested by Miss B.

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.

Internal damage

In my provisional decision I said didn't intend to require AXA to cover any internal damage under the Buildings AD peril. For AD to apply I'd said I'd expect to see damage caused by a

one-off event – in this case, for example, rainwater. I said it seemed more likely damage was caused across a longer-term period.

Miss B didn't accept my reasoning for this. She didn't accept the damage was likely caused over a longer period. She said that conclusion is contrary to the evidence. The specific evidence she referred to was excerpt from AXA's loss adjuster's report following a 4 November 2022 site visit.

'...the ceilings at first-floor level were cracked and sagging, probably as a result of the roof's initial collapse or more likely by the dropping of the debris by the contractors into the attic area during its demolition and it is likely due to the recent rainfall, that the ceilings have now probably collapsed.'

Miss B points to the report attributing the damage to the local authority contractor and recent rainfall. She says those would be insured perils of AD and storm, respectively.

When considering 'internal damage' against the 'subsequent damage' and 'AD' cover I had in mind the range of items Miss B had claimed for under that heading. Those were ceilings, walls, floors, kitchen, boiler, electrical wiring and contents.

Only ceilings are referred to in the above excerpt. So I've considered those specifically. The report does refer to ceilings collapsing due to rainfall. But I read it as a prediction, rather than something witnessed or known. The words 'likely' and 'have now probably collapsed' give it that meaning. So I don't consider it evidence of the ceilings having collapsed due to rainfall. In any event, as I set out in the provisional decision, that rainfall would need have been a one-off event to be 'AD' - or alternatively be 'storm' to be considered 'subsequent damage'. For the reasons set out in my provisional decision I'm not persuaded of either.

It's not clear from the report's author's use of 'probably and 'more likely' which is their preferred cause of the cracking and sagging of the ceilings – the initial collapse or a later dropping of debris. In my opinion it's likely the roof collapsing was the main or dominant cause of damage to the ceilings. I say that having seen photos of the extent of debris, including timbers and concrete tiles, following the collapse of the roof structure. That load of material collapsing onto the ceilings and joists would likely cause damage requiring their replacement.

So having considered Miss B's latest comments and evidence I'm not going to require AXA to pay for any 'internal damage' under the AD or subsequent damage covers.

Miss B asked why I hadn't considered 'loss of rent'. Her policy covers loss of rent when the property is damaged by a cause listed in section 1A of her policy and that as a result cannot be lived in. I haven't found the property to have been damaged by any of the relevant causes. So it follows I don't require AXA to pay any loss of rent.

making the building safe costs

Miss B didn't accept my findings and intended outcome in regard to the 'making the building safe costs'. She provided a range of comments and evidence.

My provisional decision said, in summary, that to require AXA to cover the costs Miss B outlined I'd need to be first persuaded it did something wrong. Second, I'd need to feel it likely that if it hadn't got something wrong, Miss B would have done something differently at the time (such as source, find and use her own contractor). Then I'd need to be persuaded she would be in a better position than she is in now. I said I hadn't considered the first aspect – that was because there wasn't enough to persuade me of the second and third.

Miss B provided arguments as to why, in regard to the first aspect, AXA did do something wrong. So for completeness I've considered if it did. I won't go into detail on this. I don't feel it necessary to do so as my finding on this matter doesn't change the overall outcome of the complaint.

In the calls with Miss B AXA's I consider the claims agent did give the impression the local authority contractor costs would be covered. I can understand why the claims agent, from internal emails between it and AXA, may have thought that to be the case. So AXA did something wrong here. As I said in my provisional decision it would have been better if it had explained clearly to Miss B that acceptance of those costs was subject to wider acceptance of the claim.

Miss B has said AXA committed to cover the costs, so it must do so. I'm not persuaded of that. Instead I've found AXA misled her by failing to explain its payment of them was subject to the wider claim outcome. So in line with this Service's approach I've considered what would likely have happened differently if it hadn't made that mistake.

Miss B's position has been that she would have found her own more suitable make safe contractor at a significantly lower cost. In my provisional decision I said she hadn't provided enough to persuade me it was most likely she would have been able to find one meeting various requirements – available, suitably skilled and lower cost etc.

To support her having been able to find her own contractor Miss B provided an additional email from the stonemason firm she has said were suitable and available. I've considered it along with her latest comments. However, I'm still not persuaded she most likely would have found and engaged a provider that would have met the various requirements.

I said in my provisional decision that the stonemason firm hadn't stated it was available at the relevant time. In an email from it, Miss B provided in response to the provisional decision, it provides a cost estimate. It also explains it always responds to emergency works within 24 hours.

However, that still isn't enough for me. The stonemason's comments are made six months after the event. No comment on its availability on the relevant date is given. I accept it may have been. But on the other hand I think it's likely it sometimes, at least, has commitments to projects that restrict its ability to respond to emergency work, as was the case with AXA's own contractors.

More importantly however, I'm not persuaded Miss B would likely have found that individual firm at the time. Its website doesn't promote itself as a make safe or demolition company. Instead it describes itself as a firm that uses traditional crafts to repair brick buildings. It seems, from emails, it was for that purpose Miss B initially contacted the firm.

So I'm not persuaded she would most likely have identified it in a general search for suitable companies at the relevant time. I accept there are other potential providers. However, considering AXA were unable to find one at the time, and the evidence provided by Miss B, I still haven't seen enough to persuade me she most likely would have.

I realise this will be frustrating for Miss B but I'm not going to require AXA to cover the cost of the make safe work or additional costs she's requested.

My final decision

For the reasons given above, I don't require AXA Insurance Plc to settle Miss B's claim for internal damage or to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 6 August 2024.

Daniel Martin
Ombudsman