

The complaint

Mr B has complained about the way AXA Insurance UK Plc handled a subsidence claim made on a buildings insurance policy he benefits from.

What happened

As the circumstances of this complaint aren't in dispute, I'll summarise what's happened.

- Mr B owns a flat in a block. The freeholder is a company I'll call N. It took out a buildings insurance policy to cover the block and that's underwritten by AXA.
- N got in touch with AXA about crack damage in the block in 2017 and began a claim. AXA appointed a loss adjuster, S, to handle the claim.
- Mr B says around that time the flat no longer suited the needs of him and his family. He marketed the flat for sale but found the subsidence claim was going to have an impact on it – significantly limiting the potential buyers and the likely sale value. As a result, he decided to rent out the flat and he moved out to rent elsewhere.
- S setup crack and level monitoring. It tried to carry out ground investigations, but they were unsuccessful and caused damage to another leaseholder's flat. Based on the monitoring, S thought the property was stable and ready to be repaired.
- N took advice from an engineer, H, in 2019. In summary, H wasn't persuaded S had shown the property was stable. H noted S hadn't diagnosed the cause of the damage or made any attempts to stop it – and monitoring showed an unusual pattern of movement. H recommended further investigations, together with continued monitoring, to better understand the problem and appropriate solutions.
- AXA agreed to follow these recommendations, and some of them were carried out in 2020 and 2021. Numerous drainage defects were found and repaired. Tree roots were found in the subsoil and, following arborist advice, a number of trees of various ownership were identified for removal.
- N didn't think AXA had fully investigated and established the cause of the problem, noting concern about a void beneath the property. S appointed a specialist structural repair company, O, to carry out further investigations into the cause of the problem.
- Around that time, N referred a complaint to this Service. As a result, it was agreed S would follow O's recommendations in order to progress the subsidence claim. I understand those investigations took place in December 2022.
- By 2022, Mr B wanted to buy a house for his family. He'd planned to sell or re-mortgage the flat and use the proceeds towards the house purchase. But because of the ongoing subsidence claim, his options remained limited. He received advice that he would likely lose out significantly if he sold the flat before the claim was resolved.

And he would likely be unable to re-mortgage it at all during the claim. He bought a house without selling or re-mortgaging the flat, which meant he had two homes.

- Mr B complained about the way the claim had been handled, in particular the time it had taken and the way he had been communicated with. He asked AXA to pay him compensation for this, as well as his financial losses – actual and potential – as a result of his buying a second home. That included additional mortgage borrowing, stamp duty, and capital gains tax.
- Our investigator thought there had been avoidable delays and poor communication during the claim, for which AXA should pay £750 compensation. But he didn't think it would be fair to ask AXA to pay for any costs Mr B had incurred, or may incur, by purchasing a second home, at this time.
- AXA agreed to this. Mr B didn't. So the complaint 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.

- Having done so, I agree with the position reached by the investigator. I'll explain why.
- The complaint referred to this Service by N, and dealt with separately, considered the way to progress the subsidence claim and related matters. So I won't be considering those points in this complaint.
- This complaint will focus on the impact of the claim on Mr B, and his request for AXA to pay compensation and financial losses.
- The claim is ongoing at the moment. So I need to be clear about the scope of this decision. Usually I would consider matters up to and including the insurer's complaint response – but AXA didn't provide one. Instead I will use the time when Mr B referred his complaint to us, which is January 2023. I won't be considering any events beyond that time.
- AXA isn't responsible for the subsidence problem itself, or the steps reasonably required to put it right. Nor is it responsible for the impact of subsidence on selling or re-mortgaging a property. So I won't hold any of these things against AXA.
- However, AXA *is* responsible for handling claims promptly and fairly. And where it doesn't do this, I will hold it responsible for any distress and inconvenience and/or financial losses it has caused as a direct result.
- Our investigator said there had been delays and a lack of updates to Mr B. AXA has accepted that, so this point isn't in dispute. As a result, I won't go through the full history of the claim in detail, I'll highlight some key points.
- Setting up monitoring to observe the nature of the movement to the property was a reasonable step to take initially. There seem to have been a number of possible causes of damage, including trees, drains, nearby building work, and the void. In such a situation, monitoring data provides helpful insight into diagnosing the cause of the problem and can be an important step to resolving it.

