

The complaint

Mr A has complained about his property insurer AXA Insurance UK Plc regarding a claim he made to it when his home was damaged by subsidence.

What happened

Mr A noted damage in 2018 and made a claim to AXA. He was unhappy about the claim's progress and plans for repair. AXA agreed to appoint an independent engineer (IE) to assist and Mr A provided some expert reports. In summer 2021 work to stabilise and reinstate Mr A's home began. Whilst the stabilisation was completed, and the reinstatement contractor began their portion of the work, problems arose. This culminated with the reinstatement contractor walking off the job in August 2021 and Mr A presenting a quote for his own contractor to complete the work. The IE considered the quote but felt it was over-priced and included things AXA likely wasn't liable for.

Mr A and his family had been living elsewhere to allow the works to be done. They were due to move home in October 2021 but with the works outstanding this couldn't happen. AXA said it would pay Mr A the price the IE felt was fair for the work quoted, or instruct another contractor to complete the work. It said it would pay a further six-months rent for the family to live elsewhere, but no further storage costs. Mr A was unhappy and reverted to this service, having originally contacted us in 2019.

Our Investigator noted that AXA was still reviewing the alternative accommodation (AA) issue, including storage, as Mr A had instructed solicitors and negotiations were on-going. She also noted AXA wanted to review compensation for upset at the end of the claim. She felt it was fair for those matters to be reviewed later. She also noted AXA needed to give Mr A its view on Mr A's request for it to contribute towards repairing/replacing the front path and side-access door. She otherwise felt that AXA should provide Mr A with a clear breakdown of what it felt the work would cost.

AXA said it was happy with the findings. Mr A said he was disappointed by them – that he felt our Investigator had just accepted everything AXA had said. His complaint was passed to me for an ombudsman's consideration.

I felt the complaint should be upheld in part, for reasons and in ways different to those set out by our Investigator. So I issued a provisional decision to explain my views and suggested redress to both parties. My provisional findings were:

"The parties will note that my background above is brief. But I can assure both parties that I have considered everything that has happened. And I'll include further detail, as relevant to my findings, on each topic I discuss below.

AA (including the home office) and storage post October 2021, compensation and path/door

This service will consider complaints where positions of 'stalemate' have been reached. That is not where these aspects of Mr A's complaint are at this time. I know Mr A is unhappy with what has happened and what has been said so far. But AXA has confirmed it is still

reviewing these aspects and will look at what compensation it feels is due for upset once the claim, as a whole, has concluded. So it would be premature and unfair of me to say anything about any of these issues at this stage.

Clothing

Mr A and his family moved out of their home in summer 2021 and put a lot of their personal belongings, including clothes into storage. They expected to be out of their home for a month, although that was extended to two fairly quickly. However, into September 2021 they found they needed attire for a family wedding. They checked the storage but couldn't find what they needed. So they bought new items and asked AXA to reimburse them. AXA said it would not.

I appreciate this was a frustrating situation for Mr A to be in. But I'm not persuaded that it would be reasonable to make AXA reimburse these sums. Mr A and his family had access to their belongings, but couldn't find the items they wanted for the wedding. I understand that they wouldn't have been in that position but for AXA's contractor completing poor work, failing to take care of their home and then walking off the job. But that isn't reason enough for me to say AXA must fairly pay for wedding attire merely because items that would otherwise have been used couldn't be found.

Bathroom

Part of the problem with the contractor failing to take care of Mr A's home was that, in breach of an agreement, it used Mr A's family bathroom. The contractors used it as a general convenience, even though alternative arrangements for that were on site, and to mix materials (in the bath). The IE said it would be possible to reinstate the bathroom by completing a deep clean, or perhaps, as punishment to make the contractor pay towards the bathroom being replaced. The latter of which was Mr A's (and seemingly the IE's) preferred option. AXA said it would compensate Mr A for his bathroom being used by paying him £1,000, but that it didn't feel that replacing it was required.

I understand how unhappy Mr A is about his bathroom being used by the contractors in this way. Especially when there was an express agreement for them to use the other facilities provided. And I note the options the IE gave Mr A, along with his preferred choice. But this service does not look to punish insurers, either for their own actions or those of their agents. I know Mr A says he couldn't trust that a deep clean would resolve everything, that he even went so far as to replace the soil pipe as he was worried about contamination. But bathroom facilities are designed to be capable of being cleaned and sanitised. If it had been cleaned and, for example, evidence of materials having been mixed in the tub had remained, then I might think AXA should have been looking at a remedy taking into account replacement costs. As it is, I think its offer of £1,000, which Mr A could have used to clean or as a contribution towards replacing the bathroom, was a fair and reasonable remedy.

