

## The complaint

Ms Y complains about AXA Insurance UK Plc (AXA) declining a claim under her home insurance policy for damage to her property.

References to AXA include their agents who administer the policy and assess claims.

This decision covers Ms Y's complaint to this Service in March 2024 about AXA declining her claim for damage to her property. It doesn't cover a separate complaint made to AXA about delays and issues with her claim and with the home emergency service. AXA issued a separate final response to the complaint in January 2024, awarding £100 compensation.

## What happened

At the beginning of January 2024 Ms Y contacted AXA to tell them her property had suffered damage during bad weather. She said rainwater got into the property through damage to the roof, causing damage to the inside of the property. AXA appointed a surveyor (D) who inspected the property at the end of January 2024. Because water was coming through ceiling lights, she engaged an electrician to fix the lights ahead of D's inspection.

D left Ms Y a summary report at the end of the visit, saying the external damage to the roof was caused by natural breakdown of materials, so wouldn't be covered. But internal damage to the lounge and a bedroom was due to storm and would be covered. The summary report included a settlement figure of £1,426.78 (net of the policy excess of £200).

Ms Y contacted AXA shortly afterwards to ask about progress with her claim and to say the settlement figure in D's report didn't include the cost of her electrician fixing the lights. But AXA said they were declining the claim for both the internal and external damage, on the grounds it was due to wear and tear. She had been incorrectly advised by D that part of the claim for the internal damage would be covered. Because the claim for the external damage had been declined, the internal damage would also not be covered. So, they wouldn't be making a settlement.

Ms Y disagreed with AXA's decline of the claim, having been initially advised by D part of the internal damage would be covered. So she complained to AXA.

AXA upheld the complaint in part. In their final response, they referred to D's inspection following which they said the external damage wouldn't be covered (due to wear and tear) but there would be cover for the internal damage. However this was incorrect and there wouldn't be cover for either external or internal damage. AXA said there was no evidence of one-off storm damage and so wasn't an insured peril under the policy. They also referred to D's findings, including the external damage due to a natural breakdown of materials, which wouldn't be covered because of a policy exclusion for gradual damage. Confirming decline of the claim, AXA didn't uphold this aspect of the complaint.

However, AXA accepted Ms Y had been incorrectly advised initially by D the internal damage would be covered, for which AXA apologised. They upheld this element of complaint, awarding £150 compensation.

Ms Y then complained to this Service. She thought it unreasonable she had to wait three weeks for D to inspect her property, given water was coming into the property through ceiling lights. She also referred to D's summary report from their inspection, concluding the damage to the bedroom was due to the storm and including the settlement figure. She'd not claimed for the area where D had found condensation, just the areas affected which D said was caused by storm. She wanted AXA to accept her claim on the basis of D's report and the settlement included in the report. She also wanted reimbursement for the costs of her electrician (£444.50) as well as compensation for the delays and stress she'd experienced in making her claim and for AXA to be fined (£1,500 in total).

Our investigator upheld the complaint in part, concluding AXA hadn't acted fairly in all regards. She thought there were storm conditions around the time of the incident and water ingress was consistent with storm damage. However, she thought the main cause of the damage wasn't a one-off storm event. Photographs of the property roof and gully in D's report indicated vegetation growth and a lack of maintenance. The flat roof also appeared work in places. This was consistent with D's conclusion there had been a natural breakdown of materials over time. She noted Ms Y said she had been in the property for 12 years and the last work on the roof before she moved in. The investigator also noted flat roofs generally have a shorter lifespan than tile or slate roofs. So, she concluded the storm conditions had merely highlighted an existing [wear and tear] issue with the roof and so wouldn't be covered under the policy. As the external damage was due to wear and tear it was reasonable for AXA to decline to cover the internal damage as the water ingress wouldn't have happened had the roof been in good condition.

However, the investigator thought AXA had given Ms Y confusing information by being led to believe [part of] the internal damage would be covered, raising her expectations. It took week for Ms Y to be advised AXA were declining the claim in full and she'd also experienced lengthy call waiting times when contacting AXA and had to call several times to obtain a copy of D's report. The investigator thought AXA should pay a further £100 compensation for the distress and inconvenience caused, in addition to the £150 they'd awarded. And it wasn't appropriate to fine AXA, as this wasn't within the remit of this Service.

Ms Y disagreed with the investigator's conclusions and asked an ombudsman review the complaint. She said a report from the home emergency team (C) who attended the property before D concluded the water ingress was from a leak around a window frame, not the roof. While the roof was worn and need to be replaced, it wasn't a roofing leak causing the water ingress. She said the water ingress had been through the top floor front walls and then down to the ceiling of the second floor, as shown in the video she'd provided. She said the surveyor told her the storm had caused the drainage channels to overflow, and nothing would have prevented it. He tested the drainage channel and there wasn't a blockage. The damage was to the second floor ceiling, not the third floor ceiling which was under the roof, which she thought showed the water ingress wasn't through the roof.

