

## **The complaint**

Miss B and Mr C complain that AXA Insurance UK Plc has unfairly handled a subsidence claim under their commercial property insurance policy.

Any reference to Miss B, Mr C, or AXA includes respective representatives or agents.

## **What happened**

The background of this complaint is well known to both parties. So, I've summarised events.

In October 2020, Miss B and Mr C made a subsidence claim under their commercial property insurance policy.

AXA investigated this and carried out monitoring. Following a complaint about delays and temporary repairs, AXA provided a final response letter in May 2022. The complaint came to this Service and was not upheld. The Investigator said AXA's compensation of £150 related to the quality of temporary repairs was fair, found there to be no avoidable delays, and said AXA's decision to decline a loss of rent payment at that time was fair. This matter closed in May 2023.

In July 2022 AXA agreed to pay 50% of the loss of rent from the date it was notified of window damage (in October 2021). AXA also agreed to pay 50% of the costs towards replacing the windows.

In 2023 Company B were appointed by Miss B and Mr C to produce an independent report. Their report identified signs of ongoing movement at the property and made recommendations to continue further monitoring. It also concluded the extension was not structurally sound and recommended demolishing and rebuilding on a cost basis.

In June 2023 AXA stated it would carry out further monitoring due to Company B's report. AXA said if the property is stable then the consultant would view the site to assess damage and produce a schedule of works. And due to the damage and necessary repairs unrelated to claim works AXA would be cash settling the matter.

A follow up complaint was raised with AXA, with Miss B and Mr C saying:

- AXA's offer towards loss of rent was insufficient, and it shouldn't have been for Miss B and Mr C to raise concerns about functionality of doors and windows, this instead should have been identified by AXA's agents. They said they should receive loss of rent from the start of the claim onwards.
- Temporary repairs from March 2022 were insufficient and fresh cracks had appeared and further movement had taken place. They said AXA and its agents hadn't attended the property nor erected a scaffold that was previously promised. Miss B and Mr C said they wouldn't agree to any permanent repairs taking place until confirmation the site was stabilised had taken place. They said this meant since August 2022 no progression had taken place. And in February 2023 they incurred pest control costs of around £200.

- AXA should provide them with confirmation the property was stable, that it was carrying out permanent repairs, a detailed report of what it involved, and for AXA to acknowledge it overlooked problems from the start of the claim. Miss B and Mr C sought full reimbursement for loss of rent and described the council tax and rising costs that were owed.

AXA subsequently provided another final response letter dated July 2023 in which it didn't uphold the complaint. It said it recognised Miss B and Mr C disagreed with the scope of works it put forward, and a reconsideration around the loss of rent.

In September 2023 AXA's surveyor met Miss B and Mr C to inspect the property. At this time AXA agreed the property was not stable, and it said a neighbouring tree was most likely the cause.

In March 2024, one of our Investigators assessed the complaint and didn't uphold it, concluding AXA's offer to pay 50% towards both the window replacement and loss of rent was fair and reasonable in the circumstances, saying:

- *Scope of view:* she would not reconsider the complaint points already addressed previously by this Service. This included not reconsidering the quality of the temporary repairs, and any of the loss of rent issues prior to the May 2022 final response.
- *Window costs:* The structural reports provided and AXA's correspondence in which it says the property is in a poor state of repair unconnected to the subsidence. This included having no kitchen, an unusable bathroom, holes in the ceiling, a rear access door that was not operational, and windows suffering from wear and tear.

AXA had recognised that the subsidence had impacted the frames of the windows and offered 50% of the cost of replacement in light of their condition. The Investigator felt this was fair in light of the poor condition of the windows based on the available evidence.

- *Loss of rent:* The Investigator said AXA had been clear to Miss B and Mr C in June 2021 that the home would be habitable had they carried out repairs/maintenance. As this wasn't done, in light of the condition of the home, and lack of mitigation on part of Miss B and Mr C the Investigator concluded AXA's offer to pay 50% of the loss of rent from October 2021 onwards was fair.
- *Council tax exemption:* The Investigator found AXA had acted reasonably by contacting the council to notify it of the property's condition, and it was ultimately the council's decision to not consider it exempt – which is not the responsibility of AXA.

Miss B and Mr C disagreed, providing photos related to temporary works, and stating they had obtained an opinion that said the implicated trees were not the cause of the subsidence due to their distance.

As of February 2024, Miss B and Mr C said they had been told it may take up to another six months for the vegetation problem to be resolved, followed by further monitoring. They have also provided various photos of the property showing cracking and other damage throughout.

The Investigator reiterated we would not re-address matters previously handled under another complaint related to the quality of the temporary works. And the matter was passed to me for an Ombudsman's 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.

Having done so, I'm not upholding this complaint.

### *Scope of decision*

First, I want to acknowledge that I recognise Miss B and Mr C will want this Service to consider all matters and events going back to the start of this claim. I simply do not have a free hand to do so, and as our Investigator has outlined the previous complaint addressed matters regarding the quality of repairs so I will not comment on these matters again. This means I will be looking at events that followed the May 2022 final response letter up until the July 2023 final response – so the temporary repairs they've complained about fall outside of this complaint.

I have considered the complaint points regarding the damaged windows, and AXA's decisions around loss of rent up until July 2023, as well as AXA's actions regarding council tax that Miss B and Mr C have raised.

