

The complaint

Mr and Mrs L have complained about their home insurer AXA Insurance UK Plc regarding their claim for subsidence and how the way it handled that affected their health. They think AXA should pay for a shed too.

What happened

Mr and Mrs L made a subsidence claim in 2018. By winter of 2020 reinstatement works were due to start. Mr L told AXA about some health conditions. It was agreed that works would be postponed to the spring so the home wasn't disrupted during the cold winter months (which would likely affect Mrs L's conditions). In 2020 the works were discussed, various issues arose and it was October 2021 when the reinstatement work started. Mr and Mrs L raised concerns with AXA, and its loss adjuster, over the conditions in which they were living – with works having started they really only had use of the kitchen downstairs. AXA and the loss adjuster didn't feel that moving them out of their home into alternative accommodation (AA) was warranted.

The reinstatement contractor then had to be changed. Work began again in early December 2021 and continued into the new year. At which point AXA and Mr and Mrs L chose to settle in cash for the agreed outstanding work. Mr and Mrs L complained to the Financial Ombudsman Service. It was 2023 when AXA issued its final response to Mr and Mrs L about their concern about the poor claim handling affecting their health.

AXA said it had initially felt moving Mr and Mrs L out of their home wasn't necessary. However, it said it had then changed its mind, given Mrs L's health and offered AA, and/or to move things around or perhaps provide additional storage to make living there better. But it said its offers had been refused. So it said it felt that if the conditions had made Mrs L poorly, this wasn't its fault. Regarding a request Mr L had made for around £600 to be paid for lost income, AXA said lost income isn't covered by the policy.

When our Investigator considered the complaint, he noted AXA's offer. Mr and Mrs L replied stating that there had never been any offer received for them to move out of the home. Regarding storage, they said the only offer made was for AXA to pay £300 towards a shed – but for them to get one of suitable size, they had to pay nearly £3,000. They said they think they should be able to claim that back at least.

Our Investigator felt AXA had handled things reasonably, including making fair offers to assist Mr and Mrs L, given Mrs L's health. So he wasn't minded to uphold the complaint.

Mr and Mrs L remained unhappy. Their complaint was referred to me for an Ombudsman's consideration. I was minded to uphold it and award £2,000 compensation, plus £830 as a disturbance allowance. But I wasn't minded to make any award for lost earnings or regarding the shed. I issued a provisional decision, my findings of which were:

"The shed"

In summer 2021 an agreement was reached that, to avoid the need for additional storage, AXA would pay Mr and Mrs L £300 so they could buy a shed (available for sale for around

that sum). The shed could be used initially for storage of contents items, but they could keep it after the claim was concluded. I've seen that Mr and Mrs L agreed to this – they even signed a form of acceptance. I note the larger, more expensive shed was purchased after the offer to pay £300 was made and before they signed to accept that offer. So Mr and Mrs L accepted the offer, knowing they'd already bought a different more expensive shed, and they didn't challenge AXA to pay more, in-line with their actual cost incurred. So I'm satisfied that an agreement was fairly reached between the parties, which it would be unreasonable for me to undo now by making AXA pay more for the shed.

AA and storage

I don't believe that AA or storage (in addition to the shed in summer 2021) were offered to Mr and Mrs L. Both AXA and its loss adjuster are vague about when this was offered. AXA said its loss adjuster made the offer during a call in December 2021 after works re-started. The loss adjuster says it was in a call in November 2021. But the call itself is not available. And whilst I've read the loss adjuster's notes kept about the claim, most of which are quite detailed about the various discussions which occurred, there is no log of a call with Mr and Mrs L in November or December 2021 where offers in these respects were made by the loss adjuster but declined by Mr and Mrs L. I think an important discussion like that would have been clearly noted.

I do see on AXA's file notes that an AXA team member may have had a discussion with Mr and Mrs L in November about their living conditions. But I also see that AXA and the loss adjuster had agreed, at that time, that moving Mr and Mrs L out of the property was not needed, because the home wasn't strictly speaking uninhabitable, because they had cooking and washing facilities. There is no sign, contrary to what AXA said about this "initial" decision by it being later revised, that after this date, 12 November 2021, an offer for AA or storage was then made and turned down.

I also bear in mind that AXA had come to an agreement about the shed in summer 2021. The notes regarding the shed show AXA/its loss adjuster believed the shed it had agreed to pay for would be sufficient to clear the property of boxed belongings, to make it more comfortable. So it doesn't make sense to me that it would then have agreed later that doing something more was necessary. Especially not without clearly noting its file in that respect.

