

The complaint

Mr and Mrs S are unhappy with the way AXA Insurance UK Plc dealt with a subsidence claim they made under their home insurance policy.

Mr S has primarily dealt with the claim and complaint. So for simplicity, I'll refer to him only. Reference to AXA includes its agents and representatives.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mr S got in touch with AXA in 2011 about damage to his extension.
- AXA accepted the damage had been caused by subsidence and was covered by the policy. It removed trees it thought were causing the subsidence problem and carried out repairs to the extension. The claim concluded in 2014.
- Mr S noticed further damage in the same area in 2018. By that time, his home insurance was provided by another insurer, F. He got in touch with F and they accepted the damage had been caused by subsidence. F thought trees were again the cause of the problem. Concerned about the risk of heave if too many trees were removed, F carried out ground improvement work to stabilise the extension.
- Both AXA and F charged a subsidence excess. And both recorded a subsidence claim on Mr S' claim history.
- Mr S complained to AXA. He said the damage in 2018 was a continuation of the damage from 2011 and should be considered as one claim. And that meant he should only have had to pay one excess and only have one claim recorded. Because two claims had been recorded, he thought he was paying unnecessarily high premiums, it was harder to find insurance with other companies, and it would be harder to sell his home in the future.
- AXA said it had fulfilled its liability in line with the terms and conditions of the policy. It said it hadn't received any reports about the recent damage and would investigate further if anything was shared with it.
- Our investigator thought the complaint should be upheld. She noted the recent damage was in the same place as a result of the same cause, four years after AXA had carried out repairs. She wasn't satisfied this amounted to a lasting and effective repair. She said the recent damage should be considered a continuation of the earlier claim. Because of that, AXA should reimburse the second excess and the difference between the premium Mr S would have paid had only one claim been recorded and what he actually paid.

- Mr S accepted our investigator's view. AXA didn't. It insisted that as it hadn't received a report outlining what it had done wrong when handling the claim, it wouldn't take any further action.

My provisional decision

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr S has made a separate complaint to F – and S, the broker. In this decision, I'll only be able to consider how AXA has acted. So that's what I'll focus on.

AXA's main objection to treating the latter damage as a continuation of the earlier damage – and taking the steps our investigator suggested – is because it hasn't received a report to say what it had done wrong and/or hasn't been asked by F to contribute to the cost of the latter damage.

But I'm not persuaded AXA needs these things to take action as the facts presented by Mr S speak for themselves.

AXA accepted the damage was caused by subsidence and thought it was the result of nearby trees. After removing those it thought were causing the problem, it carried out a period of monitoring and said it showed stability had been achieved. Building repairs were completed in late 2014.

In 2018, the problem reappeared in the extension. Photos provided by Mr S show the damage in 2011 was very similar to that in 2018 – almost exactly the same in some cases. The 2018 damage was referred to F, who identified other trees as the cause of subsidence but chose a ground improvement method of stabilising the extension due to concerns about the risk of heave.

I would expect an insurer to ensure that any repairs it carries out are effective and lasting. In a subsidence claim, that includes ensuring the structure has been stabilised and is likely to remain stable for a reasonable period of time.

In this case, the property became unstable and damage returned to the extension within four years. I'm not satisfied this amounts to an effective and lasting repair. I think most people would reasonably expect a structure to remain stable and damage free for much longer than four years after a subsidence claim.

Had the cause of the 2018 damage been something completely unrelated to the first claim, I may not find it fair to hold AXA responsible for it. But here, the same damage returned in the same place due to the same cause – nearby trees. As a result, I'm not satisfied AXA provided a lasting and effective repair.

I know AXA doesn't think it acted unreasonably based on what it knew at the time. In particular it points to the monitoring, which it says showed stability after two years of readings. I can understand how that would have given the impression that tree removal had stabilised the extension at that time. But given how soon the same problem re-occurred, I'm not persuaded it would treat Mr S fairly to treat this as two separate claims.

Overall, I'm satisfied it would be fair to treat the latter damage as a continuation of the initial damage – so effectively there is one claim only. If there had been one claim only, Mr S would have been liable for the first excess only – and there would only have been one subsidence claim recorded.

To put things right, AXA should reimburse the cost of the second excess. I understand this was £1,000.

Had AXA dealt with and recorded a second subsidence claim, I would have asked it to remove that claim and recalculate the premiums without it – and refund any difference.

