

The complaint

Mr M and Mrs E complain that AXA Insurance UK Plc ("AXA") have unfairly declined a claim made under their commercial property insurance policy.

What happened

Mr M and Mrs E own a house which they rent out to a tenant. The rental property is insured with AXA. In August 2020, they made a claim on their policy as cracks had appeared in the garage wall following a neighbour removing land next to the garage. AXA initially declined the claim under the subsidence section of the policy. Mr M and Mrs E didn't agree with this and so referred the complaint here.

Another Ombudsman at this service issued a final decision on 26 March 2023. The Ombudsman didn't uphold the complaint as AXA had said another report was needed to determine the cause of the cracking, which the Ombudsman thought was fair. Following the decision AXA appointed a loss adjuster to complete a report on the garage which said the damage wasn't something covered by the policy. Unhappy with the claim still being declined, Mr M and Mrs E raised another complaint.

AXA reviewed the complaint and didn't uphold it. It said the claim didn't fall within the scope of the policy and maintained its position that the claim wasn't covered. Mr M and Mrs E didn't agree and referred the complaint here. They said the garage had been damaged by the neighbour removing soil from next to one of the walls and thought the claim should be covered under the accidental damage section of the policy.

Our investigator reviewed the complaint and explained that she could only consider what had happened between the previous final decision and AXA issuing its final response on 26 May 2023. She didn't think AXA had done anything wrong by declining the claim but did find that it hadn't handled it well. Particularly around explaining the outcome it had reached. AXA agreed to pay £300 compensation for the poor claim handling which our investigator thought was fair.

Mr M and Mrs E didn't agree and asked for an Ombudsman's decision. So, the complaint has come to me to decide.

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.

Before I explain my findings, I would like to clarify that in this decision I'm only able to consider what's happened between the previous final decision being issued and AXA issuing its final response letter. So, in this decision, I will only be considering what happened between 26 March 2023 and 26 May 2023.

Mr M and Mrs E have said the accidental damage section of the policy should cover the claim. This is because the removal of land by a neighbour has caused damage to the

garage. I've therefore reviewed this section to see whether AXA has acted fairly by declining the claim.

Under the accidental damage section, the terms and conditions of the policy says:

"The Buildings section is extended to include the following cause

Any other damage excluding...

4 the collapse or cracking of building(s)"

There are other exclusions listed but I've not listed them here and have highlight one quoted by AXA. I've also reviewed the loss adjuster's report completed on 19 April 2023 which says:

"As advised at our meeting, the garage has been affected by an uninsured peril [sic]

We have reviewed the Accidental Damage wording and confirm there is no policy cover.

In regards to the damage, and our observations. [sic]

It would be expected that the garage builder would take into consideration [sic] the land around the structure.

Therefore, using a neighbours [sic] garden to support the garage foundations would be considered poor planning"

When reviewing the cause of the damage, the removal of supporting land by the neighbour, and the policy terms. I'm satisfied AXA has acted fairly and reasonably by declining the claim. I say this as the cause of damage is reported to most likely be the removal of land from the neighbour's garden and Mr M and Mrs E agree with this. The question here is whether this is accidental damage and covered by the policy.

The policy doesn't define "accidental damage". However, I don't think that makes a difference because even if this is accidental damage and therefore an event covered by the policy, I'm satisfied there are exclusions which relate to this event. So, I'm not going to make a finding on whether this is an insured event under the policy here.

The exclusion AXA has referred to is referenced above. The damage to Mr M and Mrs E's garage is cracking in the walls. And, as this is specifically excluded, I'm satisfied it's not covered by the policy. The loss adjuster's report also refers to faulty or defective workmanship, as it refers to poor planning. Faulty or defective workmanship is also excluded under the policy.

I appreciate Mr M and Mrs E don't agree that these exclusions apply and think the claim should be covered under this section as there is damage to the garage. However, without further persuasive evidence to show the cause of damage is one covered by the policy, I'm not persuaded AXA has acted unfairly by declining the claim.

I've also considered AXA's poor claim handling. AXA hasn't clearly explained the reasons for declining the claim and has acknowledged this. It's also offered £300 in compensation for the distress and inconvenience this has caused. I'm satisfied this is a fair and reasonable amount, so I'm not going to tell AXA to pay anymore.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint in part. I require AXA Insurance UK Plc to pay Mr M and Mrs E £300 for distress and inconvenience, if not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs E to accept or reject my decision before 14 December 2023.

Alex Newman
Ombudsman