

complaint

Mr T is unhappy that AXA Insurance UK Plc has not paid out on his claim for storm damage to his home and outbuildings that happened in early 2018.

background

In early 2017 Mr T's home suffered storm damage and AXA accepted the claim and made a cash settlement. The damage included a timber shed being largely destroyed, damage to the stable block roof, damage to the roof of the hot-tub shelter (gazebo) and water ingress to a walk-in wardrobe. It was detailed that some of the damage to the stable roof would be covered, but some wouldn't as the problem was due to the nature of the materials used, rather than the storm.

In early 2018 Mr T made a claim for damage which he believed had been caused by a period of severe, stormy weather. Damage was reported to outbuildings, one having been completely destroyed due to the wind and weight of snow, cracking to a retaining wall in the garden, damage to the main roof of the house (with associated water damage to the rooms below) and damage to the roof of the detached garage.

AXA arranged for a surveyor to visit the property and assess the damage. The surveyor concluded that the damage to the garage roof wasn't due to snow or wind loading, but rather poor design. The retaining wall was damaged as there was no/insufficient drainage for the retained soil and water pressure over time had distorted the wall and caused it to crack. As for the cracked floor slab in the stable block, this again wasn't considered to be storm damage, but rather it was caused by the design of the slab and its location. The damage to the main roof of the house was recorded as being due to wear and tear as nothing had been dislodged, and there was missing mortar along the ridge. The damage to the gazebo roof was considered to be likely due to storm conditions. Following this the claim was declined by AXA as its surveyor wasn't persuaded that the damage was caused by a storm.

Mr T didn't accept AXA's decision. He commissioned his own structural engineering report and AXA also reassessed the damage claimed for. Mr T's engineer's report said that a pre-existing crack in the concrete floor of the stable block had worsened considerably. The garage was described as having a significant bowing deformation to the roof ridge line. This had resulted in the outward bowing of the eaves fasciae, which had resulted in cracking to the gable masonry. It couldn't say there wasn't any damage before the severe weather, but it said it was without question that the excessive snow build-up on the roof structure had contributed significantly. Newer gable cracking evidenced that was the case.

In relation to the retaining wall, the engineer said the wall had an outward lean suggestive of rotational failure. This had caused settlement of the lawn area and an area of decking behind the wall. The engineer confirmed that the excessive build-up of snow from the recent storms had contributed to the failure of the retaining wall and the subsequent depression of the ground level.

AXA's resulting further assessment of the evidence about the damage resulted in it requesting more information from Mr T.

AXA asked Mr T to provide evidence of the repairs he'd had done following the 2017 storm claim. Unfortunately no documentation was available, although the contractor confirmed he had done work and detailed what he could remember about it. This included replacing slates

and damaged ridge tiles on the house and garage roof, repair of the roof and replacement of lighting for the stable and a replacement wooden shed. Internally, he confirmed he had completed repairs for water damage and redecorated. An invoice was also produced for the 2017 repairs, but it was on the letterhead for a company owned by the contractor, but one that had no involvement with the building industry.

Mr T's contractor subsequently confirmed that he hadn't completed any paperwork at the time because Mr T's budget had been stretched for the works needed (including non-claim related work). This had meant that it had been agreed that Mr T would pay for the work in cash and no paper record of it would exist.

In addition, given the possible design problems with the garage roof/loft conversion, AXA also asked for the design documentation and building control certificates for the works. Mr T told AXA that there had been no need for an engineer to design the conversion, but he had asked the council if it had any documentation relating to building control activities. No evidence from building control was provided.

Again, AXA asked for the design specifications for the retaining wall in order to assess whether it was adequately designed, specifically whether it included a drainage system. Mr T said that he'd asked the council for this information too and whatever he received would be forwarded to AXA. The evidence requested was not provided.

Mr T complained to AXA about its handling of his claim. AXA didn't uphold the complaint and didn't change its decision about the claim. It said that when the damage was first inspected it was noted that some of it wasn't recent and hadn't been caused by a storm; rather the weather had made it worse. It was also noted that some of the damage claimed for was in the same places as previous storm damage that had been claimed for and a cash settlement had been made. Due to this, AXA had wanted to ensure that the previous repairs had been done. It hadn't received evidence that this was the case. As such, it maintained that it wouldn't consider the claim further until the necessary documentation had been provided.

In September 2018 Mr T commissioned a second structural engineering report on the damage to his retaining wall and the roof of the detached garage. The damage to the retaining wall was described as a vertical crack of up to 15 mm wide approximately mid-depth. The crack started just above ground level and continued to the top of the wall. A secondary crack started half-way up the first and went diagonally to the top of the wall. It was confirmed that no settlement or rotation of the wall was noted at lower levels. It was also noted that there were six weep-holes in the ten meter wall.