Flooring

Mr A's carpets were removed and disposed of. He said the reinstatement contractor had turned up without any material or equipment to protect the carpets and that the IE had told him the carpets wouldn't survive the work. Mr A said the IE agreed to ask AXA to contribute £5,000 towards their replacement. However, the IE said Mr A had told him he wasn't going to keep the carpets, so, rather than protect them, they were left in place during the work and disposed of in agreement with Mr A.

Looking at what has been said most recently, it seems Mr A and the IE have opposing recollections of what they said to each other. And I wasn't present during their conversation

so I can't know which recollection is likely correct. But Mr A has shared with us an email from July 2022 between himself and the IE. In that email the IE said that Mr A had said he intended to dispose of the carpets and that it was also Mr A that suggested AXA contribute towards their replacement in lieu of paying to protect them. Mr A, in his reply, doesn't dispute that, in fact he says that any attempt to protect the carpets will, in his view, most likely be futile, it won't be possible to clean them. Mr A said, in that email, as a result, he'd like AXA to pay him a "betterment contribution". So I'm not persuaded that the carpets ultimately needed replacing due to any failure of AXA's contractors to protect them. I think even if they had been protected Mr A would always have looked to replace them. Therefore, I can't reasonably say AXA must fairly contribute towards their replacement.

However, because Mr A felt he would need to replace the carpets due to the works, AXA did 'save' on the cost of cleaning them at the end of the works. That was a claim cost AXA should always have incurred but which Mr A's decision mitigated. So I do think it's fair for me to require AXA to pay an amount to Mr A in lieu of cleaning the carpets at his home. I think it's reasonable to say a deep clean of the carpets would likely have cost around £750, so I'll require AXA to pay that sum to Mr A. I think AXA could reasonably have chosen to offer this sum when it reviewed Mr A's contractor's costs which included a sum for replacing the flooring. So I'm going to require it to pay interest on the sum of £750 from 15 October 2021 (which was the date of its cash settlement offer) until payment is made.

Windows and doors

Mr A wants AXA to pay £5,200 as his cost incurred to replace the lounge bay and two front bedroom windows, along with the French doors at his home. He says they were affected by subsidence and formed part of the initial repairs works scope in 2019 and 2020 before the stabilisation works were queried and the IE reviewed that. The IE said he didn't think the windows and doors had been affected by the subsidence – but a windows specialist should consider the issue. AXA appointed a window expert, and Mr A asked his window contractor for a report. Both considered the windows before they were replaced.

Mr A's contractor said the lounge bay and one (of two) front bedroom windows along with the French doors were damaged beyond repair. He said they needed to be replaced. But did not say what had caused the problems he had found. Mr A said that was because experts in 2019 and 2020 had already determined they'd been affected by the subsidence. Mr A also said the cause shouldn't matter because his policy covers him for most things, including accidental damage.

AXA's expert looked at the damage and problems which existed with the windows/doors and noted the location of any movement which had occurred due to the subsidence subject of the claim. He noted the lounge bay and front bedroom windows, along with the French doors, had largely moved away from and in the opposite direction to the subsidence. So he felt the damage was largely historic, possibly related to a different period of movement. But he noted damage to the bay likely caused by this episode of subsidence. And AXA also accepted that the furniture of the bedroom window had suffered during the works too. But it felt that in respect of those issues, repairs could be completed. So it offered £750, plus VAT (£900) in settlement for the windows. Its recently clarified that offer to be subject to a deduction of £310 plus VAT (£372). This was a figure allowed for in the overall settlement as a possible potential cost AXA might be liable for in respect of damage to the windows.

I know that in an earlier stage of the claim, the loss adjuster at that time proposed replacement of the doors and windows. And Mr A agreed to that. But with the involvement of the IE and the claim generally being reviewed, that original opinion was superseded. Mr A wanted AXA to revise its settlement offer and plans for repair, and it did. That reasonably included everything which had previously been agreed, including in respect of the windows

and doors. But, having seen an email Mr A sent just before the reinstatement work started in 2021, I accept that he did not realise that. So I can understand that he was upset and frustrated when he realised much later on that the windows and doors had not even been factored in by the IE. AXA, in my view, should have managed this aspect better so that Mr A fully understood from the outset that appointing the IE would mean that everything would be reviewed. Because it did not, I think it should compensate him for the loss of expectation he suffered. I think £250 is a fair and reasonable sum in this respect. But I can't fairly and reasonably say AXA should pay Mr A for the replacement windows and doors.

