

The complaint

Mrs H has complained about her property insurer AXA Insurance UK Plc regarding a subsidence claim.

Mrs H has often been represented by her brother-in-law, Mr H. But as this is Mrs H's complaint, and for ease of reading, in the main I'll refer only to Mrs H.

What happened

Mrs H made a subsidence claim to AXA in 2020. It monitored the property and took out some vegetation. It then intended to complete repairs of the cracks as it was confident the property had/would stabilise. It wasn't prepared to underpin as Mrs H had suggested might be needed. In late 2022, with some crack repairs having been done by AXA, but further movement having occurred, and Mrs H having complained to the Financial Ombudsman Service, AXA said it would carry out further investigations. Our Investigator at the time felt that was reasonable, Mrs H accepted that opinion and her complaint closed.

It was October 2022 when AXA's loss adjuster reported that it was arranging for an arborist to further attend the property to report on existing vegetation. The loss adjuster's subsequent reports show that it was felt further vegetation needed removing and this was done on 18 January 2023. A monitoring reading was taken on 20 January 2023 and AXA said it would take one more in March 2023, which it was confident would show the property was now stable. Once that reading was taken AXA confirmed no more readings would be taken, that it felt the property was stable. It said it wanted to move to repairing the property.

Mrs H was unhappy with that. She reported that the property was still moving. She pointed out that the ground the house sits on is shrinkable clay. AXA spoke to its loss adjuster. In July 2023 the loss adjuster said it had offered to undertake a further two monitoring readings – but Mrs H hadn't agreed. The loss adjuster said new damage might have occurred but it wasn't convinced old damage had re-occurred. It said underpinning would be betterment.

In a final response of August 2023 AXA said it was aware further damage to the property had been reported in May 2023. It said some further monitoring "to reassure you of the stability of the property" could be arranged. Mrs H reverted to us.

Our Investigator noted AXA had said it would do more monitoring and felt that was a fair and reasonable resolution to the complaint. Mrs H remained unhappy and her complaint was referred to me for an Ombudsman's decision.

I felt AXA had failed Mrs H – that it hadn't taken sufficient data to show it had reached a fair and reasonable decision that the property was stable. I felt it needed to do a number of things to put matters right, including visiting Mrs H's home to map out all current subsidence damage and pay £1,500 compensation. My provisional findings were:

"I think AXA handled things poorly in early 2023 which resulted in an unfair claim outcome at that time. So I think it needs to act now to put things right. However, to manage Mrs H's expectations, I'm not persuaded it would be fair and reasonable, at this time, based on the

available evidence, to make it provide an engineering solution to stabilise the property (such as underpinning). I'll set out my views below, both will have a chance to respond before I make a final decision.

I can only look at what has happened from October 2022. At that time further movement had been accepted by AXA as having occurred and it was going to review what was needed to resolve things. I think it started that review reasonably by reinstructing an arborist. But I think it was then, once the work had been done to remove the vegetation recommended by the arborist, that I think AXA failed Mrs H.

The vegetation was removed on 18 January 2023. With a monitoring reading taken two days later. But that reading can't fairly be said to say anything of note about the impact of removing the vegetation. Yet in a report in February 2023 AXA's loss adjuster said the reading in January showed good recovery and only one more reading, to be taken in March, would be needed to demonstrate the ground was stable. When the reading was then taken in March that was exactly the conclusion reached. So, based on one reading only since the vegetation was removed, AXA's loss adjuster said its work was concluded; the property was stable and it would not, at that time, look to monitor the property any further. This position was repeated in correspondence with Mrs H over the subsequent months.

I think the position put forward by the loss adjuster in February 2023 was flawed. A feature of this type of subsidence movement, once vegetation is removed, is that recovery occurs over the winter months but until the ground reaches an equilibrium, downward movement will likely occur in drier months. So it is quite normal for an insurer, in handling a claim like this, once vegetation is removed, to monitor a property over the following season. Jumping to a conclusion about stability, based on one reading only, taken just two months after vegetation removal and during a period typical for recovery, seems to me to be rather flawed. I think it was unfair and unreasonable of AXA to cease monitoring in March 2023.

I note that the loss adjuster has said that, sometime in May/June 2023, it offered to carry out two further monitoring readings. But I haven't seen any evidence of it putting that offer to Mrs H. The evidence from the file submitted by AXA shows that in May/June 2023 the loss adjuster was affirming its position to AXA that no further readings were required, that the property was stable. Whilst the loss adjuster (and AXA) had been notified of further damage by Mrs H, no attempt, as far as I can see, was made to go and assess that damage.

To be clear – in terms of stability, continued movement does not just have to be downwards movement. Moving up and down is no more stable than just continued downward movement. Fluctuations like this can still cause damage. And in a claim where an insurer has completed repairs, which are meant to be long-lasting, that means those repairs are at risk. Damage to them in the short to medium term would mean the insurer has not completed long-lasting repairs.

