

The complaint

Mrs L complains that AXA Insurance UK Plc declined a claim she made on her home insurance policy for subsidence.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mrs L has had home insurance through an independent broker, who I'll call S, for a number of years.
- In 2021, Mrs L got in touch with her then-insurer, who I'll call B, about a potential subsidence problem with the barn at her home. B investigated and declined the claim. It said there had been subsidence, but it pre-dated B's policy starting in 2019.
- Mrs L asked S who her insurer was prior to B and was put in touch with a loss adjuster. They inspected the damage and said there hadn't been subsidence. Mrs L wasn't happy with the way this had been handled, as she recalled the loss adjuster saying further investigation was necessary, before simply declining the claim. She was told her claim had been passed to AXA for further consideration in April 2022, but she didn't hear anything further from it and complained. It didn't respond.
- After Mrs L referred the matter to this Service, AXA conceded there had been a delay due to miscommunication. It offered compensation and agreed to review the matter. Mrs L accepted that offer in June 2023 and the complaint was resolved.
- In August 2023, AXA told Mrs L it wouldn't take responsibility for considering the claim. It said the damage was first noticed whilst Mrs L was covered by B, so B was the appropriate party to take responsibility for the claim and she should get in touch with it. Mrs L referred the matter back to this Service.
- Our investigator thought the complaint should be upheld. She noted AXA hadn't considered whether the damage was covered under its 2018 policy – it had merely insisted Mrs L should return to B. Our investigator didn't think this was fair and asked AXA to consider the claim under its policy.
- Mrs L agreed with this. AXA didn't. In summary, it said B was responsible for considering the claim under the Association of British Insurers (ABI) 'change of insurer' Agreement – but B hadn't followed it. As a result, AXA didn't think it was required to take any steps with Mrs L's claim.

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 recognise Mrs L's complaint concerns the way all parties have acted since she first made her claim. That includes the way AXA, B and S, and their respective agents, have acted, including S' decision to change her insurer.
- However, the way this Service works means I can only consider a complaint about one party and its agents at a time, for the matters that party is responsible for only.
- Mrs L has previously referred a complaint about B to this Service, which has been resolved separately, so I won't comment further on that. Mrs L is entitled to make a complaint about S and refer it to this Service if she wishes.
- This final decision is about the way AXA acted in relation to the matters it is responsible for – which is its decision not to consider Mrs L's claim and refer her back to B. So that's what I'll focus on.
- AXA provided an annual buildings insurance policy from July 2018. The policy provided cover for damage caused in a number of ways, including by subsidence.
- Put simply, Mrs L would like to claim for possible subsidence damage, which may have been caused within the span of the AXA policy. So I would usually expect AXA to consider that claim under its policy, including carrying out any relevant inspections and/or investigations, and let her know the outcome.
- However, after a long delay, AXA has said it won't consider the claim. Instead, it's insisted Mrs L should get in touch with B about the damage and make a claim under B's policy, which I understand ran for two years from July 2019.
- This strikes me as unhelpful and unfair. AXA ought to be aware that Mrs L was in touch with B before AXA – but B declined the claim and referred her to AXA. So not only has AXA refused to consider the claim under its own policy, it's also knowingly directed Mrs L back to an insurer who has already declined her claim.
- AXA has done this because it thinks B should take responsibility for the claim. It's pointed to the ABI 'change of insurer' Agreement to support its position. I note a condition of the agreement says:

In the event of any dispute arising under this Agreement, the parties should make every effort to resolve it between themselves having regard to the spirit of the Agreement.

- I bear in mind that a key spirit of the Agreement is to avoid situations where policyholders can find themselves caught between two insurers because neither of them will take responsibility for the claim. Which is exactly the position Mrs L has found herself in.
- So if AXA considered B hadn't followed the Agreement and it ought to have accepted the claim, I would have expected AXA to get in touch directly with B to resolve the dispute between the two insurers. Then, once they had decided between them which was the responsible insurer, that insurer could have let Mrs L know and taken the claim forward from there. But AXA hasn't done that.
- Nor has AXA considered the claim under its own policy. And it hasn't pointed to any policy terms or conditions that might give it the contractual right to decline the claim.

- Whilst a loss adjuster considered the claim in 2022, and said there wasn't any subsidence, it's not clear they were acting as AXA's agent at that time. Their report doesn't say so and AXA hasn't suggested it's already considered the claim by appointing this loss adjuster.
- I note the loss adjuster's findings. But Mrs L has questioned them in light of her recollection of what was discussed during the inspection. And they're inconsistent with B's findings, which said there was subsidence. So I think the possibility remains that there has been subsidence damage, and it may have happened within the span of AXA's policy.
- Taking all of this into account, I'm not satisfied AXA has acted fairly. It seems to have lost sight of the fact that Mrs L was its policyholder. That meant it had a duty to consider her claim promptly and fairly and to treat her fairly and reasonably. Yet it's done neither of these things. As a result, it's now around two years since AXA was informed of her claim – and it's still not begun considering it. Had AXA not offered considerable compensation shortly before this complaint began, I would be telling it to pay compensation now.
- To put things right, AXA should now consider Mrs L's claim. It should do so against the terms and conditions of the policy that were in place in 2018 and take into account her claim is for damage which may have happened at that time. It shouldn't hold against her any deterioration of that damage as a result of the passage of time.
- I would expect AXA to appoint a loss adjuster, that hasn't been involved in the claim so far, to inspect the damage and carry out any other investigations they consider necessary, and to let her know whether it will accept her claim or not. AXA is entitled to get in touch with B about accepting the claim under B's policy, if it wishes, but it shouldn't leave Mrs L to do this or unduly delay the claim by doing this.

My final decision

I uphold this complaint

I require AXA Insurance UK Plc to consider the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 1 May 2024.

James Neville
Ombudsman