

The complaint

Ms G's complaint is about AXA Insurance UK Plc's handling of a claim made under her home insurance policy.

I understand from reading the casefile that Ms G's late husband was predominantly involved in the claim and subsequent complaint, but for ease of reference I will refer only to Ms G in my decision.

All references to AXA include its appointed agents.

What happened

I'm aware that my summary of events will be in far less detail than provided by the parties concerned. And our investigator has already set out the events in some detail to both parties. So, I won't repeat everything here. But I've carefully considered everything that's been provided. And I'll refer to any relevant events later in my decision.

Ms G made a claim on her home insurance policy with AXA for damage to her property around 2014. AXA appointed a loss adjuster to assess the cause of the damage, which it linked to subsidence. Significant investigations and repairs to the property followed. Around 2019, Ms G raised complaints about the way her claim had been handled and the delays she said AXA had caused.

AXA responded to Ms G's concerns over three final response letters. It accepted the claim hadn't been handled well, and that this had caused Ms G a significant amount of distress and inconvenience. So, it awarded her a total of £3,550 compensation. AXA also appointed a new loss adjuster to oversee the claim.

Ms G didn't agree with AXA's response and referred the matter to our service. Our service investigated the complaint in December 2020 and considered matters up to the date of AXA's final response letter of 7 October 2019. The complaint wasn't upheld, as our investigator concluded that AXA's offer of compensation was fair and reasonable in the circumstances.

Following our service's investigation, the new loss adjuster carried out further investigations at Ms G's property and ultimately determined that the damage wasn't due to subsidence. So, AXA turned down the claim.

Ms G raised further complaints about AXA's handling of the claim. This included the misdiagnosis of the damage since the claim had been raised in 2014.

Around November 2020, AXA instructed an independent surveyor to review the claim and agreed to be bound by their findings. The surveyor concluded:

“The property has not suffered from subsidence...

...The principal cause of the cracking and movement evidence is moisture and thermal movements in the structure over time. This has been exacerbated by slight flexing due to a lack of lateral restraint...

...The property is currently structurally stable subject to improvements to the lateral restraint strapping in the roof space.”

Following the report, AXA maintained its position to turn down the claim.

Unhappy with AXA’s decision to turn down her claim, Ms G referred the matter to our service. In summary, she said:

- That AXA hadn’t fully compensated her for the impact the claim had had over the last five to six years.
- This included the overall length of time the cause of the damage had been misdiagnosed, and eventually declined.
- That she was unhappy with the claim being reported as subsidence and wanted all references to subsidence removed from insurance databases in order to avoid future detriment to her insurance premiums.

Our investigator looked at everything and recommended the complaint be upheld. They concluded that it was reasonable for AXA to record the claim under the subsidence peril. But they agreed that AXA had prolonged the claim by misdiagnosing the damage, and this had caused additional distress and inconvenience to Ms G. So, they recommended AXA compensate Ms G a further £1,200.

AXA accepted our investigator’s findings and paid the £1,200. Ms G disagreed and asked for an ombudsman’s decision, so the matter has 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.

AXA accepts it should’ve handled the claim better. So that’s not in dispute. And this is reflected in the total compensation it has paid to date. This amount is in line with the higher awards that our service considers for sustained and severe distress and inconvenience. So, my role is to consider all the relevant evidence and decide if this is fair and reasonable in the circumstances.

What I can consider

Our service previously considered that AXA's compensation offer of £3,550 was fair and reasonable for the period we investigated, and I don't intend to revisit our findings on that complaint here. So, the points I will consider are:

- AXA's handling of the claim from the date of Ms G's last complaint which was considered by this service (October 2019) until the date of this one (May 2021).
- AXA's recording of the claim and its costs.
- If any additional compensation is due for the distress and inconvenience caused to Ms G.

Claim developments since our service's investigation in December 2020

I've read a copy of the previous investigation, and I can see that the recommendations were made in line with AXA's handling of the claim when it was still assumed the damage was linked to subsidence. But the evidence from the investigations that have happened since now conclude that the property hasn't suffered from subsidence, rather the thermal and moisture movements exacerbated by a lack of lateral restraint I referenced earlier. And so, the claim hasn't succeeded because it doesn't fall under a valid event covered by the policy.