The only current expert evidence that considers the cause of the damage to the windows and doors is that of AXA's expert. I've referenced his findings above. I know Mr A thinks it is relevant that AXA's expert has not commented on the windows and doors in the areas of the house that were not worked on and which remain in good condition. But I don't think that the condition of those windows reasonably means a causal connection must be made between the works and the damaged windows. I find I'm most persuaded by what AXA's expert has said. AXA has offered the price for repair. Whilst Mr A's contractor has stated they can't be repaired, I think that is clearly due to other issues with the windows which AXA's expert has shown are not related to this episode of subsidence or works. As such I think AXA's offer based on what it would cost to repair the windows, as those repairs could be done but for the other damage which AXA isn't liable for, is fair and reasonable. I'm also satisfied that the sum offered by AXA reasonably represents the price Mr A would face for repair if just that work needed to be done. And AXA deducting an amount from that which has already been paid in respect of the windows and doors, also seems fair to me. So, other than an additional payment of interest, I'm not minded to make AXA pay more to Mr A for the damaged windows and doors.

AXA offered the sum to Mr A on 6 April 2022 but did not pay it at that time. Nor did it note, at that point, that a partial payment of this sum for the windows had already been paid. As AXA had accepted it was minimally liable for the total sum of £900, the outstanding part of that – £528 – should have been paid without delay. I'm, therefore, minded to think AXA should pay a sum to Mr A equivalent to interest* applied to the amount of £528 (£900 minus £372) from 6 April until final payment for the windows is made.

Mr A's policy does cover him for loss or damage to items. But that does not mean that AXA must make him good for any damage howsoever and whensoever sustained. The policy excludes wear and tear, for example. And, other than in respect of historic movement, that is what AXA's expert puts the damage to the windows down to. But I don't see that AXA has ever considered whether the historic movement damage might be something it would cover under the policy. If Mr A wants it to, he would need to make a claim to it in that respect for it to be considered. In respect of this current claim, given the evidence I have seen, and even taking into account what happened in the earlier stages of the claim, I think AXA's refusal to settle for replacing the windows and French doors is fair and reasonable.

Reinstatement settlement

Mr A's contractor quoted £83,107.20 inc VAT. AXA said it would pay him £35,725.20, later increasing this to £36,375.20 (both inc VAT). Or it would instruct a contractor to do the work. Mr A felt it should pay his whole cost. Not least as he believed this had been authorised by the IE.

I don't think it is fair to say the IE did authorise this. He clearly had Mr A sign mandates and thought AXA would agree to the work going ahead. But I think he was trying to manage the claim in such a way as to reduce the risk of delays. I think he was clear with Mr A and the contractor, that these provisional steps were being taken pending authorisation from AXA being received. From detail the IE sent to AXA, he clearly had doubts about some of the

work and the total costs quoted for. But he sought AXA's agreement to 'trade' any concerns in that respect for savings in costs for AA. AXA though wasn't minded to do that.

AXA, like most insurers, wanted to pay only for what it was liable for. So it didn't want to pay for things like the bathroom – replacement costs for which featured in Mr A's contractor's quote. And it didn't want to pay anything it felt was inflated either. I know Mr A says the work cost more due to his location. But I see the IE took the location and extra costs that might cause into account when analysing the repair quote. It was the IE's assessment that brought the circa £83,000 asked for, down to the initial final offer AXA made of £35,725.20. I'm satisfied that was a fair and reasonable offer made by AXA and I don't intend to make it pay or do anything more in respect of Mr A's contractor's costs.

However, AXA knew in October 2021 that Mr A did not want its contractor to do the work. Whilst Mr A wasn't inclined to accept its cash offer in settlement of his claim, AXA knew it was minimally liable to him for over £35,000 of repairs. AXA should have looked to pay him what it believed its liability was. It wasn't fair for it to hold onto that money. In line with our usual approach, I intend to require AXA to pay an amount equivalent to interest to Mr A on the sum of £35,725.20 from 15 October 2021 until settlement was made. And on the additional amount of £650 from the date it was offered until settlement was made.

Expert costs 2019/2020

Mr A paid for an expert's view and investigation costs into the cause of subsidence at his home, with a view to determining a satisfactory stabilisation method. He was invoiced for these in January 2020 and paid £1,020 and £210. Evidence of these costs were sent to AXA on 20 January 2020. AXA eventually reimbursed them in 2022. I think AXA should and could have reimbursed these sums earlier. It should now pay Mr A an amount equivalent to interest on each sum, from 20 January 2020 until settlement of each was made."*

AXA said it would welcome a decision from me on part of the disputed AA issue. It said paying anything to Mr A for the carpets would equate to betterment as he had disposed of them. It argued Mr A must reasonably have realised that getting an IE involved would mean the whole claim was reviewed, not just the part he had disputed. Regarding interest, AXA said it hadn't paid the sums it felt it was liable for because it knew Mr A was unhappy with the figures and would dispute them. So it felt it had acted in accordance with Mr A's wishes in not paying the sums and shouldn't, therefore, be liable for paying interest.

