

The complaint

Mr T complains that AXA Insurance UK Plc declined a subsidence claim on his commercial property insurance policy.

What happened

Mr T has a commercial property, which is let to a tenant. In May 2021 he made a claim on his policy after the tenant reported problems with the front of the building.

Mr T obtained a report from a structural engineer, which said it was likely that leaking water from the drain had caused the soil to wash away, undermining the foundation and causing the movement. He recommended that repairs be carried out, with a suitable concrete footing.

AXA appointed loss adjusters to consider the claim. They said there was bulging at the front of the building, but this wasn't caused by subsidence. Based on the loss adjuster's advice, AXA rejected the claim, saying the issue was gradually operating and had likely been present well before the policy started.

Mr T provided further comments from the structural engineer and the loss adjusters reviewed this but didn't change their position, which was confirmed by an in-house surveyor.

In January 2022, AXA said if Mr T wanted to carry out excavations to investigate further, this would be at his own expense.

Mr T provided further reports from the structural engineer and another engineer, and complained about AXA's refusal to cover the claim, but AXA confirmed the decision not to accept the claim.

In its final response to the complaint, AXA said it had dealt with the claim process correctly and confirmed its decision, but accepted there had been some delays. AXA has paid compensation of £150 in respect of that.

Our investigator did not think the complaint should be upheld. He didn't think the structural engineer's evidence confirmed there was subsidence, and said the loss adjusters had explained why they didn't think it was subsidence.

Mr T disagreed and requested an ombudsman's decision. He provided further comments from the structural engineer in support of his request.

After reviewing the evidence, I issued a provisional decision saying I intended to uphold the complaint. I set out my reasons as follows:

My provisional decision

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; support a policyholder to make a claim; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed. The settlement should put the customer, as far as possible, in the position they were in before the loss or damage. Where repairs are being done, that means carrying out an effective and lasting repair.

There has been a separate complaint about delays and AXA has paid some compensation. In this decision, I'm solely considering the decision to decline the claim.

The policy includes cover for damage caused by subsidence, but not damage which originated before the start of the policy.

AXA declined the claim on the basis the problem was not caused by subsidence. It relied on the comments from the loss adjusters and in-house surveyor when reaching this conclusion. The loss adjusters have said:

- The bulging at the front of the building is old, and was caused by the poor standard of construction together with moisture ingress, which would result in softening of lime mortar leading to outward bulging. They did not think it related to downward movement of the ground beneath the foundations.
- There was no distortion to the paving at the front of the property, and the floor didn't seem to be particularly damaged.
- There was gradual deterioration of the timber joists supporting the shop front.

In the absence of any contrary evidence it would be reasonable for AXA to rely on the comments from the loss adjusters. But Mr T has provided several reports that do contradict their views, including further comments from the structural engineer in response to the investigator's view. In summary, Mr T's expert evidence says:

- Investigations were recommended in the initial report and these investigations revealed that the drain was leaking underground. This confirmed what was suggested in the first report – the defective underground rainwater pipe and gully were discharging water into the soil under the foundations.
- Leaking water from the drainage system (which could not be seen until exposed by investigative excavations) has caused fines in the soil to wash away. This undermined the pier and its foundation, causing the subsidence.
- The condition of the pavement is not related to the property in any way; none of the relevant guidance cites the external ground level as evidence of subsidence to buildings in the manner described by the loss adjusters.
- The fact that the internal slab doesn't appear to have subsided is not evidence the building foundations have not subsided. They are at different levels, and the bearing pressures are different. The slab may not be linked to the front wall. The loss adjusters don't appear to have confirmed the construction of the ground floor slab – for example, whether it's suspended or is a ground-bearing concrete slab – or carried out a level survey to confirm the ground floor slab is level. Without this, their statements have not been proved and are pure speculation. They haven't provided evidence of the cause of the movement.
- The poor support to the wall is caused by the soil beneath the wall being soft and weak, due to the leaking drain undermining the wall by washing away and eroding the soils. This type of damage is progressive and has evidently got a lot worse in recent times.

Having weighed up all the reports, I think the evidence from Mr T's experts is more persuasive. He has provided reports from structural engineers which are very detailed and follow intrusive investigations, setting out what they think has happened and how this has led to subsidence. They are supported by a second opinion from another expert.

The loss adjusters' reports, by comparison, are less detailed. They were based on observation only and they did not carry out investigations in the way Mr T's engineers did. They rely on old online photos as evidence the movement started before the policy was taken out, but the structural engineer has said these do not show any significant distortion, only general aging, in keeping with the age of the property generally.

Given the more comprehensive nature of the evidence provide by Mr T I don't consider it fair for AXA to decline the claim. So AXA should accept the claim and arrange for the repairs to be done. This will mean preparing a schedule of the repairs needed to provide a lasting and effective repair for agreement with Mr T, and then carrying out the repairs without further delay.

Replies to the provisional decision

AXA confirmed it's happy to accept the provisional decision and arrange for the loss adjusters to contact Mr T to start to progress the claim.

Mr T's representative said he also accepts the provisional decision but asked for a specific firm of structural engineers (which I will call "L") to be appointed, and said in addition to paying for the repairs, AXA should also pay for the investigative costs Mr T has incurred to-date.

Before proceeding with my final decision, I sought further comments from AXA. It has now confirmed it is happy for Mr T to use his chosen firm of structural engineers and for the costs incurred for investigation works so far to be incorporated within the claim.

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.

Both parties have accepted the findings in my provisional decision. AXA has also agreed that Mr T may use his chosen firm of structural engineers and that the costs incurred for investigation works so far be incorporated.

In the circumstances, there's no reason for me to change the provisional decision, other than to say the structural engineers Mr T has specified should be appointed and the costs he's already incurred in investigating the claim should be covered. Given L's involvement, I think it's fair if they supervise the work once the schedule they prepare has been agreed..

My final decision

I uphold the complaint and direct AXA Insurance UK Plc to:

- appoint Mr T's chosen firm of structural engineers ("L") to prepare a schedule of the necessary repairs to provide a lasting and effective repair of the damage and, once agreed by Mr T, carry out the repairs under L's supervision; and
- pay the costs incurred by Mr T for investigation works so far.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 March 2025.

Peter Whiteley
Ombudsman