The engineer considered that the crack to the retaining wall would have occurred instantaneously after extreme loading of ground pressure from the snow/ice loads imposed on it during the period of severe weather. It said that the wall would require substantial rebuilding to prevent any further movement or collapse due to lack of restraints within the L-shaped walling.

In relation to the garage roof, it confirmed that the pitched roof was supported on a steel framework that rested on the stone side walls of the structure. The steel framework provided vertical and horizontal restraints to the dormer walls and roof. On the pitched side of the roof, there was additional timber struts and stud walling to provide support to the roof.

It was concluded that the conversion of the loft of the garage had been done using the correct materials and workmanship. The roof had suffered due to over stressing of the timber

rafters following a lengthy period of excessive ice and snow loadings. The pitch of the roof in normal circumstances would not have allowed such a build-up of loads with the snow sliding off at periodic intervals. However, the rafters had deformed due to these excessive loadings and would need to be completely replaced. The engineer commented that it would be prudent for the replacement rafters to be of a larger cross-section to prevent a future reoccurrence.

The engineer also confirmed that the garage roof conversion wouldn't have required planning permission or building control when it was done, as it was only to be used as storage. It was also stated that it wouldn't have passed building control requirements for use as a habitable area. AXA established that building control would have been needed for the conversion of the garage roof space to a room, which was clearly how it was used.

AXA declined the claim in September 2018. It said:

- The roof damage to the main roof was wear and tear and hadn't been caused by a storm;
- The patio, decking and retaining wall damage was again wear and tear rather than storm;
- The garage roof was damaged because of poor design and/or workmanship rather than storm;
- The stable roof it accepted may have been repaired following the 2017 claim, but it hadn't been provided with proof that it had;
- The damage to the main roof is the same as it was following the 2017 claim. No clear evidence had been provided about what repairs had been done.
- A 2014 claim had involved missing ridge tiles and a crack in the retaining wall, which were in the same areas as the damage that was claimed for in 2017 and 2018.

AXA summarised its position as being unable to offer any settlement in relation to the claim. It also said that based on its concerns about previous claims and lack of repairs, it might review the 2017 claim.

Mr T wasn't happy with AXA's position and referred his complaint to this service. One of our investigators considered the complaint, but didn't recommend that it be upheld. Mr T didn't accept the investigator's conclusions. He raised the fact that she had focussed on whether there had been a storm or not, but AXA had never questioned this.

The complaint was referred to me to consider and I requested further information from the parties.

AXA was only able to provide very limited information about the 2014 claim mentioned when it declined the claim. It was made in early 2014 for damage due to a storm. The damage was reported as ridge tiles missing from the main roof, damage to the stable roof and cracks to a wall. The claim for damage to the roofs was paid.

AXA also clarified that it had concerns about whether repairs from previous storm claims had been completed when it assessed the 2018 claim. As such, it wanted proof that the repairs had been done and Mr T had maintained his home in accordance with the terms of the policy. As he couldn't prove the previous storm claim repairs had been done to its satisfaction, it declined the entire claim.

I issued a provisional decision on 12 July 2019. In that document I detailed my conclusions and reasons for reaching them. Below is an excerpt of that document.

'AXA is correct that a policyholder is required to maintain their property in a reasonable state of repair and complete maintenance on it when such maintenance is required. However, in order to decline a claim for lack of maintenance, or in this case having not completed previous insured repairs, I would expect to see some evidence of the neglect. I also don't consider it appropriate for the entire claim to be declined if there is evidence of a lack of maintenance in an area of the property unrelated to the some or all of the damaged claimed for. As such, I have considered each area of damage detailed in the reports produced by both AXA and Mr T's experts.

I note Mr T is unhappy the claim is not being paid because he says a senior manager from the loss adjusters AXA employed said it would be. I can understand Mr T's disappointment if this was the case, however, I've seen nothing in the documentation from the time that indicates Mr T was told this. Indeed the inspection of the property clearly documents aspects of the claimed damage was not due to the weather event, so it seems unlikely he would have been told it was being covered.

When we consider a storm claim, the first thing we establish is if there was a storm. I don't think there is questioned that there was a storm in this case. We will then consider whether the damage is consistent with the type of damage we would expect a storm to cause. Finally, if there is damage of the nature a storm would cause, we will consider whether the storm was the dominant cause of the damage, or whether there was a pre-existing problem or damage which was the dominant reason for the damage.