But as F dealt with the latter damage and recorded a second claim, I can't ask AXA to remove it. I found in the separate complaint against F that it would be fair for F to record a claim for the damage it dealt with. I also found it should disregard the second claim when calculating future premiums and other policy terms from the 2023 renewal onwards. That will ensure Mr S is treated fairly from that point.

That leaves the intervening years to consider – 2019, 2020, 2021, and 2022. At each of those renewals, the premium was calculated on the basis of two claims, when effectively there was one. If the second claim led to any additional premium, I think it would be fair for AXA to refund that additional premium.

One option is for AXA to get in touch with F and find out what F would have charged without the second subsidence claim recorded. However, that may take some time and won't be fully within AXA's control. An alternative is to estimate how much the premium has increased by as a result of the second claim over those four years and for AXA to pay that amount. It won't be precise, but it will be simple, pragmatic, and provide a prompt resolution.

I've taken into account the premium in 2018, prior to the second claim, and the premium at the subsequent renewals. I've also considered how much it would likely have increased by, even without the second claim. There are a wide variety of estimates for how much buildings insurance premiums increased by on average during those years, which I've factored into my thinking. Generally, they estimate annual increases rising over time, as the rising cost of building materials impacted premiums more significantly more recently.

Overall, I'm satisfied £1,000 is a reasonable estimate of the likely additional premium paid during that time as a result of the second claim. So that's what I think AXA should pay.

I know Mr S is concerned that a second claim may make it harder to find insurance with other companies. And it may make it harder for him to sell the property in the future.

Once a home has suffered subsidence, it can be harder to insure and/or sell. That's not something I can hold against AXA, that's a consequence of the original subsidence problem itself. I could hold it responsible for any consequences if the second claim made things *more* difficult than they would otherwise have been.

Whilst I can't rule out the possibility that a second claim *could* make things more difficult, I haven't seen any evidence to show that's *likely* to be the case. So I don't think there's anything further for AXA to do to put things right.

Responses to my provisional decision

Mr S said he accepted my provisional decision.

AXA responded to make a number of points. I'll summarise the key ones:

- 2018 was an extraordinary year for subsidence claims as a result of the hot and dry weather during that year.
- Monitoring had confirmed the property was stable and it remained so for four years. It's not unusual for cracks to return in the same place as they're the weak points.
- The two claims had different causes – the first was due to root induced clay shrinkage subsidence and the second was due to the weather event, possibly exacerbated by the remaining trees.
- The weather event was unforeseeable.
- If F had thought the issues were linked, they would have approached AXA to recover costs – and they didn't do so.

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.

The main points of AXA's response to my provisional decision are the same ones it had argued throughout the complaint and which I took into account when reaching my provisional findings. So, whilst I note the points it's made, I'd already thought about these arguments previously. Looking at them again, my opinion hasn't changed. I won't repeat the findings.

The fundamental point remains that AXA should provide a lasting and effective solution to a subsidence problem. But the problem returned within four years, which I'm not satisfied can be described as 'lasting' in the context of structural stability.

AXA has argued the two sets of damage had different causes – so it wouldn't be fair to consider the latter a continuation of the former.

In 2011, AXA said the cause was subsidence due to tree roots. Following the return of damage in 2018, F also thought the damage had been caused by subsidence due to tree roots. It chose not to remove any trees due to heave concerns, but it was nonetheless satisfied that clay shrinkage was once again the problem, as a result of nearby tree roots drying the subsoil. I haven't seen F label the cause as a 'weather event' unrelated to the trees or clay shrinkage subsidence. So I'm not satisfied the cause of the latter damage was unrelated to the cause of the former damage, as AXA suggests.

I agree that 2018 was generally considered to be a 'surge' event for subsidence claims. That means there were significantly more claims than an average year. But 2018 isn't the first year this has happened – it often happens as conditions fluctuate from year to year. So I'm not persuaded it was unforeseeable that a surge year may occur again in the near future.

Overall, I remain satisfied it would be fair to uphold this complaint for the reasons outlined and make the award I set out in my provisional decision.

My final decision

I uphold this complaint. I require AXA Insurance UK Plc to:

- Reimburse the cost of the second excess.

- Pay £1,000 to reflect the likely additional premium paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 24 February 2023.

James Neville
Ombudsman