

The complaint

Mr B and Mrs B are unhappy AXA Insurance UK Plc (AXA) declined a claim made under their buildings insurance policy for subsidence and retrospectively added an endorsement.

Any references to AXA include their agents.

What happened

Mr B and Mrs B purchased their home and in July 2019 they took out a Homeprotect insurance policy. The policy was initially underwritten by a different insurer but has been underwritten by AXA since July 2020.

In March 2024, AXA sent Mrs B an email following an enquiry about potential subsidence damage to their detached outbuilding. This said when taking out the policy some of the information they'd provided in relation to a question asked about subsidence was incorrect. As a result, they were adding an endorsement to the policy. This endorsement excluded damage caused by subsidence and was backdated to July 2023 when the policy renewed. Mr B and Mrs B were unhappy with this decision, so they complained.

On 14 May 2024, AXA responded to Mr B and Mrs B's complaint about the endorsement. AXA said the decision to add the endorsement was made having considered comments in the homebuyers report which highlighted previous damage to the outbuilding. AXA said when the policy was taken out, questions had been asked about the properties history of subsidence going back 25 years, not 10 years as Mr B indicated in his emails, and they declined to change their decision.

Unhappy with AXA's refusal to remove the endorsement, Mr B and Mrs B referred their concerns to the Financial Ombudsman Service. They were considered by one of our investigators who didn't consider AXA had acted fairly in adding the endorsement. She said to put things right AXA should remove the endorsement, recover any policy premiums reimbursed as a result of the endorsement being added, reconsider the claim subject to the remaining policy terms and pay £200 compensation.

Mr B and Mrs B accepted this outcome, but AXA disagreed, stating movement had occurred long before the policy was taken out and should have been declared. Our investigator considered AXA's comments but wasn't minded to reach a different conclusion, so the case has been passed 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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

AXA says Mr B and Mrs B failed to take reasonable care to answer the questions set out in the statement of fact accurately. So, I've considered the questions relating to subsidence set out in the in the statement of fact when the policy renewed in 2023. These said:

"Has the property within the last 10 years:

Been the subject of an insurance claim for subsidence, landslip or heave?

Been monitored or been recommended that it should be monitored for subsidence, landslip or heave?

Suffered any structural movement of settlement, subsidence, landslip or heave?

Shown signs of damage caused by structural movement of settlement, subsidence, landslip or heave?"

AXA says Mr B and Mrs B were asked about details of claims or damage from the last 25 years. I can see that was the case when the policy was first taken out with AXA in 2020. But when the policy renewed in 2021, and for each year after that, the questions asked about claims or damage within the last 10 years. As each policy runs for a year, I'm satisfied this is the timeframe Mr B and Mrs B needed to answer questions on.

When considering the questions from the 2023 renewal documents set out above, Mr B and Mrs B answered no to all four questions. They've said they did so on the basis the previous owner of the property had noted in property sale paperwork (which they received when they purchased the property in 2019) there had been a subsidence claim in 1992, with remedial works being carried out in 1997 – both of which occurred more than 25 years before the policy was first incepted with AXA in 2020. I've seen the relevant page from the paperwork supporting this and I'm satisfied Mr B and Mrs B took reasonable care when answering the questions set out above.

Like our investigator, I don't consider Mr B and Mrs B answered the questions asked by AXA incorrectly based on what they've said about the subsidence claim from 1992. The recorded subsidence claim occurred more than 10 years before July 2023 when the policy renewed. And they were asked questions about claims and damage impacting the property within the last 10 years only.

In response to the investigators conclusions, AXA said Mr B and Mrs B ought to have disclosed the condition of the outbuilding as noted in the Homebuyers report. For ease, I've copied the relevant section of the report, which says:

"The outbuilding is in satisfactory condition but there is evidence of normal weathering... The outbuilding is affected by structural movement with distortion of door/window openings, cracks over openings and at wall / ceiling junctions, uneven flooring and side walls are out of alignment. The movement appears to be long-standing in nature and to have stabilised..."

Mr B and Mrs B told us when they took out the policy they talked to AXA about the damage noted to the outbuilding but received reassurance they didn't need to do anything more. Our investigator said AXA didn't ask for more information about the damage to the outbuilding but appears not to have done so. AXA hasn't provided any comments in response to this point, which was mentioned in the conclusions set out by our investigator.

Based on the information provided to me, I agree it seems AXA could have asked for more condition about the outbuilding when the policy was incepted but hasn't provided any evidence to show they sought this. I don't consider AXA can reasonably now say Mr B and Mrs B didn't act reasonably in providing information that might have impacted the level of cover AXA was prepared offer.

I consider it reasonable for Mr B and Mrs B to have relied on the information contained in the Homebuyers report which noted the damage to the outbuilding was long-standing and appeared to be stabilised. Whilst it didn't specifically say when the damage occurred, given the comments quoted above, I also consider it reasonable if Mr B and Mrs B reviewed this information in conjunction with the claim declared from 1992 and believed all issues linked.

I'm satisfied Mr B and Mrs B took reasonable care to accurately answer the questions put to them by AXA. I don't agree there has been a misrepresentation or that the actions taken by AXA in retrospectively applying an endorsement were fair, or in line with CIDRA. It follows that I'm upholding Mr B and Mrs B's complaint.

Putting things right

As I've set out above, I don't consider AXA acted fairly in adding the endorsement to Mr B and Mrs B's policy. To put things right, I require AXA to:

- Reinstate subsidence cover and remove endorsements from the policy.
- Recover no more than the policy premiums it reimbursed to Mr and Mrs B in recognition of reinstating policy coverage.
- Reconsider the claim, subject to remaining policy terms and conditions.
- Pay Mr and Mrs B £200 compensation to reflect the impact of its actions as they've told us about the worry and stress AXA's handling of this matter has caused.

My final decision

My final decision is that uphold this complaint and require AXA UK Insurance Plc to take the steps outlined in the "Putting things right" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 5 February 2025.

Emma Hawkins
Ombudsman