Given what I've said above about monitoring usually being required over the following season, I'm not persuaded that two readings taken in isolation in summer 2023 would have been reliable evidence of the property's stability. But had AXA approached things differently, in a more impartial way, there might at least have been some evidence now of how the ground was moving at that period. As it was, AXA took the view, even knowing there was report of further damage, and even knowing the limitations of the monitoring already completed, that further monitoring would only show stability. An impartial approach would have recognised Mrs H's concerns and assured her that further monitoring would be undertaken, with what was needed for resolving the claim moving forwards being assessed from there. That might well have persuaded me that AXA was offering a fair and reasonable resolution for the claim and complaint. But, as I've said, I'm not persuaded that what it did do was fair.

I then need to think about what AXA must do to put things right. I know Mrs H would like me to direct AXA to provide an engineering solution to stabilise the property. I can understand that in the context of the claim as a whole – over a three-year period since the claim was made the property has not stabilised. But I have to focus on the situation as it was in 2023. At that point AXA had obtained professional advice from an arborist as to what was needed, and it implemented those recommendations. Then, due to AXA's flawed claim process, there is no data to show how that action actually affected the property. That must be very frustrating for Mrs H – but I can't reasonably require AXA to move to an engineered solution just because it hasn't gathered evidence to support its contention the property is stable. That would be a punitive award. For me to make a requirement like that I'd have to be satisfied the property is most likely still moving. It might well be, but I haven't got any evidence of that.

Further, when I find an insurer has failed a policyholder, it is part of my role to make the insurer act to put their policyholder, as closely as possible, back into the position they'd have been in but for the failure. In this case, as I've explained above, AXA, having removed the vegetation, should have monitored the property over a longer period – at least I think through spring and over the summer of 2023 to see how the property moved over that period – with spring and summer months generally expected to be drier than the winter ones, AXA could have seen if the recovery (upwards movement) suggested by the March 2023 reading was maintained, stabilised, or lost by further downwards movement occurring. So I'm going to require AXA to recommence monitoring and I think it should recommence that as soon as possible (if this hasn't happened already which I'm aware it might have done) and continue it through the summer of 2024. In doing that I think it should take readings at monthly intervals (previously it took them every two months).

I'm also going to require AXA to visit the property to assess and map the current subsidence damage. In doing that it should also reference which areas of the property were repaired/decorated previously. AXA is required to complete repairs which are long-lasting. So if the repairs, including decoration it has completed, are being spoiled by further subsidence damage occurring, even if that is different cracks to those which were there before, then it has not completed long-lasting repairs. If the property does not stabilise such that its repairs can last then it will have to look at providing an engineered solution so stability, and lasting repairs, can be achieved. If this assessment identifies damage in urgent need of repair; either on account of safety or to provide comfort and a more normal standard of living for Mrs H whilst monitoring continues, works should be arranged.

Finally, to help make things right, I can award compensation. I'm satisfied that, if AXA had continued to monitor the property through spring and into summer 2023, by the time it issued its final response of August 2023, it would have had enough data with which to make an informed and reasonable decision on how to progress the claim (with my suggested award now being that it gathers that data through summer 2024). So AXA's unfair actions in 2023 meant data available in that year was wasted – Mrs H was frustrated as she felt AXA should

be doing something more, and she was right. In 2023, up to August, Mrs H was extremely worried about the state of her house. Further when she identified more movement and damage occurring, she took action to contact AXA about it, but AXA, in the main, didn't do anything. I can see that Mrs H felt unheard which caused her more upset and frustration. I'm minded to require AXA to pay £1,500 compensation which I think is a fair and reasonable sum in the circumstances.

I'm aware that AXA offered £75.00 in February 2023 for some upset caused by its loss adjuster not replying to emails in a timely manner. And it's also offered compensation at times for its complaint responses not being made in time. My suggested award of £1,500 is separate to those sums."

Mrs H said she wanted a current survey she was having undertaken of the damage at her home to be considered. She said further cracking had occurred.

AXA did not reply to my findings.

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'm sorry to hear further damage is still occurring at Mrs H's home. I understand how upsetting that is for her. I think it's important then that this matter moves on as swiftly as possible, which involves AXA visiting to undertake its own damage assessment. A current survey by Mrs H's surveyor won't change that. But AXA will only have to do that – will only have to act in line with my findings – if there is a final decision directing it to act, which is accepted by Mrs H within the deadline set. So I'm not going to hold things up at this stage to wait for Mrs H's report.

Having reviewed matters, taking into account Mrs H's reply and noting AXA has not presented any objections, I'm satisfied by the findings I issued provisionally. As such they, along with my comments here, are now the findings of this my final decision.

Putting things right

I require AXA to:

- Undertake monthly monitoring until the end of summer 2024, taking any results gathered into consideration alongside data gathered before in order to reasonably determine whether the property is stable.
- If the property is not stable (ie it is still moving, with upwards and downwards movement still capable of causing damage and affecting repairs), it will have to move to an engineered solution to achieve stability.
- Assess and map the current subsidence damage, alongside any previous repairs, including noting areas decorated – this to better determine if the repairs are being or indeed have been affected by continued movement.
- But also if the above identifies damage in urgent need of repair, as I've explained above, arrangements should be made for repairs to be done.
- Pay Mrs H £1,500 compensation.

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 Mrs H to accept or reject my decision before 26 February 2024.

Fiona Robinson
Ombudsman