She also referred to D's report stating damage was due to storm. She was claiming for damage due to water ingress through the front of the property, not through the roof. She wasn't claiming for damage to the roof, only that part of the internal damage due to storm. She'd also not accepted the compensation awarded by AXA.

Our investigator shared Ms Y's response with AXA, for D's comments. AXA provided a response from D that said they'd had no verbal discussion with Ms Y relating to the claim. And that water ingress was from the roof, which was in poor condition. The water ingress was due to natural breakdown of materials. AXA provided a further response from D saying the water ingress came from the box gutter/gully situated outside the lounge, affecting the lounge and the [bedroom] below.

## 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.

My role here is to decide whether AXA have acted fairly towards Ms Y.

The main element of Ms Y's complaint is that AXA unfairly declined part of her claim, for internal damage, when she was initially advised by D it would be covered (including a settlement figure) because the damage was due to storm conditions. But AXA then declined the whole claim, on the grounds the damage was due to wear and tear (natural breakdown of materials). AXA say that as the external damage wouldn't be covered, then the internal damage would consequently also not be covered.

As the claim was considered under the storm section of the policy, I've considered this issue, whether the damage resulted from a storm, against the three key issues we consider:

- 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 that a storm typically causes?
- Were the storm conditions the main (or dominant) cause of the damage?

On the first question, AXA don't specifically consider this question from what I've seen – although D's report refers to 'storm' as a cause of damage to the roof and internal damage to the lounge and bedroom 1. I've then considered what would constitute a 'storm'. The definition of storm in the policy is as follows:

### *"Storm*

*A period of violent weather with wind speeds of at least 47mph<sup>1</sup>, or rainfall of at least 25mm per hour, or snowfall of at least 30cm in 24 hours, or hail of such intensity that it damages hard surfaces or breaks glass."*

AXA haven't specifically mentioned the weather conditions at the time of the incident in their final response. But they haven't sought to argue there weren't storm conditions at the time of the incident and in their case handling notes I can see call notes with Ms Y shortly after the incident in which they refer to 'Tue 02 Jan 2024 68mph'. The source of this reference isn't provided, but it would mean there were weather conditions around the date of the incident that met the policy definition of storm. Weather data from the source we use as a Service indicate a highest wind speed above the figure in the policy definition.

So, I think it reasonable to conclude there were storm conditions on or around the date of the incident.

Moving on to the second question, water ingress is something we would expect to see from storm conditions, so I think the answer to this question would be 'yes'.

The key is therefore the third question, what is the main or dominant cause of the damage.

In their final response, AXA refer to the following findings in D's report:

*"Bedroom 2: when the surveyor inspected the wall he observed that the damage was caused by condensation.*

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<sup>1</sup> The policy terms were updated to change the windspeed considered a storm from 55mph to 47mph.

*External: When the surveyor inspected the main roof he observed that the damage was caused by natural breakdown of materials.”*

Looking at the report, it states damage to the lounge and bedroom 1 is storm.

Looking at the summary sheet provided by D to Ms Y from their inspection in January 2024, it records the following (with answer or comment):

<i>“External Damage</i>	<i>(Yes)</i>
<i>Location of damage</i>	<i>(Main roof – gully)</i>
<i>Covered under policy</i>	<i>(no)</i>
<i>Cause of damage</i>	<i>(Natural breakdown)”</i>

<i>“Internal damage</i>	<i>(Yes)</i>
<i>Location of damage</i>	<i>(Lounge + Bedroom 1)</i>
<i>Cause of damage</i>	<i>(Storm)</i>
<i>Covered under policy?</i>	<i>(Yes)</i>

In their final response, AXA refer to the following policy exclusion for gradual damage under a heading *What is not covered* in a section titled *Getting Started: Conditions and Limitations That Apply to Your Policy*:

*“Your policy will **not cover** loss, damage, liability, costs, or expenses for claims in the following circumstances:*

- \* Damage caused gradually by wear and tear; or failure to fix a known issue (e.g. a visible leak isn’t fixed which causes further damage)...”*

A similar exclusion is included in the Insurance Product Information Document (IPID).

While Ms Y says she isn’t claiming for damage to the roof, I have considered whether it was fair and reasonable for AXA to decline to cover any damage to the roof. D’s report refers to natural breakdown of materials. From photographs of the roof in D’s report, I think they are consistent with a roof in poor condition. And a report from the Home Emergency Team (C) includes a statement: *“I have inspected the flat roof. This is worn and will need to be replaced at some point.”*

I’ve also noted Ms Y has said she’s not aware of any work being carried out on the roof in the twelve years she’s lived at the property.

