

The complaint

Mr L complains AXA Insurance UK Plc unfairly declined a claim he made on his home insurance policy for damage caused by subsidence.

What happened

In the summer of 2022, Mr L noticed cracks in his property. He made a claim on his home insurance policy for damage caused by subsidence. AXA assessed the damage but declined it. They said the extension, built in 2008 and where the damage had occurred, hadn't met the relevant building regulations for foundation depths (as set out in guidance by "N"). So AXA declined the claim, relying on an exclusion for 'damage due to faulty design or workmanship'.

Mr L complained to AXA. He said the extension had been signed off by Building Control as meeting the relevant building regulations. AXA didn't agree to change its position. It said just because it had been signed off by Building Control didn't mean the design wasn't faulty, just that Building Control failed to identify this. Unhappy with AXA's response, Mr L brought a complaint to the Financial Ombudsman Service.

Our investigator didn't think AXA had acted fairly in declining the claim. She said AXA was relying on guidelines written by N to decline the claim, but Mr L's extension didn't need to meet the N's standards, so it was unfair to hold it to this. She said AXA should consider the claim in line with the remaining policy terms. She also said it took four months for AXA to undertake further investigations to verify the claim, which was an unreasonable amount of time. She said Mr L had to do a lot of chasing of AXA and its poor communication caused Mr L unnecessary distress and inconvenience. So she said AXA should also pay Mr L £500 compensation.

Mr L accepted the outcome in terms of the claim, but said the compensation was nominal. He said they were living with damp and mould because of the cracks and it's been a very difficult situation. He felt the compensation should be much higher.

AXA didn't agree to the Investigator's outcome. It said the building regulations referred builders to N's guidelines, so whilst the guidelines themselves aren't regulatory, as they're cited in the regulations, they should have been followed. It said if these guidelines had been followed, and the foundations were dug deeper, it's likely this episode of subsidence could have been avoided.

As an agreement hasn't been reached, the complaint has been passed 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.

AXA's initial report concluded that the damage was most likely caused by subsidence due to clay soil shrinkage as a result of vegetation. It noted several oak trees – not on Mr L's land – as being the likely cause, given the damage had happened over the summer months. So as

Mr L's policy covers him for damage caused by subsidence, AXA will need to meet the claim unless it can show that a policy exclusion applies.

As AXA is seeking to rely on a policy exclusion of faulty design to decline the claim, it is for it to show that this applies. And for this Service to consider it has done so reasonably, it needs to show that:

- a) The relevant standards haven't been met
- b) And the failure to meet those standards is the reason for the damage.

AXA says the relevant building regulations state the depth of foundations on clay soils like Mr L's should not be less than 0.75m, although it will commonly need to be increased in order to transfer the loading onto satisfactory ground. From everything I've seen, it seems accepted that the foundation of Mr L's extension was 1m, so it meets the regulations quoted by AXA in terms of exceeding the minimum depth.

But AXA says other guidelines, provided by N, suggest for this type of soil, with vegetation close by, the foundations should have been dug to 2.5m, and as it wasn't the design of the foundations was faulty.

N's guidelines relate to the building of new houses; they are guidelines set out in its role of overseeing and supporting building practices for new homes in the United Kingdom. Mr L's build wasn't a new home, it was an extension to an existing one, so I'm not satisfied that N's guidelines apply to this case.

AXA says N's guidelines are a logical source of information for a builder to use, and whilst they're not directly applicable to the structure, they're still relevant. It also says that the 2005 building regulations in place when Mr L's extension was built, specifically refer to N's guidelines.

Whilst the regulations may refer to the guidelines, in order for me to fairly consider AXA has relied on its policy exclusion for 'faulty design' I'd need to be persuaded that the build didn't meet the building regulations in force at the time. Mr L has shown his Building Control completion certificate, showing the building regulations have been met for this build. The regulations state a different depth to what is quoted by N's guidelines, and I'm satisfied the extension exceeded the depth recommended in those regulations. So I'm not satisfied AXA has shown it can fairly rely on its 'faulty design' exclusion to decline the claim.

In any event, even if I were to accept the relevant building standards haven't been met, I'd need to be persuaded that the failure to meet those standards was the cause of the damage. Mr L's extension was built in 2008, the damage was first reported in 2022, so the structure stood, unaffected by damage, for around 14 years. And the trees had been present when the extension was built. So, if the foundations were inadequate, I wouldn't have expected the structure to stand without issue for such a long time period.

AXA also hasn't shown that if foundation depths did go down to what it considers they should have, that the subsidence wouldn't have occurred. It hasn't shown how far down the tree roots extended to, and that digging the foundations further would have exceeded the depths of the roots. It has said if the foundations were deeper, then the damage likely would have not happened, without providing any evidence to back up this assertion. So even if I did accept its arguments about the regulations, it hasn't shown that the failure to meet them has caused the damage claimed for.

Therefore AXA hasn't satisfied me that it can fairly rely on the exclusion. As such, it cannot reasonably decline Mr L's claim and needs to proceed with it, in line with the remaining policy terms.

A considerable amount of time has already passed since Mr L reported the damage. And it took AXA around seven months to give a decline decision, so it will now need to act promptly to restart the claim.

I understand this has been a worrying time for Mr L, and I've factored in AXA's delays in communicating its outcome when considering a compensation award. But much of Mr L's worry relates to the damage itself and I can't ask it to compensate for the worry that comes with discovering damage to your home. I do accept that AXA's delays mean the claim will take longer, given it's already now around nine months since the damage was reported and they've been living with it. But I'm satisfied that £500 is fair to compensate for the impact of AXA's poor handling so far. I would hope it now deals with the claim promptly. But Mr L can raise any further complaints with this Service – for any issues that happen after the date of this final decision - if he feels the need to.

My final decision

My final decision is that AXA Insurance UK Plc needs to accept Mr L's claim for subsidence and settle it in line with the remaining terms and conditions of the policy, without applying the exclusion for faulty design. And pay Mr L £500 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 April 2024.

Michelle Henderson
Ombudsman