

The complaint

Mrs P has complained about the way AXA Insurance UK Plc handled a claim she made on her buildings insurance policy for subsidence.

Reference to Mrs P includes her representative.

What happened

The claim has been ongoing for a number of years, so I'll summarise the main points:

- Mrs P owns a property that she rented out to tenants. I understand they left when their lease expired in 2018. Shortly after, Mrs P was told by the local authority there were a number of problems at the property that needed to be put right before she could rent it out again. This included subsidence damage, as well as problems with the electrics and damp. She got in touch with AXA soon after.
- AXA appointed a loss adjuster, S, to handle the claim. S visited the property in February 2019 and arranged for investigations to be carried out, including a drainage survey. As a result, S said the damage had been caused by subsidence due to an escape of water. It setup level monitoring and got in touch with the local water authority, who carried out drainage repairs in August 2019.
- S went on to schedule the building repairs in late 2019. It arranged for structural repairs to be carried out in early 2020 and offered to settle the decorative repairs by cash. However, Mrs P was concerned the building was still moving. And she didn't accept the cash offer.
- S said level monitoring had shown general stability prior to carrying out the building repairs, but subsequent readings suggested there may still be a drainage leak. It carried out another drainage survey, found damage on Mrs P's system, and agreed to repair it. This was completed by September 2020 and monitoring continued.
- In early 2021, Mrs P appointed a representative, M, who questioned the quality of the repairs and whether the property had been stabilised and recommended further investigations. After they were carried out, and there was further discussion between the parties, S agreed that some form of stabilisation work was required. It later proposed a scheme which differed from what it had agreed with M.
- In early 2022, Mrs P complained about a lack of progress with the claim, a lack of communication, and the change of scheme. In response, S explained how it was planning to progress the claim. In March 2022, AXA responded to the complaint. It said the scheme was still being considered. It also accepted it had caused some avoidable delays and hadn't communicated clearly. It offered £200 compensation.
- Mrs P questioned whether AXA had dealt with her complaint points in full and it agreed to consider things further. By September 2022, AXA provided an updated complaint response and increased the compensation offer to £450.

- Mrs P still didn't think AXA had fully dealt with her complaint points, and AXA again agreed to consider the matter further. By this time, her complaint was made up of the following main points:
 - AXA, through S, handled the claim unreasonably, including causing avoidable delays and communicating poorly.
 - As a result, Mrs P had been unable to rent the property out for an extended period of time and suffered a loss of rent. She'd continued paying a mortgage on the property during that time.
 - Mrs P turned to a representative and paid for their professional fees.
 - The premiums Mrs P paid AXA increased significantly.
 - Mrs P suffered stress, worry, and financial hardship during the claim. AXA offered a total of £650 compensation but this was derisory.
- In January 2023, AXA provided another updated complaint response and increased the compensation offer again, this time to £1,225 in total. It agreed to consider whether loss of rent was covered and to what extent it would pay M's professional fees. It thought the premiums it had charged were fair. At this time, the stabilisation scheme had been finalised and a start date for work was awaited.
- Our investigator didn't think the complaint should be upheld. She said the compensation AXA had offered was reasonable, it hadn't increased the premiums unfairly, and it wasn't responsible for the loss of rent or professional fees.
- Mrs P disagreed and made a number of points. In summary:
 - There were greater periods of delay than our investigator had accounted for.
 - Mrs P couldn't have carried out repairs to the 'non-subsidence' problems whilst the property was moving. And even if she had carried out work to resolve the other problems, she couldn't rent out the property until the subsidence was resolved as well.
 - M acted in relation to a number of technical aspects – not merely to support Mrs P during the claim.
 - The premium increases were significant and unfair in light of AXA's delays. She was also concerned about the increase of excesses on the policy too.
 - Overall, she thought AXA should make payments on all points.
- An agreement wasn't reached, so the complaint has been passed to me.