Roof of the main house

The only comments we have on the damage to the main roof of the house are those of AXA's expert. It said there was nothing on the roof dislodged and the damage consisted of missing mortar on the ridgeline. It was concluded this was wear and tear, rather than storm damage.

Subsequently AXA noted the same type of damage had been present on the roof the previous year when another storm damage claim had been made. AXA asked for evidence the repairs thought necessary the previous year had been done. Mr T wasn't able to provide evidence from the time, although his builder said he remembered replacing slates and damaged ridge tiles the previous year.

Eroded mortar from between ridge tiles, when the tiles are stable and in situ, is not the sort of damage that would be expected to be caused by a storm. This type of damage will usually be caused over time with repeated small amounts of damage being caused by wind and rain. I note Mr T's home appears to be quite exposed, and so such erosion would likely happen more quickly than it would on a more sheltered roof. So AXA's expert's opinion as to the cause of this damage would seem to be correct. As such, this damage doesn't fall to be covered by the insurance policy.

Internal damage in the living room

AXA's expert is again the only one that commented on this issue. It said that snow from the storm fell from the main roof and melting water entered the property through the woodwork of the door. This damaged the wall and stained the carpet. It was accepted this was damage caused by the storm and a valid claim under the policy.

In light of this, AXA should settle the claim for this damage, including replacement of the carpet.

Sheds

None of the experts commented on this damage to any extent. AXA's stated one of the sheds had been almost completely destroyed and provided a photograph of the damage. It didn't comment on the cause of the damage. As it wasn't put forward the cause of damage was anything other than the storm as was done regarding other damage, I can only assume the damage was accepted as being caused by the storm. As such, I consider AXA should settle the claim for the damage to the three sheds.

Stable

There are two areas of damage to the stables. The first being a crack in the floor slab and the second damage to the roof.

Both AXA and Mr T's first expert commented on the damage to the floor slab. Neither considered it had been caused by the storms. Rather it had existed before the storm and, whilst it is possible the storm made the crack worse, it wasn't the original cause. In light of this, I can't find the storm was the cause of the damage and that AXA has any liability for it.

However, in relation to the roof damage, I consider the photographs of the roof from 2017 and 2018 clearly show the roof was repaired after the 2017 claim. The damage appears to be consistent with wind damage, so I consider this aspect of the claim should be settled by AXA.

Garage roof

The evidence in respect to the garage roof shows that at some point after it was originally built, the roof space was converted for use – a dormer was added and a floor and staircase installed. Based on Mr T's comments, it would appear the conversion was done by a previous owner and Mr T believed it was done to create a storage space. If Mr T's understanding of the purpose for the conversion is correct, then building control wouldn't have been necessary when the works were done. However, at the time of the claim, Mr T was clearly using the roof space as a habitable room rather than as a storage space.

AXA declined the damage to the roof because its expert considered it had been caused by poor design. The implication being that when the roof space was converted for use with a floor and dormer added, it wasn't done to an appropriate standard.

Mr T's first expert said there was significant bowing of the ridgeline which had resulted in outward movement of the fasciae at the eaves. This in turn had resulted in cracking to the masonry of the gable walls. It was unable to say there was not a problem before the snow build-up on the roof, but if there had been an existing problem, the snow made it worse.

The second expert brought in by Mr T said the structure of the roof was fine for its purpose. It said all the damage was due to the additional loading on the roof by the build-up of snow from the storm. It said the rafters needed to be completely replaced and that when they were, it would be prudent to use larger timbers to stop the same thing happening again.

Where there are conflicting expert reports I must determine which I think, on balance, is the more persuasive evidence. In this case we have three different expert opinions:

- *the damage is because of poor design;*
- *there is nothing wrong with the design, but suggesting an upgrade to the roof structure when the repairs are done to prevent it happening again; and*
- *there could have been pre-existing damage before the storm, so effectively saying there could be a design/workmanship problem.*

I think overall, there is sufficient evidence to say there was a problem with the roof structure before the storm. Even the second expert for Mr T, whilst saying the structure was fine, has recommended it be upgraded to stop the same damage happening again. This would rather undermine the earlier parts of its statement about the condition of the roof. As such, I am satisfied AXA wasn't wrong to decline this aspect of the claim.

Retaining wall

AXA has referred back to a claim in 2014 to evidence this wall was cracked at that time and so it was not something caused by the storm in early 2018. However, having read the information available from the time the cracked wall isn't identified as the retaining wall. Whilst I accept that might be the case, the one being referred to equally could have been a different wall somewhere else on the property.

