

## **The complaint**

Mrs K has complained about AXA Insurance UK Plc's (AXA's) handling of a claim she made under her buildings insurance policy for subsidence damage to her home.

## **What happened**

Mrs K made a claim for damage to the front of her home in 2022. The cause of damage was eventually identified to be subsidence caused by the roots of a nearby tree.

Mrs K's claim has been handled by a loss adjuster, under delegated authority from AXA. This means AXA is ultimately responsible for the claim journey and anything which might've gone wrong. Any reference to AXA in my decision also includes the actions, or inactions, of the loss adjuster.

Mrs K raised concerns about water ingress and mould, caused by the subsidence, several times during the claim. She said AXA told her it would cover a replacement carpet, but then later refused to do so. She was also unhappy that AXA said damage to the rear of her property was separate to the subsidence at the front, and so could only be investigated further if she paid for it herself or opened a second claim.

AXA accepted the level of service it provided had been poor. Overall, it offered Mrs K £450 compensation. But it maintained the damp issues and damage at the rear were unrelated to the subsidence issue at the heart of her claim.

Our investigator considered Mrs K's complaint and thought it should be upheld. He said investigations into the water ingress and mould were inconclusive and the report suggested more was to be done – which it wasn't. So, he said AXA needed to investigate further. He also said AXA ought to investigate the issues at the rear of the property as part of the ongoing claim, as earlier reports had suggested it would. And in terms of the overall impact of AXA's poor service, he said the £450 didn't go far enough. He suggested a total of £700 compensation should be paid in the circumstances.

AXA partially accepted our investigator's opinion. It agreed to carry out further investigations into the cause of water ingress and mould issues, and to pay the increased compensation. But it maintained that the issues toward the rear of the property were unrelated to the ongoing claim. So, it said Mrs K could either fund investigations herself – which would be reimbursed if they evidenced a valid claim (or link to the ongoing claim) or it said she could open a new claim for accidental damage and AXA would then investigate under the new claim.

Mrs K wasn't happy with AXA's position on the rear damage. She said AXA initially said it was all linked, and only changed position after she told it her neighbour's property might be suffering its own episode of subsidence. But this statement was based on what her neighbour told her, and her neighbour is not a subsidence specialist.

As no agreement could be reached, the complaint was been passed to me to decide.

I was minded to reach a slightly different outcome to our investigator. So, I issued a provisional decision to set out my thoughts, and to give the parties the opportunity to respond before I reached a final decision. Here's what I said:

***"What I've provisionally 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.*

*Having done so, I'm minded to reach a slightly different outcome to our investigator. So, I'm issuing this provisional decision, to give the parties the opportunity to respond before I reach my final decision.*

*For ease of reference, I'll address each of the complaint points separately.*

***Water ingress and mould***

*Mrs K has been concerned about water ingress and mould in the property from early on in the claim journey. She says she was led to believe a replacement carpet she purchased would be covered and was disappointed when AXA later declined all of this damage on the basis it wasn't linked to the subsidence.*

*AXA says numerous specialists visited the property and shared the view that the damage hadn't been caused by the subsidence. It accepted that Mrs K was given incorrect advice about the carpet but said she'd have needed to replace the carpet regardless and so it wasn't responsible for a financial loss.*

*Our investigator highlighted that the leak detection specialist who visited the property said its investigations were inconclusive and that further investigations were recommended. But I haven't seen any evidence to suggest that further investigations were completed.*

*Given the evidence available, I'm not able to conclude that the water ingress and mould issues have been caused by the subsidence, and so should be covered under the claim. But I agree with our investigator that AXA's decision to decline this element of the claim, based on the evidence it had at the time, was unfair. And I agree that AXA must complete the necessary investigations into this damage, in line with the leak specialist's recommendations, before making a new decision as to whether there is cover under the policy for these issues.*

*In the event these investigations result in the damage caused by the ingress of water and mould being covered, AXA should reimburse the costs Mrs K incurred for the replacement carpet, as well as any other reasonable costs she has incurred repairing the water and mould damage. It should also pay 8% simple interest on any amounts due back to Mrs K, to compensate her for being deprived of the use of that money for other purposes. But if the investigations show the damage isn't linked to the subsidence, and/or isn't covered under the policy terms, then no reimbursement of these costs would be due.*

*Should a dispute arise over AXA's decision on these aspects, following completion of further investigations, then this will need to be raised as a new and separate complaint – with AXA in the first instance. If Mrs K remains unhappy with AXA's position following its final response letter, she can then refer that hypothetical new complaint to our service, subject to our normal rules and timescales.*

