

The complaint

Miss O complains that AXA Insurance Designated Activity Company has rejected a claim on her home insurance policy.

What happened

Miss O made a claim on her home insurance relating to damage to the septic tank at her property.

She provided a report from a specialist, who said:

- a CCTV survey showed the internal baffle had been dislodged
- in their opinion it had been dislodged as a result of ground pressure and movement
- this has caused solids to enter the system, clogging up the perforated holes and pipework
- the whole system needs to be replaced

AXA instructed loss adjusters to consider the claim. They said:

- there was no visual damage noted in the area of the tank or soakaway
- they had asked Miss O to provide a report detailing the cause of the damage but no information has been provided confirming that the damage was caused by an insured peril.

AXA asked for further information including copies of consent to discharge forms, receipts for tank emptying, a copy of the CCTV survey and documents from the specialist substantiating their opinion that ground movement was the likely cause of the damage.

When the information AXA had requested wasn't provided, it said the claim would not be covered as Miss O has failed to prove the damage was due to an insured peril.

Miss O complained but AXA didn't change its decision so she referred the complaint to this Service. She is being assisted in bringing the complaint by a representative.

Her representative said the decision was unfair and AXA had breached its obligations to Miss O.

Our investigator didn't think the complaint should be upheld. She said Miss O had a point when she said the damage was unforeseen and unintentional but the cause of the damage hadn't been confirmed and the information AXA had requested was reasonable, so Miss O should provide that.

Miss O's representative disagreed and said:

- the investigator said Miss O has shown there's accidental damage but says she has to prove what caused the damage – this is contradictory
- AXA has the report confirming the damage and photos of the damage, and has inspected the tank
- Miss O has shown there is accidental damage as defined by the Financial Ombudsman, so she does not have to show anything else.

While accepting Miss O may have shown the damage was accidental, the investigator didn't change their view that it was reasonable for AXA to request more information. So Miss O requested an ombudsman's decision.

AXA's position is that:

- the insured needs to prove their loss
- Miss O's report says damage was caused by ground movement but doesn't say what caused the movement and how it relates to an insured peril
- as the tank is over 50 years old, it is well past the life expectancy
- it has asked for more evidence, in particular consent to discharge of effluent and controlled transfer notes, but these have not been provided
- it requested tank empty dockets as this allows it to validate that the property has been maintained to an acceptable standard as per the policy wording
- it has requested the Consent to Discharge to ensure the system was installed with the consent of the local authority and that the specification is in line with the consent
- it needs confirmation of what has caused the baffle to become dislodged – if it's due to ground movement, it would expect the outer skin of the tank to be compromised
- the policy doesn't provide cover for wear and tear or damage that happens gradually over time.

I issued a provisional decision saying I agreed the complaint should not be upheld but for different reasons; Miss O had not shown there was accidental damage. I set out my reasons as follows:

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide consumers with the information they need and reasonable guidance to help them make a claim, avoiding unreasonable barriers; and not unreasonably reject a claim.

The policy includes cover for accidental damage to:

*a. cables and underground pipes which extend from the buildings to the public mains;
and*

b. septic tanks and drain inspection covers

"Accidental damage" is not defined in the policy terms. Where something isn't defined, the usual approach is to give the words their ordinary, everyday meaning.

Some insurance policies define accidental damage to mean something that happens suddenly but other policies don't. For "accidental" our approach has long been that it means something unforeseen and unintentional. So in the absence of anything else, I would generally say the issue is simply whether the damage was caused by something unforeseen and unintentional.

However, although accidental damage doesn't necessarily have to be something that happens suddenly, the policy does not cover wear and tear or damage that occurs gradually overtime.

So to decide whether this was accidental damage, it is necessary to understand what caused the damage; it needs to be due to something unforeseen, and if it happened gradually over a period of time, or is due to wear and tear, then it won't be covered.

In the first instance it's for Miss O to prove her claim. Her representative says she has shown there is accidental damage and relies on the report confirming the damage. But that report is very brief. It simply says in their opinion "the internal baffle has become dislodged due to

ground pressure and movement.” There’s no further explanation of what this is based on, what evidence there is of ground movement, how severe the movement is or how long it has continued, or how it would cause the baffle to become dislodged without causing any other damage to the tank.

The policy says Miss O must provide any details of the claim requested, and any reports, information or help AXA needs to assess the claim. Terms like this are not unusual and it’s reasonable to expect a policyholder to provide any relevant information to help the insurer deal with the claim.

In these circumstances it was reasonable for AXA request more information. Miss O needs to be able to show the damage was unforeseen. If, for example, the tank is 50 years old and has simply worn out, then this is not accidental damage.

As it stands, we know there is damage but not what caused it or whether it is accidental damage.

Miss O’s representative says AXA has breached its duties to her. I don’t think it has placed unreasonable barriers in the way of her claim. It has explained what information it needs and why. It’s reasonable to ask for the information in order to assess what has caused the damage and whether it is accidental. If Miss O provides the information requested AXA can then reconsider the claim.

Replies to the provisional decision

Miss O’s representative has replied with further comments. The key points include:

- the controlled transfer notes from the water company have been provided to AXA. They make no mention of any damage. So it’s difficult to see how the damage can’t be considered unforeseen and unintentional as far as Miss O is concerned.
- As the tank is underground Miss O could only be expected to discover the damage when it was serviced or if she was put on notice that it was blocked.
- It’s not clear how she would have been able to foresee the collapse of the baffle and the blockage of the system.
- The test is not whether the damage was foreseeable but whether it was inevitable. Damage to the baffle wasn’t inevitable. It could have been caused by forces on the tank moving it, by the whipping action of the hosepipe used when desludging the tank or by jetting causing loading pressure on the baffles.
- The onus of proof has been met – she has shown a ‘prima facie’ case of accidental damage and the law doesn’t require her to go further and prove the exact nature of the accident which caused the loss.

AXA has replied to say it has no further comments to add.

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.

Miss O’s representative says the key point is not whether the damage was unforeseen but whether it was inevitable. As I explained in my provisional decision, our approach has long been that accidental damage is something unforeseen and unintentional. If the damage was inevitable then it likely would be foreseen. In any event, the issue is still what caused the damage.

There’s a number of things that might have caused the damage. As Miss O’s representative

has said, it could for example have been due to forces on the tank, the action of the pipe when desludging the tank or by jetting causing loading pressure on the baffles. Or it could simply have been the fact that it was old and had worn out. The report Miss O relies just says the baffle has become dislodged due to ground pressure and movement. It doesn't provide evidence of ground movement or how it would cause the baffle to become dislodged without causing any other damage to the tank. AXA asked for an explanation of this and I think that was reasonable. Without that information I don't think Miss O has proved her claim.

Miss O's representative has referred to a finding in another case considered by this Service. We consider each case on its own circumstances and the facts in that case were different. In this case, I don't think Miss O has proved her loss so AXA's decision was fair. If she can provide further evidence then AXA can reconsider.

My final decision

My final decision is that I don't uphold the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 4 March 2024.

Peter Whiteley
Ombudsman