

The complaint

Mr and Mrs G complain about AXA Insurance Plc's decision to turn down a subsidence claim made under their buildings insurance policy.

What happened

Mr and Mrs G hold buildings insurance cover with AXA. They noticed a 'bulge' around a tie-bar on their property and asked a structural engineer's advice about this. The engineer thought an extension had caused stress on the foundations which may have partly transferred as a horizontal force into the tie-bar. Mr and Mrs G were having work done on their property, and so decided to include piling within the foundation works to address the issue. Mr and Mrs G then made a claim under the policy for subsidence.

AXA couldn't carry out site investigations as Mr and Mrs G had already carried out ground stabilisation works by way of piling. However, its loss adjuster didn't think the damage at the property was typical of subsidence damage and so turned down the claim. Unhappy with AXA's claims decision, Mr and Mrs G brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought the available evidence didn't support there had been subsidence, and so she concluded that AXA had fairly declined the claim.

Mr and Mrs G didn't accept our investigator's findings and so the matter has been passed to me for a 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.

The policy covers loss or damage from subsidence, and defines this as:

'Downward movement of the site on which the buildings are situated by a cause other than settlement or the weight of the buildings themselves'

The policy says it doesn't cover:

'Loss or damage:

...

- *due to settlement, shrinkage or expansion;*

...

- *resulting from construction, structural alteration, repair or demolition'*

The policy defines 'settlement' as:

'The natural movement of new properties in the months and years after they are built.'

Mr and Mrs G's structural engineer said the rear extension appeared to have been originally built as a single storey extension but had been vertically extended on two occasions. He said this had added a substantial amount of vertical load to the original footings. And at some point, a horizontal tie-bar was added (for reasons unknown) which extended from the front of the property through to the rear extension. The engineer said the addition of the two lifts of masonry could have increased the stress of the original footings which may have transferred, in part, as a horizontal force into the tie-bar. He concluded by saying:

'However, we could not confirm whether the movement was due to subsidence or settlement as it was our opinion that it may have been caused by the increased vertical loading due to the addition of the two lifts of masonry.'

AXA's loss adjuster carried out an inspection. They noted there were some internal cracks, and that to the exterior, the tie-bar near the front kitchen window appeared to be pulled inwards.

The loss adjuster concluded the damage hadn't been caused by subsidence as they said the pattern and nature of the cracks weren't consistent with foundation movement. They noted that Mr and Mrs G's engineer thought the movement had occurred as a result of the addition of a second storey gable to the projection at the rear right corner of the property. The loss adjuster said they believed that the additional weight of the gable had caused additional settlement of the structure and/or caused additional lateral movement of the historic tie bar.

The loss adjuster also said that, if subsidence had been suspected, then the implementation of the cantilevered piling scheme jeopardised AXA's ability to complete site investigations in order to make a decision on liability.

So, whilst it seems there has been some movement to the property around the tie-bar (where the wall appears to 'pull inwards'), we don't know if there was downward movement of the site. There could be, as the loss adjuster suggests, lateral movement of the tie-bar.

As Mr and Mrs G carried out ground stabilisation work before AXA could investigate their claim, it can't now be established if there was downward movement of the site. Or if there was ongoing movement at the time they made their claim in 2023.

Though even if there had been downward movement of the site, Mr and Mrs G's engineer thought the movement was due to the increased vertical loading due to the two lifts of masonry to the extension. This would suggest it was settlement or the weight of the buildings causing the movement, which isn't subsidence.

Mr and Mrs G say there weren't 'two lifts of masonry' and so the statement that AXA was relying on was incorrect. However, that statement was made by Mr and Mrs G's own engineer, so if they think his statement is incorrect, that's something they'd need to raise with their engineer.

Mr and Mrs G also disagree with AXA's loss adjuster's opinion that the cracks to their property aren't consistent with subsidence. But they haven't provided any expert evidence to dispute the loss adjuster's view and have only provided photos of the damage. I think AXA was entitled to rely on its loss adjuster's opinion.

Mr and Mrs G have also provided some photos to this service, which they think supports that the damage was there before the extension was built. They say one photo shows no crack in the mortar by the tie-bar, but a later photo does show a crack by the tie-bar. These photos apparently both predate the extension being built in 2009.

I've looked at the photos, but I can't see the crack by the tie-bar that they've referred to in the second photo. Though even if there was cracking to the mortar at this time, that doesn't necessarily mean it was caused by subsidence. Although Mr and Mrs G say there can be no other cause of the cracking, I disagree. As AXA has pointed out, not unreasonably, cracks in mortar can have a number of possible causes, such as thermal expansion or lateral movement.

Taking everything into account, the available evidence doesn't support there was subsidence. So, I think it was reasonable for AXA to turn down the claim.

Mr and Mrs G say that when they called AXA on 8 August 2023 to raise a claim, they advised AXA that they had started the piling work. However, they say that AXA didn't tell them that carrying out the work would be a problem, though now AXA is using this to deny their claim. They've linked this to Consumer Duty, particularly the Consumer Understanding outcome. They think AXA failed to give them information that was clear, fair and not misleading regarding the potential implication that the piling scheme could have on their claim.

Mr and Mrs G are correct that AXA has an obligation to comply with the principles set out in the Consumer Duty that was introduced by the regulator, the Financial Conduct Authority. This sets a higher standard for firms in respect of how they interact with their customers and applies to events from 31 July 2023.

I haven't been provided with the call recording from 8 August 2023, but I have read the call note. This supports that Mr and Mrs G made AXA aware they had instructed a firm to carry out piling. I don't think it's an unreasonable expectation for a policyholder to expect an insurer to give them the right information at the right time so that they could make a properly informed decision. So, I think AXA ought to have told Mr and Mrs G that continuing with this work might impact their claim. However, I don't think AXA's failure to make Mr and Mrs G aware of this is material to the outcome of their claim or complaint. I'll explain why.

Although Mr and Mrs G say that AXA is relying on the fact that the piling took place to deny the claim, I don't agree. AXA has turned down the claim as the opinion of its loss adjuster is that the damage isn't consistent with foundation movement (ie downward movement of the site), and the evidence from Mr and Mrs G's structural engineer also doesn't support there was subsidence. AXA has pointed to the piling taking place as a secondary reason, as its loss adjuster says this would have prejudiced AXA's position if subsidence had been suspected (which it wasn't).

So, whilst I accept that AXA could have provided Mr and Mrs G with clearer information in the initial phone call, I don't think this makes a difference to the overall outcome. The available evidence (which includes the opinion of a structural engineer who is considered an expert in these matters) doesn't support there was subsidence. And it's for this reason I think AXA's decision to decline Mr and Mrs G's claim was fair and reasonable in the circumstances.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 24 April 2025.

Chantelle Hurn-Ryan
Ombudsman