

The complaint

Mr and Mrs T are unhappy with AXA Insurance UK Plc (AXA) declining their claim for landslip at their property.

What happened

The background of this complaint is well known to both parties. So, I'll summarise the key points I've focused on within my decision.

- In December 2021, Mr and Mrs T raised a claim as the land at the rear of their property has started to fall away and this has caused damage to the lawn/garden also a nearby shed
- There hasn't been any damage to the main home
- AXA have relied upon a term within the policy to decline the claim; this term says that unless there's been damage to the main home, the claim can't succeed
- Our investigator considered the complaint but didn't uphold it. She said that whilst there had been damage to the shed, this was defined as an outbuilding within the policy
- Therefore, as there was no evidence the main home had been damaged, our investigator said the term AXA had applied was reasonable
- Mr and Mrs T disagreed with our investigator, saying that landslip was an insured peril, and they didn't consider their damage was excluded
- The complaint has therefore been passed to me, an Ombudsman, to make a decision

I issued my provisional findings on this complaint on 23 February 2023. This is what I said:

What I've provisionally 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 this case, there isn't a dispute that Mr and Mrs T have had a landslip albeit the cause of it hasn't been fully determined. From what I can see the slope may have destabilised after removal of a tree and it seems that an assumption has been made that a soakaway may have failed but this hasn't been located.

AXA says it won't cover the claim because the main home wasn't damaged at the same time by the same cause and the damage to the garden is excluded under the policy. So, I've had to consider and decide whether the claim was fairly declined due to the policy exclusions, and if it was, whether this is fair and reasonable in the circumstances.

Landslip is an insured peril that the policy can respond to. The policy says it will cover loss or damage from subsidence or ground heave of the site on which the building stands or

landslip, so that means loss or damage to anything within the property boundary. Under section 9 of the policy, which is the relevant part for this landslip claim, it says the policy does not cover for loss or damage to:

“Boundary and garden walls, gates, hedges and fences, paths and drives, patios, decking, terraces, tennis hard courts and swimming pools unless the home has been damaged at the same time by the same cause.”

And home is defined within the policy as “The private residence shown in your policy schedule including its garages and outbuildings if they form part of the property.”

Within the policy, “shed” falls under the definition of an outbuilding, however, it isn’t disputed that the private residence hasn’t been damaged.

AXA in its final response letter accepted that lawn/garden, shed were not listed but still applied the section unless the ‘home has been damaged at the same time’. I’m not persuaded this is fair as that only applies to the definitive list that goes before it in the sentence. The exclusion basically limits the all-encompassing cover established above by taking away landslip caused by those items specifically listed when the home isn’t also damaged. Because it doesn’t take away sheds or gardens/lawns, the exclusion doesn’t apply to them, and they’re covered. So, I don’t think it’s fair for AXA to rely on this to decline the claim.

I therefore intend to direct AXA to reconsider the claim in line with the rest of the policy terms and conditions without relying on this exclusion.

Mr and Mrs T are also unhappy about the service they have received from AXA and say this has been very stressful. They have had to chase for updates and responses. I think this has caused additional stress beyond what would’ve been expected by this type of claim I therefore intend to instruct AXA to pay Mr and Mrs T £150 compensation separate from any claim decision.

Responses to provisional decision

Mr and Mrs T haven’t responded.

In summary, AXA has said it doesn’t disagree that the shed is defined as part of the home. It says it is declining the claim as the shed wasn’t damaged by the landslip. However, it acknowledges that the loss adjuster has given two different reports on the condition of the shed.

AXA has proposed that its surveyor re-visits to inspect the shed again before a decision on cover is made.

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.

I’ve carefully considered AXA’s response, but I see little point of re-visiting to look at the shed at this late date. I’m satisfied I can reach a fair and reasonable decision on the strength of the information already available.

As AXA hasn’t challenged my findings about the exclusion, I won’t repeat that. Instead, AXA has argued the shed wasn’t damaged by the landslip, so that’s what I’ll focus on.

The first report in January 2022 clearly says the shed has been distorted by the ground movement there was no mention of wear and tear. The latter report in April 2022 says the shed should be excluded due to significant wear and tear. It didn't persuasively explain how the cause of the distortion could have been wear and tear, or why the findings had changed from January.

I'm not convinced that in a few months the shed had become significantly damaged by wear and tear that it wouldn't have been seen at the first visit. And even if the wear and tear had happened during that time, it wouldn't mean the original cause of the distortion wasn't the ground movement. From the photographs supplied although I can see the shed is not new and it has some wear and tear from being weathered, I'm more persuaded that the distortion damage to the shed is more consistent with the movement of the ground rather than wear and tear.

So, I'm satisfied that my provisional decision represents an outcome that is fair and reasonable.

Putting things right

I direct AXA Insurance UK Plc to reconsider the claim in line with the rest of the policy terms and conditions without relying on the same exclusion.

Pay Mr and Mrs T £150 compensation separate from any claim decision.

My final decision

For the reasons given above I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 21 April 2023.

Angela Casey
Ombudsman