So this aspect of the claim again comes down to what the expert reports persuaded me is the most likely cause of the damage. Again we have differing opinions about the cause of damage:

- *distortion and cracking caused over time because of water pressure behind the wall likely due to a lack of drainage;*
- *rotational failure. The excessive build-up of snow would have contributed to this;*
- *no settlement or rotational movement at lower levels. Lack of restraints within the wall. Drainage in the form of weep holes present. The damage was all due to the snow loadings from the storm and happened instantaneously.*

Two of the three experts appear to agree that the wall was rotating/distorting and had suffered damage before the storm. On this basis, I am persuaded that the damage to the retaining wall was likely to have been pre-existing. Whilst it is possible the storm made the damage worse, the storm wouldn't be considered the dominant cause, but rather it would have simply highlighted the existing problem. As such, I don't consider AXA acted inappropriately when declining this aspect of the claim.

Gazebo positioned on the retained ground

Again, AXA's expert is the only one who commented on this issue. It said the damage to the gazebo roof was consistent with storm damage. As such, I consider AXA should settle this part of the claim.'

AXA didn't accept my provisional decision and reiterated that it had the right under the terms and conditions of the insurance policy to decline a claim in whole or part if the conditions were not adhered to. In this case, the condition stating a consumer has to maintain their property. As such, AXA considers Mr T should have to prove he had the works done from

previous claims before it has to consider the 2018 claim further. AXA also stated that a similar storm damage claim has been made to M T's current insurer in 2019.

Mr T said he thought the provisional decision was fair. He said he had spoken to the structural engineer who had done the September 2018 inspection of the roof. He said he'd been told that there was nothing wrong with the roof timbers, but he'd suggested the increased timber dimensions to ensure that there would be no future damage should there be such unusual weather again.

Mr T pointed out that AXA's conclusions about the retaining wall had been made when the wall couldn't be fully inspected because of adjacent decking. He reiterated that once this had been removed, there was clear evidence of weep-holes in the wall, evidencing AXA's conclusions were wrong. Mr T also said that whilst the crack in the floor of the stable block might have happened over time, it was after the storm he first noticed it.

my findings

I have considered all the available evidence and arguments, including those made in response to my provisional decision, to decide what's fair and reasonable in the circumstances of this complaint.

AXA has again highlighted the requirement for a policyholder to maintain their property. This is a standard requirement of all such policies and I have no issues with an insurer expecting this to be done. However, as with all terms and conditions of an insurance policy, it should only be applied to defeat a claim, or part thereof, where it is reasonable for it to be – where there is evidence of neglect by a policyholder.

In this case, it is clear from AXA's own records that Mr T had the roof of his stable repaired following the previous storm damage claim. So there is clear evidence this building has been maintained by Mr T. It is not appropriate for AXA to decline the claim because of a lack of maintenance when there has been no such lack.

There was mention of a shed being damaged in one of the previous claims, but AXA's expert didn't indicate he thought one of the sheds claimed for in 2018 was the same as that claimed for in 2017. As such, it doesn't seem any of the other items I was minded to make AXA settle for were previously damaged. There was also no evidence put forward that the damage had been pre-existing or had been due to poor maintenance of the structure. Indeed, in relation to the gazebo roof and the internal repairs and carpet in the living room, AXA's own expert said these were valid claims.

I would also comment to AXA that the property Mr T owns appears to be positioned in a rather exposed position. This may well mean that wear and tear damage occurs over a shorter period than would usually be expected, which is something I would expect AXA's experts to take into account. In addition, it's at an insurer's discretion whether to continue to insure a property (as long as there are no ongoing claims). So AXA didn't have to continue to renew Mr T's policy if it didn't want to continue to insure him due to concerns about repeated storm damage to his property.

The only area of my provisional decision Mr T has really questioned is my findings on the garage roof. He's said he's spoken to his second engineer, who's said that the roof was perfectly adequate at the time of the storm and it was the extreme nature of the storm that

caused the problem. The recommendation to increase the size of the roof timbers was in order to prevent any future extreme events causing similar damage.

As I explained in my provisional decision, I have to consider all of the evidence available to me. I note what Mr T has recounted of a recent conversation with his second engineer. However, I have to look at all the expert opinions. When considered all the evidence, including that from the other two experts, it still leads me to believe there was a problem with the roof construction or alterations done before the storm occurred. Effectively, the storm only highlighted a problem, rather than created one.

Having considered both parties submissions, my conclusions haven't been changed.

my final decision

My final decision is that I uphold this complaint in part. I require AXA Insurance UK Plc to settle the claim relating to:

- the stable roof;
- gazebo roof;
- the three sheds; and
- the internal repairs and replacement carpet in the living room.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 5 September 2019.

Derry Baxter
ombudsman