In regard to the claim, from what I understand, there's still potential further vegetation that may need to be removed to stabilise the property and monitoring that will likely follow (if these are yet to happen). These events have happened sometime after the final response letter of July 2023 and appear to be ongoing. So, for this reason I'm not going to comment on matters beyond the date of the final response either. And this includes the more recent evidence Miss B and Mr C have asked us to consider regarding the current cause of the subsidence.

Miss B and Mr C will need to raise these issues with AXA in the first instance before this Service is able to consider these matters. And as AXA takes these matters forward I would just remind it of its obligations to handle these matters promptly and fairly.

### *Claim for window issues / and loss of rent from October 2021 onwards*

There's no dispute that Miss B and Mr C have a valid claim under their policy for subsidence damage and loss of rent. So, I won't repeat the terms again here. The dispute in this case lies with the settlement around this. And for the loss of rent, I am only considering AXA's revised position on the matter that came *after* its May 2022 final response up until its July 2023 response.

AXA initially said the subsidence damage identified (cracking) would not have made the property uninhabitable, it was instead the other issues with the home (including the bathroom damage due to an escape of water) were what made it unlettable at that time. And it said it told Miss B and Mr C they would need to carry out maintenance and repairs to their property for it to be habitable and that such reasonable costs would be reimbursed if the claim was validated. This was subject to the previous complaint so I will not readdress these points.

After AXA was informed of window issues around October 2021, it looked again and agreed subsidence has caused issues around some of the window frames due to the ground movement. AXA said it would only pay 50% of the costs and loss of rent as their condition was poor due to a lack of maintenance at the time of the subsidence damage. It said if the windows had been maintained appropriately, they would not have likely needed replacement and the subsidence wouldn't have led to the home being uninhabitable.

So, put simply, it said the lack of maintenance has led to the windows being in a worse position than they would've been otherwise.

AXA said it would only cover 50% of the loss of rent from October 2021 onwards because it was only made aware of issues related to the windows at this time. And it said it confirmed to Miss B and Mr C in June 2021 that if attempts were made to mitigate the loss and carry out repairs (regarding the poor condition) the property would've been habitable. From what I've seen this was communicated to them.

AXA said it could not resolve or mitigate this damage prior to being told about it – and as there was no attempt by Miss B and Mr C to repair or upkeep the property to mitigate this loss either it said its offer of 50% towards this also was fair in the circumstances.

The insurance contract between Miss B and Mr C and AXA requires them to keep the property in a good condition and “*in good repair*”. So, on its face, AXA's decision doesn't sound unreasonable to me. But to determine if AXA's actions were fair, I've thought about the evidence it has relied upon to say the windows were in a poor condition.

I've reviewed various reports, site investigations, photos and contact notes provided by AXA and Miss B and Mr C. These show the property had an unusable bathroom due to an unrelated existing water tank leak. This isn't disputed by Miss B and Mr C from what I've seen. There are also various comments from specialists and agents who visited the site commenting on its general poor condition, including comments about the windows, holes in the ceiling and general upkeep. I've carefully considered all of the commentary alongside photos taken around the time, and I think AXA's conclusion about the property's condition is fair – and I agree there appears to be various reasons the property would be unlettable or uninhabitable (for the purposes of the policy) that were unconnected to the subsidence claim.

These contact notes and correspondence I've seen reflect the first discussion of non-functioning doors/windows was in October 2021. From this point onwards AXA agreed the property was now uninhabitable for the purposes of the policy, but said this would have been avoidable had Miss B and Mr C carried out necessary repairs/maintenance. In light of the above, and wider concerns with the property, I'm satisfied this was a fair conclusion.

Miss B and Mr C said AXA should've identified these issues within its earlier review of the property. AXA responded to this saying it was not for its contractors to review all aspects of the home upon its visit, and that they had met their obligation of considering the appropriate damage that was reported at the time (cracking).

I'm in agreement that there is a responsibility of the policyholder to report the loss they are seeking to claim for. And in these circumstances, I'm not persuaded in this particular case that AXA's agents did something wrong by not discovering this earlier.

I've also considered that Miss B and Mr C have provided little in response to any of these points to show the property was either in good repair or good condition. So as a result, based on what I've been given and for the period I've considered, I'm satisfied AXA's settlement for the loss of rent and windows is fair and I'm not directing it to do anything further.

### *Council tax issues*

Miss B and Mr C have said the property has not been deemed as uninhabitable by the relevant agency that makes decisions as to whether the property should be exempt for council tax purposes. And they've explained the impact of having this ongoing financial strain

has had on them. They've provided an explanation from a government agent that explained all of the rules around a property being considered derelict or undergoing major structural alteration works under specific legislation.

I won't detail these again here but in essence the agent explains the extent of damage or works necessary to meet these criteria, and explains that an owner, local council or any other party deeming it uninhabitable is not sufficient to meet this bar. They also explained that a property may be not fit for habitation, but this may not mean necessarily mean it is exempt for council tax purposes. The agent concluded that Miss B and Mr C's property did not meet the requirements for exemption.

Given this decision was reached by the government agent and this sits outside of the scope of control of AXA, I don't think it would be reasonable for me to hold AXA accountable for such a decision or direct it to pay for these costs in principle when this is outside of the policy terms. Particularly given it appears to me that AXA did engage with this agency and from what I've been given it appears the cover under the policy is limited to "*rent*" and not other household outgoings.

I recognise Miss B and Mr C are concerned about this as an ongoing cost and in relation to what they consider to be delays and inaction on AXA's part, but this is not something I've considered under this complaint as I've explained in the scope of this decision above.

### **My final decision**

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr C to accept or reject my decision before 26 September 2024.

Jack Baldry  
**Ombudsman**