Mr A responded against the content of my decision document, and he provided further evidence in support of his points. In summary:

- He added detail to the background and said AXA hadn't provided the breakdown I'd said our Investigator had recommended.
- Mr A said AXA keeps delaying the issue of AA and compensation, so I should make a decision on these issues.
- All personal belongings, save only what was needed for four weeks during the summer, were put into storage. Photos show the impossibility of the task they faced finding items in large containers which had not been packed by them.
- Bathrooms are not designed to be cleaned in the circumstances which occurred here, which included use of carcinogenic materials. The sum of £1,000 is not fair when the agreement not to use the bathroom was clearly breached.
- Mr A said he hadn't agreed to leave the carpets in place – why would he when they would obviously be damaged by heavy equipment (shown in photos). And the plans for the carpets changed when AXA's contractor arrived late, ill-prepared to start work. And it was the IE who had instigated the discussion about the carpet in the lounge only – but

then carpets in the whole house were removed by AXA's contractor. Any agreement he gave regarding the carpets only came after the IE agreed to approach AXA to pay £500. Cleaning the carpets was never an option and, in any event, removal of the carpets meant this couldn't have happened.

- AXA never explained that the IE would review everything. And it's not fair for AXA to just change its mind on a whim. It was the previous loss adjuster and others involved in the claim which confirmed the windows were affected by subsidence. AXA's window expert, when appointed was not FENSA registered or otherwise suitably qualified to be considered a window specialist. Repairing the windows had been attempted, unsuccessfully, previously. The damaged windows were not compared to those which are not damaged. No payment has been received.
- He obtained a quote because AXA asked for it and that was the only contractor available at the time. And that quote was authorised as evidenced in an email. He said it is unclear how the quote could be reworked and he has never seen a final breakdown. Only the figure excluding VAT should be considered and if the disputed costs such as the bathroom are removed, the amount over and above his quote is less than the extra AA payment made. Neither the IE nor AXA tried to negotiate the costs with him. AXA did nothing after August, he had to guess what would happen next.
- There were delays and poor communication throughout, with him and even the IE. Even at important times like when authorisation for his quote was pending.
- His policy, which AXA has sought to mislead us about, is for priority, prestige cover. It was purchased to ensure his life would be interrupted as little as possible in the event of a claim and AXA has used the wrong policy to the detriment of his claim.

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.

Background

I've noted Mr A's comments. But I'm satisfied that my background is a reasonable summary of what happened. And AXA hasn't provided the breakdown recommended by the Investigator because her findings weren't accepted and, instead, the complaint progressed to consideration by an Ombudsman.

AA (including the home office) and storage post October 2021, compensation and path/door

As I said above, the AA issue hasn't got to a position of stalemate, negotiations are ongoing as to whether AXA will pay for costs post October 2022. It would be unfair for me to then comment on any aspect of that as my findings couldn't help but inform the direction of the ongoing negotiations and that is not my role. And it makes sense for compensation to be considered at the end of the claim, rather than in a piecemeal way. Especially as how the AA is being handled and the decision that is reached in that respect will likely be relevant to any view reached regarding compensation.

Clothing

I've reviewed Mr A's points in this respect. I accept he was in a difficult situation. I'm still not persuaded I can reasonably require AXA to pay for the clothes purchased.

Bathroom

I appreciate that the bathroom was used inappropriately and completely out of line with an express agreement made. But I remain of the view that bathrooms are designed to be

cleaned. And I've not seen any evidence that makes me think residue of carcinogenic materials would not respond to or be made safe by cleaning. I remain of the view that AXA's payment of £1,000 was a fair and reasonable remedy for this issue.

Carpets

It isn't unusual for insurers to pay monies in relation to their liability for loss to policyholders, for policyholders to use in whatever way they see fit. It is entirely reasonable for AXA to pay for cleaning carpets, and for Mr A to decide not to clean them and instead to put the money paid for cleaning towards the cost of their replacement. I see no good reason here why AXA shouldn't have to settle with Mr A for what it is reasonably liable for – the cost of cleaning the carpets.

I, of course, appreciate that the carpets couldn't actually be cleaned because they were removed. And I thank Mr A for again providing details about how he recalls that removal took place, along with the discussion that occurred with the IE. But as I noted provisionally the IE has a different recollection. And the only written detail I've seen from around that time that helps me determine which recollection is most likely accurate is the email I referenced provisionally. I'm satisfied by what I've said in this respect.

