

## **The complaint**

Ms W complains that AXA Insurance UK Plc (“AXA”) hasn’t handled a claim she made under her Commercial and Residential Landlords Insurance policy fairly, for damage caused by renovations being carried out in the flat above, and that its actions have caused her distress and suffering.

## **What happened**

Ms W’s flat sustained damage when the flat above hers was being renovated. In 2019, when the cracking became gradually worse, Ms W made a claim under her Commercial and Residential Landlords Insurance policy with AXA.

AXA investigated the claim. It said the renovations in the flat above had caused significant vibrations which had caused cracking to the walls and ceilings of Ms W’s flat. This had also then led to other associated damage throughout Ms W’s property.

AXA eventually declined the claim in March 2021, stating that there was no cover under Ms W’s policy for damage which was caused by construction work. And that the damage wasn’t covered by the subsidence section of the policy due to the exclusion, or the accidental damage section, because the damage wasn’t sudden and unforeseen.

Ms W made a complaint to AXA. She said the claim was repeatedly declined and then re-opened, that AXA had asked for planning application documents which she had sent to it, and had not kept her updated for months. In relation to AXA declining the claim on the grounds that the damage wasn’t accidental, Ms W disputed this – and said that as planning permission had been sought and granted for the work, and building control had overseen the work, it couldn’t be said that the damage to her flat was intentional or caused by negligence.

AXA issued a number of final responses including in March 2022 after which Ms W brought a previous complaint to this service. In relation to that complaint, it was recommended that AXA pay Ms W £650 compensation in total for poor service, an increase in the amount it had offered Ms W originally. Further complaints were raised by Ms W and final responses were sent to Ms W in April 2024, May 2024, and June 2024. AXA offered an additional £225 compensation for delays in the latter final responses.

Ms W didn’t accept AXA’s offers. She said AXA had declined the claim and then approved it pending planning documents which she had sent. She also said the months without responses and the worsening of the damage to her flat caused her undue stress and suffering. So she referred her more recent complaints to this service.

Our Investigator considered the more recent issues, but didn’t think Ms W’s complaint should be upheld. She said AXA had declined the claim based on a valid exclusion in the policy.

Because Ms W didn’t accept our Investigator’s view, the complaint has now come 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.

Having done so, I'm afraid I'm not upholding this complaint. I'll explain why.

I won't be reconsidering what our service looked at in 2022. That's because an Investigator issued a view on that complaint in March 2022 that £650 compensation was fair and the exclusion AXA had applied was fair. That view was accepted by both parties and Ms W was told she could refer a further complaint to our service about ongoing issues once AXA had a chance to respond to these and subject to the relevant rules and time limits that applied.

So I've considered the complaints Ms W raised after that, and which were addressed in the 2024 final response letters. My decision deals with the time period covered in those letters up to the repudiation letter which was issued on 7 August 2024.

### *Subsidence and Accidental damage claim*

I've considered AXA's response to the claim, which it considered under both the subsidence and accidental damage sections of Ms W's policy. I've also reviewed the decision it ultimately reached, which was to decline the claim on the grounds that the following exclusion applied:

*"...we will pay you for damage caused by subsidence or ground heave of any part of the site on which the property stands or landslip excluding...damage resulting from demolition, construction, structural alteration or repair of any property or groundwork or excavation at the property".*

As I understand it, AXA insures the entire property, not each flat separately. And it's not in dispute that the damage was caused by the renovation work in the flat above Ms W's. So I think AXA has applied this exclusion fairly, which means the damage isn't covered under the subsidence part of Ms W's policy.

The accidental damage section of the policy also contains an exclusion which says: *"The buildings section is extended to include the following cause... Any other damage excluding...the collapse or cracking of buildings"*.

So whilst AXA initially declined the claim on the basis that the damage wasn't accidental, it also said that even if this was incorrect, cracking of buildings was specifically excluded under the accidental damage section of the policy. I'm satisfied this is a reasonable application of that policy exclusion.

Ms W has provided planning documents which she says were given to AXA. These show permission was granted for the work to the flat above, but I don't think this changes anything. The exclusion relating to cracking still applies even if the damage was accidental. So I can't fairly say that AXA has declined the claim unfairly.

Ms W says AXA accepted liability, but AXA disputes this. As I can't see any evidence of AXA accepting liability for the claim during the time period I'm considering in this decision, I can't agree that AXA has caused distress by changing its claim decision repeatedly. On 7 August 2024, it wrote to Ms W to confirm it was maintaining its decision to decline the claim.

And for the reasons I've given above, I don't think the decision to decline the claim was unreasonable. So, I'm sorry to disappoint Ms W, but I won't be requiring AXA to do anything

differently in relation to its claim decision.

And whilst I appreciate the length of time Ms W has been dealing with this matter, I've also considered the compensation payments already offered and paid to Ms W for mistakes AXA has made along the way. I think those offers have been fair and have reflected the poor service Ms W has experienced. So I won't be requiring AXA to increase the compensation it's paid.

### *Personal injury claim*

Ms W says AXA caused her personal injuries and she'd like this service to take that into account. She says she suffered from migraines due to the stress of dealing with the claim and had to take sick leave because of AXA's actions. In August 2024 Ms W wrote to this service to advise that she'd been signed off indefinitely due to the distress that AXA caused by its mismanagement of the claim.

I've thought carefully about what Ms W has said. And I'm really sorry to hear about how this situation has affected her. This service isn't always the right avenue for every complaint. Some disputes are better dealt with by the courts, and allegations of personal injuries are serious and require proper consideration in the right forum. Ms W says she would like this service to support and investigate her personal injury claim, but I'm not going to do that in this decision. Whilst I have a great deal of empathy for Ms W, I've not seen sufficient evidence of Ms W's injuries or medical evidence to support the cause of those injuries. Courts have the power to test evidence in ways that this service can't, such as by cross-examining witnesses, for example. And the personal injury allegation wasn't brought to this service from the outset, so I'm not satisfied AXA has had a chance to respond to it. It follows therefore, that I'm unable to comment further on Ms W's injury claim.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 8 January 2025.

Iffrah Malik  
**Ombudsman**