

The complaint

Miss E and Miss M complain that AXA Insurance UK Plc (“AXA”) provided poor service and made unfair decisions in relation to a claim after their garden wall collapsed.

Any reference to AXA in this decision includes its appointed agents.

What happened

The circumstances of this complaint are well known to both parties, so I won’t repeat them in detail here. The complaint predominantly concerns AXA’s handling of Miss E and Miss M’s claim under their home insurance policy, and the decisions AXA made, as well as the delays, following a substantial part of Miss E and Miss M’s garden wall collapsing in 2022.

AXA refused to deal with the claim under the “buildings insured” part of the policy, and said that Miss E and Miss M were underinsured due to the garden wall meeting the definition of an “outbuilding”, for which there is only £7,500 worth of cover. Miss E and Miss M provided expert opinions in relation to the matter and said that the wall is structurally tied to the home, so it isn’t an outbuilding.

Our investigator upheld the complaint. He said the garden wall should be considered under the main buildings section of the policy. AXA disagreed. So the complaint has now come to me to decide.

This decision won’t deal with every point raised by the parties – I will focus only on the key parts of the claim so that the parties can move forward.

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 upholding this complaint. I’ll explain why.

I’m persuaded that the garden wall does not meet the definition of an “outbuilding”. AXA has pointed to the 2019 policy definition and considers that based on this, the garden wall is an outbuilding. But the 2019 definition states:

“To make Our intent clearer, We’ve expanded the illustrative list of what is an Outbuilding:

Outbuildings:

Fixed structures or buildings detached from the Home located within the Boundary that You are legally responsible for.

Outbuildings include but are not limited to:

- *Detached garages, sheds, boundary or garden walls, fences, tennis courts,*

swimming pools, external car ports, driveways, patios, artificial lawns, septic tanks, soakaways or sewage treatment centres.”

The list above begins with the word “detached” – and whilst there is some ambiguity around whether every structure would need to be detached from the main building in order to be classed as an outbuilding, I think it’s reasonable to interpret this definition to mean that each structure would need to be detached.

This is because the policy also defines outbuildings as structures that are “*detached from the Home*”. AXA has argued that the wall is not attached to the main home and only attached to a building. But I’m persuaded, by both the structural engineer’s report and the surveyor’s report provided, that the wall joins on to the main home and cannot therefore be described as detached from it.

AXA says even if the wall was considered under the building sum insured, there would be a reduced settlement. It says the policyholders declared a total sum insured of £520,000 for all their buildings and given the relatively high cost of replacing the wall, the remainder could not have been a realistic rebuild value for the property itself. It’s had Miss E and Miss M’s response to this, which was passed on to AXA by our investigator – and AXA hasn’t responded. I’ve found Miss E and Miss M’s explanation for this to be plausible and they’ve provided further evidence of valuations of their property which shows the figures given for the rebuild cost were reasonable. And for AXA to proportionately reduce the settlement amount, it would need to show that Miss E and Miss M gave an unreasonable answer to a clear question that they were asked. I don’t consider AXA to have been able to demonstrate this.

It follows therefore that AXA will need to deal with the claim under the main buildings part of the policy, without applying a reduced settlement.

Miss M and Miss E arranged for their own surveyors to determine the scope of the damage and the nature of the wall itself in order to assist with the claim. I consider this to have been due to AXA not reaching a fair conclusion on the claim sooner, so AXA should reimburse Miss M and Miss E the cost of the reports they paid for, plus interest, subject to them providing invoices to AXA for this work.

Miss M and Miss E also had to pay for work to the property themselves, as they were advised that the damage to the wall had made their property unstable. I don’t consider this unreasonable, so AXA should also pay interest on any amount of the additional cash settlement that has been used already, to compensate Miss M and Miss E for the time they’ve been without those funds. Miss E and Miss M have told us about the additional borrowing they’ve needed, in order to get the essential works completed to make the property safe, and I’ve taken that into account when awarding interest and when considering the impact AXA’s actions have had on Miss E and Miss M.

The claim journey hasn’t been straightforward, and I can see this has had a significant impact on Miss M and Miss E and their daily life. Claims of this nature will always have a detrimental impact on family life, but I’ve considered where AXA’s actions or failure to act has exacerbated that impact.

I’m not persuaded that AXA did enough to progress the claim for several months, and from November 2022 to August 2023 in particular. AXA changed its position causing a significant amount of worry and uncertainty – and Miss M has told us about a health condition which was made substantially worse due to the stress of the situation.

I appreciate that a claim of this nature would be stressful even if AXA’s service had been

better, but I think AXA added to the stress by unfairly settling the claim proportionally, which meant Miss E and Miss M had to take out borrowing to fund the essential repairs themselves. So overall, I think AXA's actions caused substantial distress, upset and worry over a sustained period of many months, so I'm satisfied that increasing the amount of compensation in this case from £500 to £1500 is fair in the circumstances.

Miss M and Miss E have confirmed that the loss of rent they are claiming isn't for the flat which is rented out to family at no charge, but for the house that's used as a holiday home a few weeks of the year. As the policy covers loss of rent if a tenant cannot live in it due to insured damage, I will require AXA to consider the loss of rent claim in line with the policy terms.

Putting things right

AXA Insurance UK Plc must now:

- Cash settle Miss E and Miss M's claim under the "buildings sum insured" section of the policy, without applying a reduction to the settlement.
- Pay Miss M and Miss E 8% simple interest per annum on any additional cash settlement from the date they paid for the building work until the date of settlement.
- Reimburse Miss E and Miss M for the cost of any surveys and expert reports they've obtained, plus 8% simple interest per annum on these amounts from the date the invoices were paid until the date of settlement.
- Assess Miss M and Miss E's loss of rent claim in line with the terms and conditions of their policy, from the date of the insured event until the date the property was made habitable.
- Pay Miss M and Miss E a further £1,000 compensation for distress and inconvenience, bringing the total amount of compensation for distress and inconvenience in this case to £1,500.

My final decision

My final decision is that I uphold this complaint and I direct AXA Insurance UK Plc to put things right as I've set out above.

AXA must pay the amounts set out above within 28 days of our service telling it Miss M and Miss E have accepted my final decision. If it does not pay within 28 days, it must add interest to any unpaid compensation at a rate of 8% simple per annum from the date of my final decision until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E and Miss M to accept or reject my decision before 10 June 2024.

Ifrah Malik
Ombudsman