

## The complaint

Mr M complains that AXA Insurance UK Plc declined his claim for subsidence on his home insurance policy.

Mr M has been represented throughout this claim and complaint. However for ease I've referred only to Mr M, but all references include the actions of his representative.

## What happened

Mr M had home insurance with AXA. In 2022 he made a claim after noticing cracking in the extension to his property. AXA investigated but subsequently declined his claim. It said the subsidence had happened because the foundations of the extension were insufficient for the soil type and nearby vegetation. It said the foundations were 600mm when it said new home building guidance said they should have been at least 2,200mm. It said there was an exclusion to the subsidence cover for faulty workmanship which would apply.

Mr M didn't think this was fair. He said he had a building approval certificate to show that the build had been signed off at the time, so he couldn't have known that the foundations weren't deep enough. He made a complaint but AXA didn't uphold it, so he brought it to this service.

Our investigator didn't recommend the complaint be upheld. She said that this service doesn't generally think that it's fair to judge all properties against the new home guidelines AXA used here as these only apply to the building of new homes. So she thought it fair that the foundations were compared to the rules set out in the applicable building regulations at the time instead. She said, in these it says the foundations of the extension should be at least 750mm. And as they were built at only 600mm they were insufficient so AXA had acted fairly by declining the claim.

Mr M didn't agree and asked for the complaint to be reviewed by an ombudsman.

On 13 September 2023 I issued a provisional decision. In it I said:

*'When an insurance claim is made it is for the insured to prove that there is an insured peril – a problem that's covered by the policy. It is then for the insurer to either accept the claim or to prove an exclusion in the policy applies.'*

*In this case, AXA has accepted that there is an insured peril – subsidence. However it has said that the subsidence has only happened because the foundations of the extension are defective, and this is excluded under the policy.'*

*The policy states, under the section for subsidence cover:*

*'What is not covered*

*Loss or damage arising from the use of defective materials, defective design or faulty workmanship.'*

*I need to decide whether AXA has applied this exclusion fairly in this case.*

*AXA has said that standards applied by a builder of new homes – I'll refer to them as 'N' - stipulate that foundations should be built 2,200mm deep in areas with clay soil. And its investigations have shown that the foundations of Mr M's extension are only 600mm deep. So it said that as the foundations don't meet N's guidance, they are defective.*

*I've looked at the guidelines issued by N and I don't agree these apply here. N provides guidelines for new build houses. Mr M's claim relates to an extension to their property which wasn't a new build. So the builders of the extension weren't required to consider this guidance. For this reason, it wouldn't be fair to apply it here. Instead we would expect the extension to be built in line with the relevant building regulations at the time.*

*The relevant regulations at the time the extension was built in 2014 state the foundations should be 1,000mm in high shrinkage clay soils, but this may be increased where there are nearby trees. So I agree that the foundations didn't meet these requirements. However, when deciding if a business was fair to apply an exclusion for defective foundations, we'd expect it to not only show that the foundations didn't meet the building regulation requirements at the time, but also that if they had done then this would have prevented the subsidence.*

*Here, AXA has said that it found roots at a depth of 2,100mm. That means that even if the foundations had met the building regulations and been built to a depth of 1,000mm, or indeed anything up to the depth of the roots, then the subsidence would still have happened. I'm therefore not persuaded that the depth of the foundations is the cause of the subsidence and think it would have happened even if they were sufficient.*

*I've put this to AXA and it's said that while roots were found at 2,100mm, desiccation occurred at 800mm. So it says that while subsidence likely still would have occurred if the foundations were built sufficiently, it wouldn't have been as bad.*

*I've considered this and I'm not persuaded that this means it has acted fairly by applying the exclusion. It has admitted that the subsidence would still have occurred if the foundations had been built in line with building regulations. And while it speculates that the damage would not have been 'as bad', there would still likely be cause for Mr M to claim. Based on this, I don't think it's done enough to show that the exclusion it is relying on is material to the need to claim. And I therefore don't think it's fair for it to apply the exclusion in the circumstances.*

*Based on this, I am minded to direct AXA to accept Mr M's claim for subsidence and settle it in line with the remaining terms and conditions of the policy.'*

## **Response to my provisional decision**

AXA responded and didn't agree with my provisional decision. It said that the building regulations I referred to in my decision reference Building Standards. And these standards reference the guidance produced by N about the appropriate depths for foundations based on the distance the structure is from different vegetation, that I said we wouldn't consider. AXA said that based on the vegetation here, the foundations should be built to a depth of 2,200mm. It said that as roots were found at 2,100mm then the foundations being built to this depth would have meant the subsidence didn't occur. And the guidance should be followed as it is referenced in the regulations I applied in my outcome.

Mr M didn't respond to my provisional decision.

## **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 appreciate AXA's point about the reference to N's guidance in the building standards, however this doesn't change my position. The exclusion AXA has relied on requires the loss to have arisen due to defective design or faulty workmanship. And this service considers a reasonable standard to hold builders to is the building regulations at the time. As these are a legal requirement rather than just guidance.

The document AXA has referred to is British Standards BS 8004:1986: Code of practice for foundations. The building regulations I referred to in my provisional decision reference these standards. And the standards themselves refer to the guidance from N. So while I appreciate that the British Standards provide a link to the best practice guidance, these aren't regulations that builders are required to follow under law. These are guidance for best practice for new homes and often go much further than building regulations.

The building regulations that apply here required the foundations to be built to a depth of 1,000mm. And to add to this where there are nearby trees. And while I agree the foundations of Mr M's extension don't meet this, my consideration was based on whether this was material to the loss. And I've not been persuaded that it was.

If the builders had followed the regulations, even allowing a significant amount of additional depth to allow for nearby trees, the roots are at such a depth that the subsidence would still have occurred. So I don't think it's fair to say that just because the maximum depth provided in new homes guidance isn't met, that the defective workmanship exclusion would fairly apply.

I'm therefore not persuaded to depart from the outcome I laid out in my provisional findings. I therefore require AXA to accept the claim and settle it in line with the remaining policy terms and conditions.

**My final decision**

For the reasons I've given, I uphold Mr M's complaint and direct AXA Insurance UK Plc to accept his claim for subsidence and settle it in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 October 2023.

Sophie Goodyear  
**Ombudsman**