

The complaint

Mr H complains about the way AXA Insurance UK plc has handled a claim he made on his home insurance policy for damage caused by subsidence.

What happened

In 2020 Mr H made a claim on his home insurance policy, he'd noticed cracks appearing in a ground floor bedroom and thought his home had suffered damage caused by subsidence. AXA accepted the claim and identified two trees on neighbouring land as being the cause. One belonged to a neighbour, the other tree was on land owned by the local authority (LA). AXA pursued the LA for removal of its tree, and the neighbour for a reduction of his. The neighbour's tree was reduced but the LA refused removal of its tree and so AXA was in discussions with it around other possible repairs that wouldn't involve removal of the tree.

In 2023 Mr H was unsatisfied with the progress AXA was making with his claim, and so made a complaint to AXA. He was also concerned that AXA was pursuing the correct cause of the subsidence and was unhappy his premium had gone up from £200 to £700 during the claim period.

AXA provided its complaint final response letter (FRL) on 5 December 2023. It was satisfied it had followed the correct process in pursuing the third party and putting it on notice it would be liable for underpinning costs if the tree wasn't removed. It said it had offered temporary repairs throughout the claim. AXA did accept it could have communicated better at points, and so it offered £150 compensation to apologise for its failings in that respect. Unsatisfied with AXA's response, Mr H brought his complaint to the Financial Ombudsman Service for an independent review.

Our Investigator thought AXA should carry out temporary repairs to Mr H's property now, to enable them to use his downstairs bedroom. But he was satisfied AXA had acted as it should have done in progressing the claim, noting that trees owned by third parties can often slow the progress of a subsidence claim.

He thought the £150 compensation for not always communicating effectively as it should have done was fair and reasonable.

Mr H didn't accept that outcome, he wanted an Ombudsman to consider matters. He said AXA has been focussed on felling one tree, which he didn't think is the right way forward given his own expert's view on matters. He also said matters continued to be drawn into legal delays between AXA and the third party since he brought his complaint to this Service.

Our Investigator asked AXA if he could consider matters beyond its FRL of 5 December 2023. AXA didn't give consent for this Service to do that. It said any further complaint, about how matters had progressed since the FRL, would need to be looked at by it first.

So as matters weren't resolved, the complaint came to me to decide.

In September 2024 I issued a provisional decision on this complaint. A copy of my findings is below.

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

This Service can only review matters which a respondent business, so in this case AXA, has had an opportunity to address, unless it consents for us to look into matters it hasn't yet considered itself. As AXA hasn't consented in this case, my review can only look at matters complained about, and addressed in AXA's FRL of 5 December 2023. But if Mr H remains dissatisfied with the Service he's received from AXA since that time, he can make a further complaint, which we can also consider once AXA has had the opportunity to do so.

I intend to reach a different outcome to that of our Investigator. I'm not satisfied AXA has progressed this claim as it should have done. Whilst I appreciate these claims can be long running, I consider it should have, by December 2023, taken steps to stabilise the property by an engineering solution. AXA has mentioned underpinning as its initial option, but I consider it isn't for this Service to decide on the type of engineering solution which should happen. However, I intend to decide that unless AXA has already removed the tree, or it will be removed by 30 September, that AXA should stabilise Mr H's property through an engineering solution.

Cause of subsidence

As well as having concerns about the progress of the claim, Mr H also has concerns about whether AXA are pursuing the true cause of the subsidence. So I think this is the most logical thing to consider first, before I review AXA's handling of matters.

Mr H says only one trial pit was dug which implicated a tree more than 20 metres away from his property. I've seen that the roots in the trial pit were sent for testing and it was confirmed the roots were from an oak tree, two of which are situated at the front of Mr H's property. Whilst he's mentioned the distance of the tree from the front of his property, the presence of the roots confirmed means I think AXA was reasonable in relying on the expert's opinion that the oak tree was the likely cause of damage.

In addition, AXA also asked for an arborist to provide a report. An arborist is an expert on assessing the influence of vegetation. The findings of the arborist were that as it wasn't possible to determine which oak tree the roots were from, given the positioning of the trees, the recommended way forward was that one tree (belonging to the LA) should be removed, and another (belonging to Mr H's neighbour) be reduced.

I understand Mr H has concerns about this; he considers clay movement caused by past extreme weather to be the cause of the subsidence. He says that doesn't have anything to do with tree roots. He's mentioned a structural engineer's report, but I can't see that he's provided that to AXA or this Service to review. In any event, I'm not persuaded, based on what I've seen, that AXA has been unreasonable in relying on the views of its experts. And from my own experience of handling these types of complaints I consider it common for oak trees to cause movement in the type of clay soil Mr H's home is built on. So on balance I consider AXA has been reasonable in pursuing the removal and reduction of the oak trees to resolve the subsidence.