My provisional decision

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- The scope of this complaint is the way it's been handled up to AXA's complaint response in January 2023, including its offer of compensation, and the financial losses Mrs P would like it to meet – loss of rent, mortgage payments, professional fees, and increased premiums. Mrs P is entitled to raise a further complaint about any other matters if she wishes. For example, the increased excesses, which didn't form part of the original complaint.

- There are a number of points to consider, so I'll take each in turn.

Claim handling

- There's no dispute the damage was caused by subsidence and is covered by the policy – AXA accepted the claim from the outset and has been taking steps to handle it ever since, primarily through S. When handling a claim, AXA is required to do so promptly and fairly.
- It's not in doubt that AXA failed to fulfil that requirement. It's accepted it caused avoidable delays and communicated poorly at times. As a result, it offered Mrs P a total of £1,225 compensation for the distress and inconvenience caused. She didn't accept this amount and it hasn't been paid.
- So the key question for me is whether this figure is fair and reasonable in the circumstances – does it go far enough to reflect the impact on Mrs P of the avoidable claims handling problems caused by AXA?
- I've considered the claim history in detail, taking into account the timelines provided by both parties, together with the accompanying documents and correspondence. I won't go through each and every point of the claim in detail here, but I've read and thought about it all when reaching my decision. And as I set out the key points in the background above, I won't repeat them in this section. I'll focus on the parts of the claim which I think are significant.
- In summary, I'm satisfied AXA initially handled the claim fairly and in line with the usual subsidence process. It appointed a loss adjuster, who carried out investigations and established the cause of subsidence. It identified defects to drainage for which the local water authority was responsibility and asked for it to carry out repairs to stabilise the property. That was complete by August 2019.
- However, there were also defects on a section of drainage Mrs P was responsible for, but they weren't spotted at the same time. It's unclear why this was, but usually I'd expect all drainage defects to be identified at the outset. If they'd been identified at the same time as the others, I don't see any reason why all drainage work wouldn't have been completed by August 2019.
- Even if all drainage repairs had been completed promptly, I have no reason to think that would have stabilised the property. It seems likely there would have been continued movement regardless, and a stabilisation scheme would have been required. It would inevitably have taken a period of monitoring to discover that – and it would inevitably have taken time to design a suitable scheme and accompanying repair schedule, including taking steps to gain appropriate consent such as party wall and certain statutory agreements.
- I think it's reasonable to say that would likely have taken until January 2021, had all drainage repairs been completed promptly. It would have meant the position reached by January 2023 – that the stabilisation scheme was finalised, and a start date awaited – would have been reached around two years sooner.
- As a result, I consider AXA is responsible for around two years of avoidable delays within the scope of this complaint. During that time, I think Mrs P has suffered substantial distress and inconvenience.

- As it's a rental property, she hasn't suffered from the kind of day to day disruption one might encounter if they lived there. But she has nonetheless been left worried about how and when her property will be repaired for a prolonged period of time – and how she would balance her finances in the meantime. S arranged and carried out repairs, which I think would likely have given Mrs P reassurance the problem was resolved. However, she later found out it hadn't been, so I don't think her expectations were well managed.
- And I think the way AXA and S communicated with Mrs P didn't help matters. After the initial stages of the claim, there were often long gaps between communication and there wasn't a clear action plan of next steps and a timeline. Claim handling staff frequently changed and often seemed unaware of what had gone before them. The most obvious example of this is AXA and S not realising it had carried out repairs to Mrs P's building earlier in the claim. I find this extraordinary and no doubt it left Mrs P deeply concerned about how her claim was being handled.
- Whilst complaint handling in isolation isn't something I can consider, here it had an impact on the claim so I can. It's very unusual, and very disappointing, to see AXA require several attempts, over many months, to answer a complaint. And even when it did give its final complaint response, for some of the points it had only got as far as saying it would ask S to consider them further. I would have expected AXA to take responsibility for resolving a complaint and giving a complete answer in line with regulatory guidelines. But it didn't do so.
- Taking all of this into account, I think it was right for AXA to offer compensation. I'm satisfied its offer of £1,225 was fair and reasonable for the scope of this complaint. I understand AXA hasn't paid any of the amounts it's offered.