Windows

I can understand why AXA would think that most people would likely realise that challenging the claim outcome such that it was reviewed by an independent engineer would mean that the whole claim is reviewed. But, to be fair, AXA is viewing this from the position of being an insurance expert. I don't think every reasonable person would understand that. And, from the claim and complaint details I've seen, including Mr A's response to my provisional findings, I accept that Mr A clearly did not understand that. I'm satisfied that AXA didn't make that clear to him and he was caused frustration because his expectations weren't managed successfully. For that loss of expectation, I'm satisfied that £250 compensation is fairly and reasonably due.

But AXA not having explained things doesn't mean it was unfair of its position on the claim to change. And AXA did not just change its position without good cause – the position changed because its settlement was challenged and that resulted in the IE's appointment.

In this case, the main question about the windows (including the French doors) was whether they had been damaged by this episode of subsidence and/or the works AXA completed. In terms of answering those issues I'm satisfied that AXA appointed a suitably qualified expert. I'm also satisfied that the expert, not having compared the undamaged windows, did not detrimentally affect the accuracy or persuasiveness of his report. And whilst previous attempted repairs have failed that doesn't mean that the issues AXA is liable for simply can't be repaired. I'm satisfied that it is the other damage, which AXA isn't liable for, which means that replacement is the only option. In the circumstances, I'm satisfied that AXA's offer to settle for the cost of window repairs was fair and reasonable.

AXA did not make an individual payment to Mr A in the sum of £310, or even £372. So I can understand why Mr A believes he hasn't received this. But it was a sum incorporated within the larger claim settlement of £35,725.20 paid in October 2021.

Reinstatement settlement

I appreciate that Mr A obtained a quote because he was asked to. I accept that the IE and Mr A's contractor discussed work starting and preparations were made. But the IE, in my view, was clear that this was all pending authorisation being received from AXA, albeit

authorisation the IE expected to get but which, of course, never came. Our Investigator, in March this year, did send Mr A a copy of the reworked quote the IE put together. I'm satisfied that he was able to use his experience and knowledge to reasonably assess the scope – in terms of both work stated and the related costs – and state what AXA, in his view, was fairly liable for here. I appreciate that Mr A thinks AXA should have looked at this pragmatically; authorising the work and, thereby, saving the additional AA cost paid. But, as I said provisionally, it wasn't unusual, or unreasonable, for AXA to want to pay for what it was liable for, rather than 'make a trade'.

Interest

Mr A was clearly unhappy about the settlement proposals AXA was putting forwards. And I think it is fair to say he clearly intended to dispute them. But this service is satisfied that once an insurer knows, in its own mind so to speak, the extent of its liability, payment in line with that, should be made to the policyholder. It is not fair for the insurer to keep hold of those funds. The insurer can manage the situation with the policyholder by explaining that the payment doesn't affect their right to dispute the amount and make a complaint if they wish. But those funds, reasonably owed to the policyholder, should be paid to them. If they aren't this service will usually require the insurer to pay interest. That is what I have done here and I'm satisfied it is fair and reasonable for me to do so.

Delay and poor communication

These are all issues about how the claim was handled. And any assessment of them goes towards what compensation might be payable. As I said provisionally, and noted again at the start of these findings, compensation, along with the issues relevant to an assessment of that form of redress, will not be considered as part of this decision.

Policy

Most prospective policyholders take out insurance for the purpose of limiting their loss when an incident giving rise to a claim occurs. Mr A is no different in that respect. And, due to the nature of the complaint points – none of which turn on an assessment of what the policy allows or doesn't allow for, the specifics of his policy terms haven't really impacted the findings I've made here.

Putting things right

I require AXA to pay Mr A:

- £750, plus interest* from 15 October 2021 until settlement is made, in respect of the carpets.
- £250 compensation for his loss of expectation regarding the windows and doors.
- An amount equivalent to interest* on the outstanding £528 window repair cost, from 6 April 2022 until settlement is made.
- An amount equivalent to interest* on the initial final settlement sum of £35,725.20 from 15 October 2021 until settlement was made.
- An amount equivalent to interest* on the additional settlement sum of £650 from the date this was offered until settlement was made.

- An amount equivalent to interest* on the expert's costs of £1,020 and £210 from 20 January 2020 until settlement for each was made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires AXA to take off tax from this interest. If asked, it must give Mr A a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint in part. I require AXA Insurance UK Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 November 2022.

Fiona Robinson

Ombudsman