Handling of the claim

Having established the cause of the problem around April 2021, when the arborist report was done, I consider AXA promptly started discussions with the relevant parties for the

vegetation works to start. However, it wasn't until January 2023 that the neighbour's tree reduction works were concluded. I think AXA allowing 20 months for discussions around that, and for it to agree to fund the neighbour's works only after all that time was unfair. I consider it could have progressed this matter more efficiently, especially as the neighbour was willing to remove the vegetation if AXA agreed to fund the costs.

That being said, I accept it was more difficult for AXA to progress matters with the LA. I can see AXA was in regular discussions with the LA and it seemed in 2022 that an agreement had been reached for the tree to be removed at the start of 2023. So whilst I've no doubt any period of waiting would be frustrating for Mr H, I don't think AXA unreasonably caused any delay up to the January 2023.

However, the LA did not remove the tree, as it had agreed, in January 2023. And by April 2023 it was clear the LA had changed its position. Whilst I've no doubt this would be frustrating and upsetting for Mr H, I can't fairly hold AXA responsible for the LA's apparent change of opinion as to how to resolve matters.

That said, I accept Mr H's point, that his insurance contract is with AXA, not the LA. And he is entitled to a repair under his policy. ICOBs sets out that insurers should handle claims promptly. So, with the LA no longer cooperating, the ball was reasonably back in AXA's court. It needed to act to resolve the claim.

Yet, from the file, it wasn't until August 2023 that AXA said it would put the LA on notice it would be liable for the cost of underpinning to Mr H's property. It's unclear why it took six months to progress matters upon realising in January/February that the tree hadn't been removed as agreed. Given the patience shown by Mr H up to early 2023, and the length of time the claim had been ongoing, I consider AXA should have taken a more proactive approach with the LA.

It also, at that stage, could have explored other options, such as the cost of a root barrier, or other engineered solutions. This doesn't appear to have been done until November 2023. And as a result of it only then considering root barrier costs, by December 2023 and AXA's FRL, Mr H was no further forward in having his claim progressed.

I think this was unfair to Mr H. It wasn't reasonable for AXA to allow this claim to go on for so long without progress only because it wasn't in agreement with the LA on the best way to move things forward. The LA reneging on the agreement reached in 2022 should have prompted AXA to act.

AXA has told this Service that continuing with an engineering solution carries a lot of risk as sometimes root barriers can be ineffective at preventing the issue, or only last short term until the offending roots find a way around it.

I accept AXA may have a fair argument around root barriers, but if that is the case, I don't know why it allowed one to be considered. Or why it obtained its own quotes, in November 2023, for one. AXA can't have it both ways, it can't say a root barrier is likely to be ineffective but pursue the possibility of installing one for months at the same time expecting that to be viewed as a reasonable claim handling activity. I also think there'd have been no harm in AXA exploring the options and related costs for engineered solutions whilst also pro-actively negotiating with the LA. If those negotiations were ultimately successful the engineering plans could be shelved – but if he weren't AXA would have been ready to progress the claim without unreasonable further delay. It was up to it to manage this situation – I don't think it did so.

Whilst AXA has refused to allow this Service to consider matters beyond 5 December 2023,

my view is that it should have been moving to an engineering solution before that point. It had had nearly 12 months from the LA's change of position to put it on notice that it would move to underpinning, or another engineered solution. There was no other solution agreed in September 2023, and so I think AXA should have moved forward with its plan to underpin, or do other works to stabilise the property, as its solicitor said it would do in August 2023. So to resolve this complaint, I'm minded to decide that unless AXA has already removed, or manages to achieve removal of the tree by 30 September 2024, then I'll require AXA to stabilise the property by a suitable engineered solution, in order for the claim to progress.

AXA says it has offered temporary repairs to Mr H throughout. Mr H says this was only done once, a long time ago. It does seem from AXA's file that it offered this more than once. However, I can understand why Mr H might not have wanted to agree. After all he wants the matter resolved, not just having cracks filled in. I am mindful though that I think there has been a recent change in health circumstances for Mr H. And so to enable him to be able to use the room most affected by the subsidence, I'm minded to recommend that AXA carry out any temporary repairs as a matter of urgency and without delay, unless it has of course already started the permanent ones. I'd ask, in the circumstances, that whilst this is only my provisional decision, AXA agrees to do this now without waiting for my final decision to be issued and accepted by Mr H (if he does).

Having considered how AXA has handled matters, I'm not satisfied it has treated Mr H fairly or communicated well with him. I think his house being damaged for longer than it should have been, has caused them considerable worry. I also think that had AXA moved to stabilising the property when I think it should have, its likely Mr H and his family would have been placed in alternative accommodation, in a property not suffering from subsidence damage. For the period I'm considering, I think £750 is a reasonable figure to reflect the impact of AXA's poor handling. This includes the £150 already offered by AXA. If that amount has already been paid it may remove it from the total sum.

I understand Mr H is concerned that the insurance premium has increased over the life of the claim. Whilst I consider the ongoing claim will likely have impacted the premium, I also consider its likely that isn't the only factor. Insurance prices generally have gone up over the last few years. I haven't seen anything which suggests Mr H's premium has been calculated unfairly, or that it would have reduced had AXA had progressed the claim better. The claim itself, whether on-going or not, will likely impact the premium charged. So I don't intend to make AXA do anything in relation to the premiums paid by Mr H.