- Carrying out ground investigations would also have been a reasonable step to take. Two attempts to do that earlier in the claim failed and then were seemingly abandoned until H recommended them in 2019. It then took over a year after that to complete them. I understand there were some challenges to carrying out the investigations but nonetheless there were significant delays with this.
- H seemed surprised that drainage investigations hadn't been carried out, given the location of the drains and the likely presence of sand and gravel in the subsoil. Again, it took a long time to carry out the investigation and associated repairs, so there were significant delays with this too.
- O recommended a distortion survey in 2022. I understand that's the same or similar to a survey H recommended in 2019 – but which wasn't carried out with H's other recommendations. So there was also a significant delay with this.
- It's unclear why S thought the property was ready to repair in 2019 when it had carried out little investigation, hadn't established the cause of the problem and hadn't taken any measures to stop it. H, a chartered civil engineer, questioned S' position. As a result, investigations which could have been carried out in 2017-2019 were carried out in 2020-2023.
- Bearing in mind some of the investigations were challenging and some required the leaseholder of another flat to move out, I can understand them taking longer than usual. And given the monitoring readings were showing an unusual pattern, I can also understand why that exercise was valuable to continue longer than usual. But nonetheless, it's clear there was an unavoidable delay. I think the position reached by January 2023 should have been reached around two years sooner.
- There were also communication problems. Neither AXA nor S gave consistent, meaningful updates. As a result, I can understand why Mr B was often unclear about the next steps for the claim, when they would happen and what the overarching plan of action to put the damage right was, including a timescale for completion.
- When I consider the impact on Mr B, I note he wasn't living at the flat during the period of delay. So he wasn't, for example, suffering the distress of living with the damage day to day. However, he was suffering a different kind of distress. He and his family were ready to buy and move to a property that better suited their needs. And he'd intended to sell or re-mortgage the flat and use the proceeds to support that. But because of the claim, he was unable to do so.
- The distress of being unable to release the equity from the flat isn't something I can hold against AXA for the period of time which the claim reasonably needed to take. However, for the avoidable delay, I can. I think it would have been frustrating for Mr B not to be in full control of the equity in the flat and his plans for his family's future. So I've taken that into account when thinking about compensation.
- I'm satisfied the delays and communication problems caused Mr B distress and inconvenience and £750 is reasonable compensation in the circumstances – up to January 2023.
- Mr B has asked AXA to pay financial losses, some incurred, some which he may incur, associated with his purchasing his family home. I understand the point he makes in principle – without the equity from the flat, his mortgage borrowing was greater. And with the family home being a second home, he paid additional stamp

duty he's now unlikely to be able to recover – and he may be liable for additional capital gains tax if and when he can sell the flat. There may be other losses too.

- In situations like this, I usually consider what should have happened – and what position that would likely have put a complainant in – and compare it to what has happened, and the position they are in. If they are worse off as a direct result of an insurer acting unfairly, I'm likely to make an award for the difference.
- Our investigator noted the challenge of doing this whilst the claim is ongoing and any potential financial losses haven't been fully quantified. It's uncertain how long the claim will reasonably take to conclude, particularly as a decision about how to progress the claim was yet to be made by January 2023. Depending on various factors, including the method of repair, the timescale could be very different. There's also the potential for further avoidable delays. And until the claim is concluded, and Mr B can release the equity, any estimate of financial loss would be highly speculative. It's possible there could be no loss or if there is, the extent of it could vary significantly.
- I've established there was an avoidable delay of around two years during the period of time I've considered and, in principle, any financial loss caused as a direct result of that delay should be compensated by AXA. But, for the reasons given above, I'm not satisfied it would treat either party fairly, or be practical, to make any findings or award for financial loss at this time.
- As our investigator pointed out, Mr B is entitled to return to AXA about this point at the appropriate time in the future and ask it to consider any financial loss when more information is known. So I haven't made any findings about it now.

My final decision

I uphold this complaint. I require AXA Insurance UK Plc to pay £750 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 February 2024.

James Neville
Ombudsman