Loss of rent and mortgage payments

- Mrs P has asked AXA to pay her loss of rent. I understand her tenants left in 2018, following which she was told of the repairs needed before she could rent it out again. It hasn't been rented out at any point during the scope of this complaint. So that's around four years Mrs P has been without rent.
- AXA notes the subsidence claim wasn't the only barrier to Mrs P renting out the property. She was also required to carry out other repairs – to the electrics and damp – before she could rent it out. AXA says she didn't take any steps to carry out this work, so the property couldn't have been rented out regardless of the claim. Nor did she attempt to market the property at a reduced rent to limit her loss.
- Mrs P says the subsidence damage was the main problem and her intention was to have that dealt with, before moving onto the more easily remedied other problems. But, because AXA hasn't stabilised the property, she was unable to take any further steps. And given the damage and ongoing claim, the property hasn't been in a rentable condition at any point during the claim.
- The policy has a loss of rent specific section, but I understand Mrs P didn't take out that cover. So that doesn't apply. However, AXA says there is an extension within the policy for loss of rent cover. In summary, it says if the subsidence damage made the property uninhabitable, loss of rent is covered up to 33.33% of the buildings sum insured. That would mean there's loss of rent cover up to around £75,000.

- In 2018, Mrs P was told by the local authority she had to resolve the subsidence damage, as well as other problems, before she could rent out the property again. So I'm satisfied both the insured and uninsured problems were barriers to her renting the property out. I note AXA's point that Mrs P didn't take steps to resolve any of the uninsured problems. However, I'm persuaded by Mrs P's points in response.
- I think it would likely have been impractical or risky to carry out the other work when the property was moving and further damage could be caused. And I think it would be unusual to carry out other work in this manner. In my view, most policyholders would reasonably wait for the subsidence movement to cease before carrying out other work. But even if I put those concerns to one side, even if Mrs P had carried out the other work, she would have been highly unlikely to have been able to rent out the property with an ongoing subsidence claim. I think it would be unusual for a tenant to move into a damaged property where repairs, possibly significant ones, are upcoming and potentially within the duration of the tenancy.
- As a result, I'm satisfied the property was uninhabitable for rental purposes as a result of the subsidence damage. So I consider AXA should accept the loss of rent claim under the policy. It will then be for AXA to explore that claim with Mrs P.
- Mrs P has noted she'd continued to make mortgage payments throughout the claim and has asked for AXA to contribute towards these.
- Mortgage payments aren't covered by the buildings insurance policy. So I'd likely only require AXA to make a payment toward them if I was persuaded it had avoidably caused a financial loss.
- Mrs P would have been liable to pay for her mortgage regardless of how AXA handled the claim and I haven't seen anything to suggest she wouldn't have had to pay her mortgage were it not for the way AXA handled the claim.
- In these circumstances, I'm not satisfied it would be fair and reasonable to require AXA to contribute anything towards Mrs P's mortgage payments.

Professional fees

- Mrs P has asked AXA to pay M's professional fees. Within the scope of this complaint, Mrs P had paid M around £4,300 for its first three invoices. The fourth falls outside the scope of this complaint and there may be others since. But my consideration will be limited to the first three.
- The policy says it will cover professional fees, including those of engineers, *"necessarily and reasonably incurred ... but not for preparing any claim"*.
- Essentially, that means AXA will pay engineer's fees where needed as part of handling a claim. For example, appointing an engineer to inspect the subsidence damage, assess its cause and how to put it right. But it won't pay for Mrs P to be represented or supported in making a claim. For example, when a professional acts on behalf to deal with usual claim correspondence and updates.
- I don't think this position is unreasonable or unusual – or is disputed by either party. What's in dispute is the role M played during the claim. In summary, AXA says M acted as a representative – so its fees aren't covered. Whereas Mrs P says M acted entirely, or perhaps mostly, as an engineer – so its fees should be covered.