Responses to my provisional decision

Mr H provided a report carried out in 2021 by AXA, he wanted to make sure I'd had sight of it, as he considers it supports his argument that AXA may not even be pursuing the correct cause of the subsidence. He also forwarded emails sent to AXA in 2024 (after the point which AXA has allowed me to consider matters). He says he hasn't received a response to those emails, but they confirm no further action has been taken in relation to the claim.

AXA disagreed with the provisional decision. It said tree removal was the most effective way to resolve the subsidence. It said removal of the tree had been agreed but given the tree was close to power lines, AXA was reliant on the power network to shut off power, or shield the lines, whilst the felling took place. AXA said there is no set date for the works, but it doesn't think it should take much longer.

AXA said if it undertook further works, there is no guarantee of a lasting and effective repair, and its contractor has said its recommendation can only ever be removal of a tree. It also said undertaking an engineering solution, such as underpinning, would likely prejudice its

right of recovery, which will impact the claim costs, impacting Mr and Mrs H's premium and the rest of its customers.

It didn't respond to confirm it would offer temporary repairs to Mr H in the interim.

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.

To reassure Mr H, I can confirm I have seen the report he's referred to. I didn't refer to it in detail in my provisional findings but I accept, as he says, that the roots found under the foundations and used for that report were dead. However, I'm not persuaded, based on other evidence I've seen that the roots being dead means they hadn't had any influence on the foundations. AXA's engineer's view was that the roots must have been alive to reach the underneath of the foundations, that seems a reasonable assumption. And whilst the findings of the report Mr H refers to say the sample size might not be reliable, AXA then instructed the arborist to give its expert view on the likely influence of trees. Having read that report, I don't think AXA's been unreasonable in concluding the likely cause of the subsidence was the oak tree.

Having reviewed AXA's response to my provisional findings, I'm not persuaded that it is reasonable to pro-long this already unreasonably delayed claim further by waiting for confirmation that the tree will be removed. Despite its hope that matters should be resolved soon, the fact remains that the council can't remove the tree unless and until agreement is reached with the power network to shut off power or shield power lines near the tree. I consider that is unlikely to be a swift process, given the delay so far in the claim even getting to this point. For example, I can foresee discussions of costs of such works, and recovery being another thing that causes further delay to Mr H's claim.

AXA says other solutions won't be lasting and effective, but I'm not persuaded that is the case. I have seen discussions during the claim about root barriers, resin injections and underpinning all being considered as options. It seems to me that AXA's engineers ultimately decided resin injections may not work in the clay soil under Mr H's property, and it said root barriers can be ineffective in the long term. But I haven't seen any evidence from a suitably qualified engineer that said underpinning of the property isn't viable. And I can see that AXA put the council on notice, in 2023, that it would look to underpin the property given its reluctance, at that stage, to remove the tree.

So I don't accept AXA's now apparent change in position that suggests the only way to stabilise the property is to remove the tree. Based on my experience of reviewing these types of complaints underpinning, or similar engineered solutions, are almost always considered as a last resort by insurers where a tree can't be removed. AXA hasn't provided me with any persuasive evidence to show underpinning, or similar, in this case wouldn't work, and that the only way to resolve matters is to fell the tree.

Whilst carrying out an engineering solution, such as underpinning, might impact AXA's legal right to recovery from the council, I consider that is not within my remit to consider. My role is to consider, in line with ICOBs, whether AXA has progressed the claim as it should have, and I'm not satisfied that it has. And I'm not satisfied that AXA's concerns over its legal right to recovery mean it's reasonable for Mr H to have to wait any longer for his claim to be resolved.

Equally, I don't think it is for me to consider the likely impact on AXA's customers' premiums. That is a commercial matter for AXA to review, I can't reasonably say AXA can allow claims to remain unresolved for several years due to a potential impact on its customers' premiums of it progressing matters effectively.

So having considered the responses to my provisional decision, I'm not minded to change my mind on the findings I reached. So, along with the comments noted above, my provisional findings are now those of this, my final decision.

Mr H has provided me with some emails sent to AXA in 2024, beyond December 2023 which is date until which I considered its claim handling. It's unclear whether AXA has treated the content of these as a new complaint. But if it has, Mr H can bring a further complaint for this Service to consider.

My final decision

My final decision is that I uphold this complaint and I direct AXA Insurance UK Plc to carry out stabilisation of Mr H's property by carrying out an engineering solution, rather than pursuing removal of a tree, unless it is able to secure the tree's removal by 30 September 2024.

AXA must also contact Mr H without delay to organise temporary repairs.

AXA also needs to pay £750 compensation for the unnecessary distress and inconvenience AXA has caused Mr H, less any amount already paid.

AXA must pay the compensation within 28 days of the date on which we tell it Mr H accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 October 2024.

Michelle Henderson
Ombudsman