

## The complaint

Miss M and Mr W complain that AXA Insurance UK Plc unfairly declined a claim and removed cover for subsidence under their home insurance policy.

Where I refer to AXA, this includes the actions of its agents and claims handlers for which it takes responsibility.

## What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In August 2021, Miss M and Mr W purchased a property and took out a home insurance policy underwritten by AXA.

During the sales call, Miss M and Mr W informed AXA that their homebuyer survey had shown there was historic underpinning and subsidence 23 years previously. They were informed that as this was over 10 years ago, it didn't need to be added to the policy.

In November 2022, Miss M and Mr W noticed some cracking to the front bay of the property, so they made a claim.

AXA arranged for a loss adjuster to attend in March 2023. And in June 2023, it informed Miss M and Mr W that their subsidence cover was invalid because they hadn't disclosed that the damage was still visible.

AXA removed subsidence cover from the policy and applied several endorsements retrospectively. This reduced the premium, which it refunded to Miss M and Mr W. It deemed the cause of the recent cracking to be "drain crash" which is recorded on the policy, and cover for the claim was declined.

Miss M and Mr W raised a complaint, their main points being:

- They disclosed the historical underpinning at the point of sale and was told that it wasn't relevant.
- The homebuyer survey mentions some cracking without indicating the cause but says that any "*movement is not unusual or particularly significant. It is an historical fact.*" As such, they purchased the property in the knowledge that there were no current structural issues and answered AXA's sales questions in utmost good faith.
- The policy was altered, and a refund of premiums was credited to their account without their agreement.
- The cause of the cracking has been recorded as "drain crash" but no evidence has been provided to show how this conclusion has been reached, despite being told the report would be sent to them. They say the loss adjusters only looked at the cracks

and completed no investigation or monitoring. Their own structural engineer believes the movement to be a result of extreme weather conditions.

AXA maintained its decision. But it acknowledged there'd been some delays and paid £50 compensation by cheque.

As Miss M and Mr W remained unhappy, they brought their complaint to our Service. And our Investigator upheld it. She said that without the sales call showing that Miss M and Mr W were asked a clear and specific question which they failed to answer accurately, she couldn't be satisfied a misrepresentation had occurred which would allow AXA to alter policy cover retrospectively. She also hadn't been provided with AXA's underwriting criteria to show that it wouldn't have offered subsidence cover had it known the content of the homebuyer survey.

Our Investigator recommended that AXA reinstate subsidence cover and remove the endorsements, recalculate the premiums, and continue with the claim. Miss M and Mr W accepted this outcome, but AXA didn't. So 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.

#### *Subsidence cover*

The remedy to turn back the clock and apply an exclusion retrospectively is set out in the Consumer Insurance (Disclosure and Representations) Act 2012 (or CIDRA). CIDRA sets a duty on a consumer to take reasonable care not to make a misrepresentation. But it applies to representations made when a contract is entered into (or varied).

For a remedy to be available to AXA under CIDRA, it would need to establish that Miss M and Mr W failed to answer a clear question about the structural condition of their property.

Our Investigator has asked for the recording of the sales call in August 2021 to ascertain what questions AXA asked and what answers Miss M and Mr W gave. But AXA has failed to provide this.

Whilst AXA does acknowledge that Miss M and Mr W disclosed previous historical underpinning and subsidence to the property on the sales call, it says they didn't disclose that the damage was still visible. But it hasn't shown that it asked any questions about this.

As consumers, it's not for Miss M and Mr W to know what a material fact is and what information they need to disclose. Rather, the obligations are on AXA to ask clear and specific questions to ascertain the information it requires to assess the risk.

Given that Miss M and Mr W voluntarily gave details of the previous subsidence, despite not being asked to disclose incidents from more than 10 years ago, they gave AXA the opportunity to ask more questions about this and / or request a copy of the homebuyer survey. But I can't see that it did this.

Based on this, I'm not persuaded Miss M and Mr W misrepresented the risk when they entered into a contract with AXA. So it follows that AXA isn't entitled to add exclusions or policy restrictions retrospectively.

#### *Claim for cracking*

AXA has recorded on Miss M and Mr W's policy that the property suffered from subsidence in 2021 caused by "drain crash", which is an unusual way to describe the cause of subsidence and I haven't seen any information to show how it arrived at this diagnosis. It hasn't provided any evidence to show that it investigated the cracks, carried out any of the usual tests, or monitored the property to reach this outcome.

As such, I'm not persuaded it was fair for AXA to conclude that the cracks were as a result of subsidence. I can't see that the cause of the cracking has been established and Miss M and Mr W's own structural engineer has reached a different conclusion as to the cause.

As such, the reference to subsidence and "drain crash" should be removed from the policy and the claim investigated properly under the buildings policy, including the reinstated subsidence cover.

### *Delays and customer service*

The Financial Conduct Authority's (FCA) Insurance Conduct of Business Sourcebook (ICOBS) requires businesses to handle claims promptly and fairly, provide information on the claim's progress, and to not unreasonably reject a claim.

Despite Miss M and Mr W making their claim in November 2022, AXA didn't arrange for anyone to attend the property until four months later. And it took a further three months to provide a decision on the claim.

As such, I'm not satisfied AXA dealt with the claim promptly. And as I've explained above, I'm not persuaded it declined the claim fairly either.

This would've no doubt caused Miss M and Mr W a great deal of distress and inconvenience. And I'm not satisfied the £50 compensation already paid reflects the impact AXA's actions have had. So I intend to award further compensation.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct AXA Insurance UK Plc to:

- reinstate subsidence cover and remove the endorsements from the policy dating back to inception. It can recover no more than the policy premiums it reimbursed to Miss M and Mr W in recognition of the increased policy coverage.
- reconsider the claim in accordance with the remaining policy terms and conditions.
- pay compensation of £200 in addition to what it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr W to accept or reject my decision before 7 October 2024.

Sheryl Sibley  
**Ombudsman**