- I've looked at M's invoices and at the detailed claim history. I've thought about the roles M played and taken into account the impact M had on the engineering elements of the claim. In summary, I think they acted in a mixture of roles – as an engineer providing professional input *and also* as a representative on behalf of Mrs P.
- I say this because it was M's engineering opinion and commentary that led to S accepting a stabilisation scheme would be needed – and the nature of that scheme. Without M's professional expertise, I think it's unlikely the claim would have taken this course, so M has made a material impact above and beyond merely representing and supporting Mrs P. However, much of M's communication wasn't of an engineering nature and was the form of representation not covered by the policy.
- As a result, I think it would be fair and reasonable for AXA to make a contribution toward M's fees – but not to pay for them entirely. For the first three invoices, I think AXA should pay £2,500 to recognise M's professional impact.

Premiums

- Mrs P says AXA has unfairly increased her premiums since she made the claim. I'll use approximate figures, excluding VAT, to keep things simple.
- At the renewal prior to the claim, July 2018, Mrs P paid a premium of £150. Since then, within the scope of this complaint, it's increased to the following amounts:
 - 2019 - £ 190
 - 2020 - £ 400
 - 2021 - £ 875
 - 2022 - £1,250
- This means the premium more than doubled in 2020 and 2021, followed by a further increase of over 40%. In my view, these are significant and sustained increases.
- Generally, I think it's reasonable for each insurer to make its own judgement about the risk of providing insurance in a particular circumstance – and what corresponding premium it will charge for that perceived risk. I also think insurers should ensure that any premium increase treats their customer fairly. So I would expect an insurer to be able to explain and justify a significant and sustained premium increase.
- Our investigator asked AXA to explain the increases to Mrs P's premium. It said the increases had been caused by the subsidence claim, the overall rating changes behind the policy, and other factors, such as: the increasing costs of material and labour costs in the industry, index linking sums insured, and additional costs faced by AXA passed on through premiums. But it didn't provide any specific figures or underwriting evidence to support the increases for Mrs P's premium.
- Home insurance premiums have generally been increasing by around 20% in recent years. And when a claim is made, it's common for premiums to increase further as insurers tend to perceive that as more of a risk. So I agree with AXA that *some* increase in the premium was inevitable, and fair, for the reasons it outlined.
- But I'm not satisfied it's done enough to show why such significant and sustained increases treated Mrs P fairly. The information it's provided isn't specific to Mrs P's

policy or circumstances and isn't supported by evidence. So AXA hasn't persuaded me the extent of the increases was fair.

- I don't have enough information to understand what exactly contributed to the increases. And it's not the role of this Service to determine what premium an insurer should charge. That means I can't say what premium would have treated Mrs P fairly. So, I think AXA should compensate Mrs P for unfairly increasing her premiums. That would have caused her distress and put additional strain on her finances.
- In my view, a further £775 compensation would be reasonable in the circumstances, making a total of £2,000 compensation for the 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.

- Mrs P replied to my provisional decision to make a number of points. In summary:
 - She accepts my findings about loss of rent, the mortgage payments, professional fees and insurance premiums.
 - But she was disappointed I didn't find AXA should increase its offer of compensation, noting the long and painful experience she'd had.
 - Whilst she noted the scope of the complaint is events up to January 2023, she pointed out that problems have continued since. In particular, the stabilisation work has yet to begin. And, despite raising a further complaint in April 2024, she's yet to hear anything further from AXA.
- Similarly, AXA also replied to make a number of points, which I'll summarise:
 - It reiterated its view that the property couldn't be rent out due to uninsured problems – and if Mrs P had addressed these issues, and considered a reduced rent, she could have limited her loss of rent.
 - And it also repeated its view that M primarily acted as a representative, rather than providing professional input, so it asked for guidance about how I reached the figure I suggested AXA pay for this.
 - Turning to the premiums, it said "the portfolio was running poorly", so an increased premium was justified. The premiums were "relatively low in reality" and the figures I'd mentioned don't reflect the change in market conditions at the relevant time. And Mrs P could have passed on the cost to a tenant if the property had been rented out, so this should have been taken into account.
- I've thought about all the points made by both parties, but I haven't been persuaded to change my mind. I'll explain why, taking each main complaint point in turn again.