Taking all these points into account, I think AXA acted fairly in not covering any damage to the flat roof of the property.

I’ve then considered the issue of the internal damage. Specifically, that relating to the lounge and bedroom 1.

In disagreeing with our investigator’s view, Ms Y referred to the report from C who attended the property ahead of D’s inspection. The report states:

*“Leak coming into property from 3<sup>rd</sup>/full story around window frame...”*

*I have inspected the flat roof. This is worn and will need to be replaced at some point. However, this is not causing the leak. This will also require a flat roof specialist to attend to fix this roof.*

*Issue appears to be coming in from a round window frame. There are no marks or stains on the ceiling....*

*Not a roofing leak."*

In responding to the points raised by Ms Y, AXA provided the following comments from their surveyor (D):

*"The file clearly states to condition of the property at the loss area. The condition is described as poor. The ingress is from the roof....*

*The ingress is due to natural breakdown of materials."*

And a further reply from D:

*"The lounge is the top Dorma room, the leak has come from the box gutter/gully that is situated around waist height outside of the lounge. This would affect the lounge and the room below.*

*The water coming from the middle of the room is where it has run in and naturally sloped to the centre."*

This latter comment indicates the leak (water ingress) didn't come directly from the flat roof on top of the property. And it's consistent with the statement from C above. It's also consistent with what D put in their report, that the damage to the lounge and bedroom 1 was due to a storm.

However, looking at all the reports, statements as well as the photographs included in D's report, what I think they mean is the leak (water ingress) came from the box gutter/gulley running at waist height outside the lounge (as D notes) which was at a lower level than the flat roof at the very top of the property. But D's report, noted above, attributes the cause of damage to the roof **and** gully (my emphasis) as 'natural breakdown'.

So, while the main roof at the top of the building wasn't the source of the leak (which, had it been the case, would have likely damaged the lounge ceiling) the source of the leak (water ingress) was the box gutter/gully at a lower level. Which is consistent with water coming in around the window, which the photographs show adjacent to the gully.

As D concluded natural breakdown was the cause of the damage to both roof and gully, then the exclusion would apply to either as the source of the leak (water ingress). That being the case, then I've concluded it was reasonable for AXA to use the exclusion to decline the claim for external damage to the roof and the gully. And as the latter is the likely cause of the water ingress to the interior of the property, then I think it reasonable for AXA to decline the claim for damage to the interior.

I've also considered the general principle, where a policyholder makes a claim for damage or loss under a policy, the onus is on them to show there was an insured event that caused the damage or loss. In this case, given my conclusions there were storm conditions at the time of the incident, I think it's reasonable to conclude there was an insured event (storm) that caused damage.

Where an insurer relies on an exclusion in the policy to decline a claim (as AXA have done) then the onus is on them to show the exclusion applies. Looking at the available information and evidence, I think AXA have done so in the circumstances of this case in respect of damage to the roof and gully. And by extension to the interior of the property.

Taking all these conclusions into account, I've concluded AXA acted fairly and reasonably in declining Ms Y's claim for internal damage to the lounge and bedroom 1 (and any damage to the roof).

While I've come to this conclusion, I recognise Ms Y feels strongly the summary report she was provided by D indicated the claim for interior damage would be accepted and a settlement figure was included in the summary. However, AXA retain the right to reach a different conclusion to D, which is what they did in this case.

However, given the impression Ms Y took from the summary provided by D, I think she would reasonably have formed the expectation her claim was being [partially] accepted and that settlement would be made. AXA then declining the claim in full, even though I think that was fair and reasonable for the reasons I've set out, would have meant a loss of that expectation on the part of Ms Y, causing her distress and inconvenience.

I've considered the circumstances of the case together with the published guidelines from this Service on awards for distress and inconvenience. Taking these into account, I think £250 compensation for distress and inconvenience would be fair and reasonable in the circumstances of this case. As AXA offered £150 in their final response, then they should pay an additional £100. I understand Ms Y declined AXA's offer, so they should now pay her £250. When bringing her complaint, Ms Y also asked that we fine AXA. However, it isn't the role of this Service to punish businesses and we aren't a regulator.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Ms Y's complaint in part. I require AXA Insurance UK Plc to:

- Pay Ms Y a total of £250 compensation for distress and inconvenience.

AXA Insurance UK Plc must pay the compensation within 28 days of the date we tell them Ms Y accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 11 September 2024.

Paul King  
**Ombudsman**