*AXA's premature and unfair claim decision on the water ingress and mould issues will have been understandably upsetting and frustrating for Mrs K. I'll consider the impact of these issues, alongside the wider service failings, when coming to a decision on a fair amount of compensation – which I'll address in a later section.*

#### *Damage to the rear of the property*

*The damage reported and investigated at the start of the claim was focused on the front of the property. Site investigations suggested the likely cause of damage to be clay shrinkage as a result of the roots of a nearby, local authority owned tree. However, other trees and shrubs were also highlighted, which included some owned by Mrs K's neighbour. These were subsequently removed.*

*During the claim, further cracking damage was reported or identified toward the rear of the property on the party wall adjoining Mrs K's neighbour's property. A loss adjuster's report in July 2022 suggests this was to be investigated as part of the claim. But AXA later advised Mrs K that monitoring at the rear showed no movement. And the loss adjuster concluded that the damage was too remote from the cause of the subsidence covered under this claim (the local authority tree at the front of the property) to have caused it. So, AXA decided the rear damage wouldn't be covered under the claim.*

*AXA's current position is that Mrs K can either obtain her own specialist report to contradict its findings, or that she can raise a separate, accidental damage claim and it will then complete additional investigations under that new claim. Should these investigations provide evidence that the rear damage is linked to the subsidence covered under the existing claim it would consider this and/or refund any costs incurred in obtaining the new expert report.*

*I've thought carefully about this issue. Having done so, while I appreciate it will come as a disappointment to Mrs K, I think AXA's offers here are fair and reasonable in the circumstances.*

*I say this because the current weight of expert opinion and evidence persuades me that the rear damage is most likely not linked to the subsidence which is covered under the existing claim. So, if Mrs K wants AXA to reconsider its position, then I agree the onus would be on her to obtain her own expert report to contradict the current evidence.*

*I fully appreciate that Mrs K's financial situation means she is unable to afford her own expert report. But I think AXA has also offered a reasonable alternative in setting up a separate accidental damage claim and carrying out investigations under the new claim.*

*I know Mrs K feels strongly that there should only be one claim, and I understand her concerns. But should Mrs K accept the option of a new claim, and evidence is found which shows the cause(s) of the issues is the same (or are linked), then I would expect this new claim to be removed from AXA's (and external) records and for the costs involved to form part of the existing subsidence claim. So, essentially, if it is proven that Mrs K is correct in her belief that the issues are linked, then the second claim should be closed and deleted.*

*If the evidence obtained during the new claim shows the issues are separate, then the second claim would remain and, if the claim was accepted, any associated excess would be due. I think this would be a fair reflection of the situation in those circumstances, given that hypothetical evidence.*

*As with the damp and mould issues, should a dispute arise over AXA's hypothetical claim decision on this aspect, then this will need to be raised as a new and separate complaint with AXA. If Mrs K remained unhappy with AXA's position following its final response letter, she could then refer that hypothetical new complaint to our service, subject to our normal rules and timescales.*

*Based on everything I've said above, I'm not minded to direct AXA to cover the rear damage, or to investigate it further, under the current claim. I think Mrs K should decide whether she wants AXA to open a new claim, or not, and should communicate her decision to AXA if she wishes to proceed with this.*

#### Service issues and compensation

*It's not in dispute that Mrs K received a poor level of service from AXA during the claim, in particular poor communication, a mismanagement of her expectations and a lack of updates. It's also clear that AXA's mishandling of the water ingress and mould issues would have been upsetting and that it has caused an unreasonable delay to those issues being properly investigated and potentially being resolved.*

*Taking the above into account, I agree with our investigator that AXA's offer of £450 compensation was insufficient. Having considered everything Mrs K has said about the impact of these issues to her and her young family, I'm minded to decide that AXA should increase the compensation to a total of £700."*

I asked both sides to provide any further comments or evidence they wanted me to consider within two weeks.

Neither side responded to say they had any further comments or evidence to provide. So, in light of that, and as the deadline has now passed, I'm moving forward with my final decision.

#### **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 neither side has provided any material new evidence or arguments which would lead me to alter my provisional conclusions, my final decision remains the same as outlined in my provisional decision – and for the same reasons.

#### **My final decision**

For the reasons I've explained above, and in my provisional decision, I uphold Mrs K's complaint in part.

AXA Insurance UK Plc must:

- Fully investigate the cause of water ingress and mould under the existing claim.
- Pay Mrs K a total of £700 compensation for the distress and inconvenience it has caused her.

AXA Insurance UK Plc should also investigate the rear damage concerns under a new accidental damage claim, in line with the offer it has already made, if Mrs K confirms she is happy for this to happen.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 27 March 2024.

Adam Golding  
**Ombudsman**