Claim handling

- Neither party has questioned the circumstances as I set them out, so I think the question is simply whether a total of £1,225 compensation is a fair and reasonable remedy to those circumstances.
- That figure is at the upper end of the range this Service would consider for 'significant' distress and inconvenience. I'm satisfied that's a fair reflection of Mrs P's experience during the claim, as a result of the way AXA handled it.

- In my provisional decision, I referred to Mrs P not suffering the day to day disruption of living at the damaged property. That wasn't intended to downplay her experience. It's clear she suffered prolonged uncertainty and worry about her property and finances – which isn't changed by living away from the property. But I think it's reasonable to say that living in the damaged property during that time would likely have increased her distress and inconvenience, and warranted greater compensation, so that was relevant for me to take into account.
- As a reminder, my view on a fair level of compensation is based on the scope of this complaint being limited to events up to January 2023. So I haven't taken into account any events since that time.
- It's disappointing to hear that Mrs P doesn't feel her claim experience with AXA has improved, despite her earlier complaint and referral to this Service. If she's made a further complaint and AXA hasn't responded to it within eight weeks, or it has and she's not satisfied with the response, she's entitled to refer it to this Service for investigation. Nonetheless, I would encourage AXA to seek to resolve her concerns as soon as possible and avoid a further referral to this Service.

Loss of rent and mortgage payments

- Mrs P accepted my findings on this point. AXA reiterated its earlier arguments about the loss of rent but, as I'd already considered them when reaching my provisional decision, they don't change my mind.
- At this stage, I will simply require AXA to accept the loss of rent claim. It will then have to explore that claim with Mrs P. So I won't be making any findings about how much it should pay at this time. However, I would expect AXA to take into account what I said in my provisional decision when it considers what to pay.

Professional fees

- Mrs P accepted my findings on this point. Again, AXA repeated earlier arguments about M's role during the claim. As I'd already considered those arguments when reaching my provisional decision, they don't change my mind.
- To reach the figure I suggested, I considered in detail the history of the claim, including M's role – what input it had as a representative, which isn't covered, and what input it had providing professional advice, which is covered. I also considered M's first three invoices. Any later invoices were outside the scope of the complaint, so I haven't considered them or made any findings about them.
- I suggested a figure which was over half of the cost, as I thought that was a fair reflection of the proportion of the time M spent providing professional advice. I'm satisfied the invoices and claim correspondence supports that proportion.

Premiums

- In my provisional decision, I said home insurance premiums have generally been increasing by around 20% in recent years. That was based on figures published by the Association of British Insurers (ABI), so I'm satisfied they're a fair reflection of typical increases across the market at the relevant time. I also noted that a further

increase, beyond 20%, was a common response to a claim being made. So AXA had clearly justified premium increases to some extent.

- But given the significant and sustained increases, I would expect AXA to be able to provide more detail about what had driven those increases to Mrs P's premium. Without that, I didn't have sufficient evidence to show the increases had treated her fairly. Following AXA's reply to my provisional decision, I still don't, which is why I view it the same way as I did before.
- The information provided remains broad and doesn't give any specific detail about Mrs P's premiums and why it was fair to her for them to increase by the extent they did. And the comment that Mrs P could have passed on the cost to tenants is misguided. AXA knows she didn't, and couldn't, have had tenants at the time of the premium increases. But even if I were to disregard that key point, that Mrs P may, theoretically, have been able to pass on the costs doesn't explain why it was fair for AXA to charge her those costs.

My final decision

I uphold this complaint and require AXA Insurance UK Plc to do the following:

- Accept the loss of rent claim.
- Pay £2,500 for professional fees.
- Pay a total of £2,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 9 July 2024.

James Neville
Ombudsman