

The complaint

Miss M and Mr S complain that AXA Insurance UK Plc declined their claim on their home insurance policy

What happened

Miss M and Mr S had home insurance with AXA. In June 2022 they made a claim after noticing cracks appearing in their conservatory.

AXA looked into the claim but subsequently declined it. It said the foundations of the conservatory were only built to a depth of 550mm. And the rest of the house had foundations to 1,600mm. It said building regulations that were in place at the time said the foundations should be at least 900mm. And, while these didn't apply to conservatories, it said that the builders should have taken regard of them as good practice. It said that because they didn't, the exclusion for faulty workmanship would apply.

Miss M and Mr S weren't happy with this. They said the conservatory had been in place when they bought the property in 2021 and there had been no issues with it up until that point. So they wouldn't have known if the foundations were too shallow.

They made a complaint but AXA didn't uphold it so they brought it to this service. On receiving all the evidence, our investigator didn't recommend the complaint be upheld. He said AXA had shown that the foundations of the conservatory didn't meet the building regulations that were applicable at the likely time of the construction. And it's reasonable to expect the builder to take regard of these. And as they didn't, the structure wasn't suitably built and the exclusion would fairly apply.

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

On 4 October 2023 I issued a provisional decision which stated as follows:

'There is some dispute about exactly when the conservatory was built, however both sides seem to be in agreement that it was before 1996. And there is evidence from online aerial maps that it was certainly in place in 2000. That means that the structure was in place at least 12 years, probably over 16 years before problems arose. I therefore don't think it's fair to say the foundations were defective if they've stood for such a period of time without issue.

AXA has said in some of its initial comments that the conservatory had been repaired previously. However I've seen no evidence of this in any of the photos provided or in reports carried out by its experts. So I'm not persuaded there's evidence that there were issues before these were reported in 2022.

Further, in a more recent response to Miss M and Mr S' queries, AXA's loss adjuster stated as follows:

'We do not dispute that when you made your new home purchase the home and

Conservatory were in a good state of repair with no suggestion of movement due to subsidence or any other factors.

So this confirms that AXA agree the property hadn't suffered subsidence issues before the claim was raised in 2022. And therefore that the structure stood for around 16 years without issue.

The same comment went on to say:

'However, in 2022 the United Kingdom experienced what is called a 'Subsidence Surge Event Year'. We had very little rainfall and high levels of sunshine and high temperatures. Solely or in combination, this caused the clay soils to dry up exponentially and shrink. With trees in proximity they have exacerbated the issue by extracting the moistures from the clay soils. The clay soils then shrink at a far more rapid rate and unfortunately can affect foundations.'

The fact that the structure stood for around 16 years without a problem, but then was impacted by a subsidence surge year, suggests that it was the period of unusual weather that caused the issue and not a faulty design.

Additionally, since this service has been considering this complaint, I understand that the cause of the subsidence has been confirmed as a leaking drain, rather than vegetation. So while AXA has said that the foundations should have been deeper to take account of nearby vegetation, the cause is confirmed as one that couldn't have been foreseen or accounted for in the design of the structure. And there's no evidence to show that if the foundations had been built to 900mm that the structure would have avoided suffering subsidence due to the leaking drain.

For these reasons, I don't think AXA has done enough to show that the exclusion would fairly apply. I am therefore minded to direct AXA to accept Miss M and Mr S' claim for subsidence and settle it in line with the remaining policy terms and conditions without applying the exclusion for faulty design.

Miss M and Mrs S have had to spend some time trying to prove their claim was unfairly declined, and this has caused them some distress and inconvenience. So I'm also minded to ask AXA to pay £100 compensation to apologise for this.'

Response to my provisional decision

Both Ms M and Mr S and Axa responded to say they had nothing further to add in response 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.

As both sides have added nothing further for me to consider, I see no reason to depart from the outcome outlined in my provisional decision for the reasons I've described.

My final decision

For the reasons I've given, I uphold Miss M and Mr S' complaint and require AXA Insurance UK Plc to:

- Accept their claim for subsidence and settle it in line with the remaining policy terms and conditions without applying the exclusion for faulty design.
- Pay them £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr S to accept or reject my decision before 16 November 2023.

Sophie Goodyear
Ombudsman