

The complaint

Mr E complains AXA Insurance UK Plc unfairly declined his claim for subsidence made on his home insurance policy.

What happened

Mr E held insurance with AXA from July 2019 to July 2023. In November 2023, he contacted AXA to make a claim for damage caused by subsidence. AXA said as he no longer held a policy with it, he couldn't make a claim. It noted he hadn't made a claim for this in the four years he was insured by AXA. It further noted he had no current insurance policy. It said under the principles of the ABI domestic subsidence agreement, it would have been for his new insurer to assess the claim more than eight weeks had passed since his policy lapsed when he notified it of the claim.

Mr E said that he had raised issues with subsidence with AXA in 2020, but as his property was a newbuild, he'd been referred to the provider of his newbuild warranty. AXA didn't agree to change its position and so Mr E brought his complaint to the Financial Ombudsman Service.

Our Investigator wasn't satisfied AXA had treated Mr E fairly in declining the claim. She was persuaded the damage had happened whilst Mr E was on cover with AXA.

She also thought, for the purpose of the ABI domestic subsidence agreement, that AXA should treat the notification as being in 2020, given this is when Mr E discussed the damage with an agent of AXA. She didn't think AXA had investigated Mr E's points about him having already raised the damage in 2020. She said as a result, it had caused Mr E unnecessary worry, and delayed moving matters forward. She recommended AXA consider the claim in line with the terms of the policy. She also said AXA should pay Mr E £200 compensation, for the unnecessary worry caused in refusing to consider the claim.

Mr E accepted that outcome. AXA didn't. It said under the ABI agreement for domestic subsidence claims, firms are expected to take the date of notification of a claim as the relevant date of loss, rather than when the insured might have first noticed the damage. So it said, given Mr E didn't notify them of the claim until after eight weeks after the policy had lapsed, it would generally be for Mr E's new insurer to meet the claim, and AXA would pay a contribution. It said Mr E was now uninsured, so there was no *new* insurer to take the claim forward. But it didn't accept that Mr E having no new insurer meant it should therefore meet the claim.

It also said it was a broker, and not AXA, who gave Mr E the information in 2020 about the damage. It said any complaint about its actions, needed to be raised with it directly.

As the matter wasn't resolved, it has come to me to decide.

I've already set out to AXA and Mr E that I intend to reach the same outcome as our Investigator, but for slightly different reasons. I said I wasn't satisfied that the domestic subsidence agreement applies in this case, as this specifically deals with scenarios where there has been a change in insurer. Which there hasn't been here.

So, on that basis, I said I wasn't satisfied AXA could rely on this agreement to decline the claim. However, I noted that in the supplementary questions of the agreement, there was

one that applied to this scenario. Question 34 deals with an unintentional break in cover. That is where there is more than a 30-day gap between one insurance policy ending and another starting with a new provider, which applies to Mr E's scenario.

It says in this scenario '*ordinary principles*' should be considered as to who considers the damage. I said I considered those ordinary principles to be that the insurer is on cover for insured damage which occurred whilst the policyholder was insured with it unless it can rely on an exclusion to decline it.

I said having considered the evidence here, I think the damage Mr E is claiming for now, happened whilst he was on cover with AXA. I say this as he's provided evidence of investigations into the damage from when the policy was in force.

Our Investigator said she was satisfied AXA was on notice of a claim due to Mr E notifying the broker in 2020. I said I didn't consider any 'notification' to be central to the outcome. Whether I accepted Mr E notified AXA in 2020 or not, I'd still say that it needs to consider Mr E's subsidence claim, in line with its policy terms, based on when the damage happened.

AXA accepted the findings and proposed outcome I set out.

Mr E also accepted the outcome. But he asked whether it meant AXA can still decline his claim. I confirmed to Mr E that I couldn't at this stage, ask AXA to settle the claim, because it hadn't properly assessed it in line with its usual policy terms. I said if having done so, he's unhappy with how AXA handles matters going forward, he can raise a further complaint with this Service. Mr E also said AXA declined to offer him a renewal, which is why he was left without insurance. I couldn't see AXA had looked into a complaint about its refusal to offer renewal, so I said I couldn't consider that as part of this complaint.

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 both parties accepted the provisional findings I had set out, I see no reason to depart from those, and as such my provisional findings are now those of this, my final decision.

AXA will need to assess Mr E's claim for damage caused by subsidence, in line with its usual policy terms.

AXA will also need to pay Mr E £200 compensation for the unnecessary worry caused in unfairly refusing to consider his claim for damage which happened whilst the policy was in force.

My final decision

My final decision is that I direct AXA Insurance UK Plc to consider Mr E's claim for damage caused by subsidence in line with its usual policy terms.

AXA Insurance UK Plc also needs to pay Mr E £200 compensation for unfairly refusing to consider his claim under the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 July 2024.

Michelle Henderson
Ombudsman