I accept that the home was not, strictly speaking uninhabitable. But I bear in mind that AXA was aware of Mrs L's health. And that in winter 2020 it had agreed it would not be appropriate to start the reinstatement work during the winter months for that very reason. Which leads me then to question the fairness of its decision to progress on with work during winter 2021 whilst leaving its vulnerable policyholders in their unsuitable home (unsuitable on account of the repairs).

Mrs L's health

I can see that Mrs L has a neurological condition which is impacted by the cold and stress. Also that she's been suffering with a lung and skin condition which are triggered and/or negatively affected by cold and/or dust. This was confirmed by her GP in January 2022, who also confirmed there'd been necessary appointments in the preceding three months; that a disruption in routine and ongoing stress would not be helping matters. He noted her mental health was being affected too.

Mr L

Mr L is Mrs L's carer. He hasn't presented any medical evidence regarding his own health. But I don't doubt it was stressful and worrying for him seeing Mrs L suffer. I can't be sure though that he lost earnings due to ill health on account of them staying in the home. An email sent to his client at the time referred to him not being able to do a job for them on account of a bad back, whilst AXA was told earnings were lost due to stress. So the reason

for Mr L not doing the job is unclear which means I can't reasonably conclude it was most likely because of the difficult conditions they were living in.

Compensation

My conclusion then, provisional though it is, is that AXA failed Mr and Mrs L by pressing ahead with works in winter 2021, when such had been set aside the winter before, until spring, on account of Mrs L's health. I accept, also provisionally, that Mr and Mrs L were both affected, as I've explained above by living in unsuitable conditions during repair work in the period October 2021 until early 2022. With the majority of work having been completed in early January and confirmed as being to standard in a report of 25 January 2022. That report having been made following an assessment visit on 20 January 2022. Some minor snagging was found/accepted and AXA cash settled with Mr and Mrs L, at their request, so they could complete that work. So I'm satisfied that by 25 January 2022 the home had been returned to a suitable standard for living, with Mr and Mrs L having been made aware of AXA's view in that respect. I think that £2,000 compensation is fairly and reasonably due in this instance.

I note that Mr and Mrs L have asked to be paid what it would have cost AXA to re-house them. That isn't a basis on which we award compensation. Making AXA pay that would equate to a punitive measure because it is a cost which was never incurred by Mr and Mrs L.

Meal allowance

Mr and Mrs L have asked for a meal allowance for 21 weeks at £20 per person per day. A payment like this is often referred to as a disturbance allowance. Insurers often make such a payment usually at a rate of £10 per person per day, where a home is uninhabitable. It is paid to compensate for likely financial loss caused by not being able to cook/wash/heat the home as one usually would, due to damage and / or repairs. As I've noted above, strictly speaking, Mr and Mrs L's home was not uninhabitable. It had heating, they could also cook and wash.

That said, I accept that with rooms stripped the home was likely colder than usual, and that extra costs were, therefore, likely incurred trying to keep Mrs L warm. I also accept that with the home being dusty cooking would have been less desirable. I further bear in mind that with all the additional stresses being faced I expect that, on occasion, neither Mr nor Mrs L likely felt well enough to cook as they normally would. I accept they faced some extra costs – but probably not as much as would be the case had their home been uninhabitable in the strict sense of the term. I think AXA should recognise this by paying them £5 per person per day from 20 October 2021, when works started, until 10 January 2022. The latter being a few days after the contractors left. By this time the property was in a much more finished condition – although Mr and Mrs L still had some concerns which were considered in the assessment visit. I'm satisfied requiring an allowance to be paid until 10 January 2022 is fair and reasonable. That is 83 days in total, so £830 for AXA to pay."

Mr and Mrs L said they were happy with the findings. AXA did not reply.

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 no objections have been raised to my provisional findings, I've no need to revise them. I'm satisfied they're fair and reasonable. They are now the findings of this, my final decision.

Putting things right

I require AXA to pay Mr and Mrs L:

- £2,000 compensation for distress and inconvenience, pain and suffering.
- £830 as a disturbance allowance.

My final decision

I uphold this complaint. I require AXA Insurance UK Plc to provide the redress set out above at “Putting things right”.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L and Mrs L to accept or reject my decision before 15 January 2024.

Fiona Robinson
Ombudsman