

## **The complaint**

Ms C complains about AXA Insurance Plc's (AXA) handling of a claim made under her buildings insurance policy.

Any references to AXA include its agents.

## **What happened**

In June 2021, Ms C noticed some cracking in the home she had moved into with her mother. Ms C contacted AXA, sending photos to support her claim. AXA sent a loss adjuster out to inspect Ms C's home. It was discovered subsidence was impacting Ms C's garage, and the cause of it was a problem with the drains. Ms C says it took a long time for her to be given an answer, and she was often left having to make contact to find out what happening. Ms C says after she thought the claim had been accepted, she was told needed to pay for the for some remedial works for the drains.

However, shortly after this, Ms C was told the claim wouldn't be accepted. She was told this was because the information available suggested the subsidence predated the start date of her insurance policy. AXA quoted one of the policy terms which said policyholders needed to maintain property in a good state of repair. AXA offered Ms C £150 for any confusion caused.

Ms C was unhappy with this and referred her complaint to this service. It was considered by one of our investigators who initially said she thought AXA should determine which elements of subsidence had occurred before the policy began, and which had occurred since the policy started in 2018.

AXA disagreed. It said the property was still experiencing subsidence because nothing was done to "investigate or stop movement" before the policy began. It clarified it only considered the garage was impacted by subsidence, not the house. Our investigator concluded the fairest outcome was for AXA to cover the subsidence in the garage that occurred since the start of the policy. But she didn't think the damage in the house should be covered by the claim. Neither side agreed, so this matter has been passed to me.

## **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.

In the first instance, I've considered whether AXA has acted fairly in the finding it made about the house. I think it has and I'll set out why.

It seems from the technical report dated July 2021 that in the property there is historic evidence of roof spread. This finding is based on online images of the property, which indicate the roof spread has been occurring for several years. The loss adjuster concluded this contributed to the cracking in the front bedroom. On the first floor the loss adjuster

concluded the reason for the cracking was from the bay settling onto the head of the ground floor window and differential movement of walls.

However, the overall finding of the report was none of the movement in the house could be identified as downward movement. And the key issue here is all the damage to the house is noted as being non-insured defect, with damage to the front bedroom being caused by roof spread, first floor by replacement window and lack of maintenance or age-related deterioration.

In declining this part of the claim, AXA is relying on following terms:

***“You and your family must...maintain your property in a good state of repair.***

***If following a claim we identify that you have not maintained your property in a good state of repair... it may result in any relevant claims being reduced or refused.”***

I'm satisfied the report shows the damage to the house isn't caused by subsidence. The report sets out the cracking is caused by a number of different things, none of which are insured defects, including subsidence. I haven't been provided with any other evidence which leads me to conclude the report isn't accurate. I'm not going to require AXA to take any action in relation to the cracking in the house.

I'll turn now to the garage. It's accepted the garage is experiencing subsidence. And the cause of the subsidence is the drains running near the property. The issue for me to decide is whether AXA acted fairly in declining the claim on the basis the damage to the garage occurred before the policy began.

The conclusion reached by AXA's loss adjuster is the garage has been suffering from subsidence for a long time. This was supported by the reference to old repointing repairs which had reopened, and evidence of longstanding crack damage which had previously been repaired. And the evidence of cracking is supported by numerous photos. However, neither the report nor photos set out which of the subsidence damage occurred before the policy started in 2018.

While Ms C doesn't feel a subsidence claim can be solely decision on photographs, this isn't what AXA has relied on. However, the photographs have contributed to the findings AXA made as they do support the conclusion the garage has been moving for a number of years. The loss adjuster clearly set out in their report the reopening of the cracks in the garage indicate it is still moving. So, it is clear and accepted the garage has suffered subsidence related damage in the past and has continued to do so during the time Ms C's policy has been in force.

Our general position here is where damage occurs during the policy, the insurer should be responsible for repairing it. As it's accepted the garage has continued to move since the policy began in 2018 (evidenced by the reopening of the cracks) I agree with the conclusion reached by our investigator.

To put things right, AXA should carry out repairs to the garage, where subsidence has caused damage since the policy began in 2018. If AXA considers it's unable to carry out a lasting and effective repair on those areas damaged since the start of the property, then it will need to carry out repairs to other areas of the garage that have been affected by subsidence.

Ms C was told what repairs to the drainage system needed to be carried out. But in October 2021, I don't agree she was told that these repairs would be covered as part of the claim. It

was clear from the letter loss adjuster sent, in which they shared the findings of the drainage specialist, which repairs were needed. But this letter also said AXA hadn't decided on liability at that point. It's accepted the escape of water was the likely cause of the subsidence. So, AXA should also consider carrying out repairs to the drainage system as part of my direction to carry out repairs to the subsidence that occurred since the policy began. If Ms C has had the drainage repairs carried out, AXA should consider reimbursing her these costs, along with simple interest at 8% upon Ms C sending the invoices showing her costs.

In the final response, AXA offered Ms C £150 in recognition of the confusion experienced. I can see this hasn't been a straightforward claim, so it's not unusual here it took time for the outcome of the claim to be decided. And against the background of this, Ms C's mother was unwell and passed away. I was very sorry to read this. And while I know this will undoubtedly made this experience more difficult for Ms C, I feel the compensation of £150 offered by AXA is a fair reflection for the worry experienced as a result of it wrongly declining all of her claim for subsidence. I'm not going to require AXA to increase this amount.

### **My final decision**

I uphold this complaint and require AXA Insurance Plc to:

- Repair any subsidence related damage to the garage that can be confirmed as having occurred since the start of the policy.
- If AXA Insurance Plc considers it's unable to carry out a lasting and effective repair on those areas damaged since the start of the property, then it will need to carry out repairs to other areas of the garage that have been affected by subsidence.
- If Ms C has paid for the drainage system to be repaired, and these works should have been covered by AXA Insurance Plc, it should reimburse any costs upon the production of an invoice. Interest\* should be added at the rate of 8% simple per annum from the date this was paid by Ms C to the date of settlement.
- Pay Ms C £150 compensation for the distress and inconvenience caused if not already paid.

\*If AXA Insurance UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Ms C how much it's taken off. If requested, AXA should also provide Ms C with a certificate showing the amount deducted, so he can reclaim it from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 15 February 2023.

Emma Hawkins

**Ombudsman**