Having reviewed the reports provided, I'm persuaded by the conclusions reached by the loss adjuster and independent surveyor. I say this because I can see that the independent surveyor has taken into account the discrepancies in the monitoring data when reaching their opinion, and linked the cracks to natural points of weakness in the property wall which became stressed due to an inappropriate level of lateral restraint. So, I think AXA has done enough to show that the damage isn't subsidence related.

And although it's clear errors were made on the claim, I therefore find AXA's decision to turn it down when it did was reasonable based on the evidence.

AXA has confirmed that the amount it has spent investigating and repairing the property up to the point it turned down the claim won't be recouped. Taking everything into account, I find its position reasonable in the circumstances.

Recording claim as "subsidence"

I understand the concerns Ms G has about the claim being recorded as subsidence when it's now been shown the property hasn't suffered from it. And the concerns that this would impact future insurance policies on both the premium cost and obtaining subsidence cover.

I've considered what should've happened had the claim proceeded correctly. It's apparent from the initial claim evidence that investigations would've still been required to determine the cause of the cracking. And if AXA's loss adjuster had reached the conclusion that it wasn't subsidence earlier, then AXA would've still been required to record the costs associated with the declined claim.

So, I can't see how AXA could've reasonably acted any differently here in how it recorded the claim. It recorded the costs under the insured event it investigated, and it has confirmed that it will correspond with any potential future insurers to confirm there is no subsidence damage to the property. So based on the evidence, I don't think AXA needs to do anything differently in how it has recorded the claim.

Compensation

To decide a fair level of compensation, I've first considered if there were any further avoidable delays in the claim since October 2019.

I've not seen any evidence of avoidable delays from the point that the second loss adjuster was appointed around September 2019; they monitored the property from November 2019 to May 2020 in order to determine if there was any foundation movement which would dispute their initial findings. And following the results of the monitoring, they told Ms G the claim was being turned down around July 2020.

As the position between the parties became deadlocked, AXA offered to instruct an independent surveyor around November 2020 with the agreement that it would be bound by its findings. And I think this was a reasonable and pragmatic offer in the circumstances which prevented further avoidable delays to the claim.

The independent surveyor's report was provided in January 2021, and it appears that after further correspondence Ms G was provided with a copy in March 2021. I do think it would've helped if AXA had provided this report upon completion in January 2021 – as the surveyor had been instructed independently. But Ms G had already been informed that the claim was to be turned down, and the report didn't change AXA's position. So, whilst this may have prevented Ms G from referring the complaint to our service for around two months, I don't think it had an impact when AXA's told Ms G of its decision to turn down the claim.

So, whilst I don't find any avoidable delays that I need to consider, there is an additional impact to Ms G that I need to take into account. And this can be attributed to the failure of the original loss adjuster to link the damage to the lateral restraint issues. I say this because had the lateral restraint issues been identified earlier, then it's more likely than not Ms G would've been aware the claim wasn't valid and could've planned accordingly from the start.

I am aware of Ms G's comments about the time and effort her late husband put into the claim and complaint. But our service doesn't generally award compensation for the time in dealing with or preparing a complaint.

However, it is now clear that the prolonged misdiagnosis of the claim meant that it went on for much longer than it should've done. And I don't think that the full impact of this was reflected in the previous award made. Therefore, having considered everything, I find that a further award of £1,200 is appropriate in the circumstances.

This reflects the additional distress and inconvenience caused by AXA's actions in misdiagnosing the cause of damage, and the disruption caused by the subsequent investigations required to fairly turn down the claim.

Conclusion

My findings don't in any way wish to make light of Ms G's situation. It's clear from the evidence that the claim has had a severe impact to her family over the years.

I appreciate that Ms G will most likely be disappointed with my decision. But having carefully considered everything, I find that the total amount of compensation awarded is fair and reasonable. And I'm satisfied that it is in line with our service's approach and reflects the severe distress and inconvenience AXA caused.

So, I uphold this complaint, but as AXA has already paid the compensation recommended, I won't require it to do anything further here.

My final decision

My final decision is that this complaint is upheld. As AXA Insurance UK Plc has already paid the compensation I've awarded, it doesn't need to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 5 April 2022.

Dan Prevett
Ombudsman