

## **The complaint**

B, a limited company, represented by its directors, has complained about the property's insurer AXA XL Insurance Company UK Limited. B is complaining that whilst it made a subsidence claim in 2018, the claim and subsidence remain unresolved.

## **What happened**

In September 2018 significant cracking was found at B's property. A claim was made to AXA. AXA undertook investigation works in 2019 and 2020. In 2021 B was concerned about water ingress occurring and AXA was looking to implement stabilisation works. However, those works did not progress and the claim stalled.

B, in late 2023, raised a number of complaints with AXA. Essentially B did not want to be compensated for AXA's failings, rather B wanted AXA to agree to take certain actions with a view to finally resolving the claim.

In February 2024 AXA issued a final response letter. In that letter AXA confirmed it would not be looking to carry out further work at the property. It said it had looked at what was needed to reinstate the property and said it would pay B £75,328.34 so B could complete that work.

B didn't think that was sufficient to allow for adequate stabilisation works. B was also concerned about having to deal with repairs that were so technically complex. When B complained to the Financial Ombudsman Service, AXA said it had allowed for some stabilisation works within the scope – but only as a goodwill gesture because it was satisfied the property was stable.

Our Investigator thought it was unfair and unreasonable for AXA to have tried to cash settle this claim. And he didn't think AXA had evidenced that the property was stable. He said AXA should monitor the property and, if that showed it was still moving, it should move to concrete underpinning as a form of stabilisation.

AXA wasn't happy in respect of the direction for underpinning. It said it would monitor the property and then it would decide upon a way forward.

B had concerns about the prospect of further monitoring occurring. Regarding some compensation for inconvenience the Investigator had also recommended, B said it was not seeking such redress. It reiterated that its focus was on reinstating the property.

The complaint was referred to me for an Ombudsman's decision. When I reviewed it, I decided to put forward an alternative proposal for resolution to both parties. Bearing in mind what B had said about compensation, I focussed my proposed resolution on the reinstatement issue. I sent the following to both parties:

*"This is a very old claim. I'm aware of the history and that at varying times each party has blamed the other for the matter still being on-going. What I want to do here is to cut behind all of that and ultimately resolve matters with minimum further delay as possible."*

*Key to my decision to put forward this alternative proposal for resolution are the following points:*

- *The claim was made in 2018.*
- *AXA completed investigation works in 2019/2020.*
- *AXA accepted the property required stabilisation works and, in spring 2021, moved to implement its chosen scheme.*
- *The scheme was not progressed and since that time nothing has been produced to evidence the property has stabilised.*
- *AXA is now arguing the property does not require stabilisation works and, albeit it, partially in-line with recommendations made by this Service, wishes to complete further monitoring for a year before then reviewing if stabilisation is required, and if so, what method.*

*To me that feels like AXA wants to start this claim back at the beginning. That, to my mind, is not fair or reasonable.*

*B, in summer 2024, obtained a scope of works which was put to tender. I think the content of the scope is reasonable. In saying that, I acknowledge it is based on a different stabilisation scheme to that proposed by AXA. The available evidence satisfies me that AXA's scheme was not a reasonable proposal in the circumstances. B doesn't want to take on this work itself and that is reasonable. My proposal is for AXA to adopt the tender and move ahead with it, appointing the recommended contractor to undertake the property reinstatement.*

*I appreciate AXA has not seen the scope or tender before. I'll have our Investigator share that with it. Often an insurer will want to use its own contractors. However, in complex, high value reinstatement programmes, I have known insurers to utilise a tender process. I'm satisfied that, in all of the long-running circumstances of this claim, this proposal is a fair and reasonable way of achieving a meaningful resolution which is workable in practice. I think this has the best chance of ensuring that the claim is finally resolved and settled in the most equitable way for both parties."*

B said it was pleased with the proposal. However it highlighted that, with works progressing, there will be other things it would look to claim for, such as rent reimbursement. B said it wanted to be sure that the proposal for resolving the reinstatement works would not preclude it from making claims in respect of other costs covered by the policy.

AXA replied. It merely asked if it could have an independent engineer, appointed by both parties, to arbitrate on the issue. It made no other comment on the proposal I set out.

I had our Investigator reply to AXA. I noted that AXA hadn't seen fit to comment on the tender documents I'd shared with it. I confirmed that I wasn't mind to agree to its alternate proposal. AXA was advised I would be making a final decision. It didn't reply further.

### **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.

Following my above proposal I'm somewhat disappointed to note the limited response from AXA. From what little AXA has said it seems in disagreement with my proposal – but that being the case I'd have expected it to communicate with this Service with a reasonable level of engagement. I'd have expected, at the very least, for AXA to have provided meaningful

comment on the tender documents. It's disappointing that it didn't do so. But it also makes me think that settling matters as I had suggested, is indeed the fair outcome here – after all if AXA is not minded to engage meaningfully with this Service, it seems unlikely that it would do so with B going forwards regarding determining what reinstatement work was required.

What was also missing from any reply from AXA was any evidence that the property is stable. Our Investigator noted that AXA had not shown the property was stable. And I'm mindful that AXA was initially prepared to undertake stabilisation works. It makes no sense to me that AXA would look to undertake that work – or allocate a value for it to pay as part of a cash settlement – if it actually and genuinely believed the property was stable.

So we have a property, which has suffered subsidence and which AXA has not shown is stable, with the related claim having been on-going for five years at the point B complained to AXA. It's time then, in my view, that AXA resolves matters – which means it needs to complete stabilisation works and carry out superstructure repairs to ensure the property is fully reinstated. Based on what I have seen the best way for that to occur is, as I said previously, for AXA to adopt the tender undertaken by B and move ahead with it by instructing the recommended contractor to undertake the work agreed in the tender.

That is what I think is fairly and reasonably needed to resolve the complaint about the property's reinstatement. If B has other items to claim for, such as rent reimbursement, nothing I've said precludes it from doing that. As AXA is now to take on the property reinstatement work, if other costs arise, such as for arranging party wall agreements, and which are not covered for in the tender, AXA will have to consider those costs in-line with its normal claim processes. That is because this complaint, and my direction for resolution, only covers the property reinstatement issue as far as it relates to whether further monitoring is needed and what repairs and method of stabilisation are required.

### **Putting things right**

I require AXA to adopt the tender undertaken by B and move ahead with the reinstatement work by appointing the recommended contractor to undertake the work set out in the tender. If a need for other costs should arise, which aren't included within the tender, these should be considered by AXA in-line with its normal claims processes.

### **My final decision**

I uphold this complaint. I require AXA XL Insurance Company UK Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 25 March 2025.

Fiona Robinson  
**Ombudsman**