

The complaint

Mr and Mrs M complain AXA Insurance UK Plc has unfairly declined a claim they made for damage under their home insurance policy.

What happened

In August 2020, Mr and Mrs M noticed damage to their property, including cracks around windows. They made a claim on their home insurance policy with Insurer E, with whom cover had commenced the previous day. They said piling works on a neighbouring property had caused the damage. Insurer E said it sounded like the damage might be subsidence, but as cover had only just started with it, Mr and Mrs M should refer the damage to their previous insurer, AXA. AXA declined the claim as it didn't think the damage had been caused by any of the events covered under the policy.

In February 2021 Mr and Mrs M sought their own structural investigation report, but AXA didn't agree to change its position. In 2024 Mr and Mrs M complained about AXA's decline of the claim, and how it had handled matters. AXA didn't accept it had declined the claim unfairly, but it accepted it hadn't responded to a letter sent by Mr and Mrs M in support of their claim. They said this wasn't the level of service it wanted to provide and so it paid £50 compensation.

Unhappy with AXA's response, Mr and Mrs M referred their complaint to the Financial Ombudsman Service. They said the damage to their home was causing them distress, the effects of which went beyond the compensation amount offered. They said when the piling work started, they had an insurance contract with AXA to cover the property for damage and therefore AXA should honour its contractual obligations.

Our Investigator didn't think AXA had unfairly declined the claim. Whilst she noted the damage that had happened wasn't as a result of any actions by Mr and Mrs M, she said the policy didn't provide cover for damage caused by vibrations. She said the claim couldn't be considered as 'accidental damage' as there was no cover on the policy for that.

Mr and Mrs M said they didn't agree with that outcome, they said the damage should be considered as subsidence damage, not accidental damage, as it hadn't been done accidentally.

As the matter hasn't been resolved, it has come 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.

I understand this has been a worrying time for Mr and Mrs M, but having considered matters, I think AXA has fairly and reasonably declined the claim. I've explained why below.

Mr and Mrs M's policy doesn't cover their home against damage caused by vibrations. So there is no cover for the scenario they find themselves in, whereby construction work at a neighbouring property has caused vibrations so strong they appear to have caused damage to their home.

There is cover under their AXA policy for the peril of subsidence or ground heave. Subsidence is defined under the policy as “*downward movement of the site on which the buildings are situated by a cause other than settlement or the weight of the buildings*”. AXA has said as the damage was caused by vibrations, rather than downward movement, it can’t be considered under this peril.

Mr and Mrs M say it should be as their engineer concluded the damage had been caused by “*a large number of upward (hogging) and downward (sagging) movements. This leads to the uneven settlement/shifting of soils.*” They said whilst his report doesn’t conclude the damage is subsidence, the engineer has since clarified that the damage should be classed as damage from subsidence or heave.

I’ve reviewed the report provided by Mr and Mrs M. Having done so, I don’t think it supports that the damage has been caused by subsidence. It concludes the damage is unlikely to continue, and that the damage occurred in 2020 (when the piling happened) and didn’t appear to have been ongoing since. This is important as with subsidence, downward movement will generally continue until the cause of the movement is addressed, such as drains being repaired or trees impacting the soil being removed.

The report also concludes that those upwards and downwards movements noted above resulted in “*uneven settlement/shifting of the soils*”. ‘Settlement’ is specifically excluded under the policy as not covered. Whilst Mr and Mrs M say the engineer more recently added that the movement is subsidence, that isn’t what is concluded in the report. So it follows I don’t think AXA has been unreasonable in saying the damage isn’t covered by the policy.

For similar reasons I don’t think its most likely the damage has been caused by ‘heave’. Heave is defined as the “*upward movement*” of the soil. But there is no evidence the soil has moved up as a result of the piling. Rather the report is concluding that the soil has moved up and down rapidly over a short period of time, which has caused damage. There is no evidence that, once the piling stopped, the lasting position of the soil was either upwards, or downwards, compared to where it had been, such as you’d see with subsidence or heave.

AXA did consider whether ‘accidental damage’ could apply. I know Mr and Mrs M were confused by this as they said the damage wasn’t accidental. But home insurance policies often include this – and sometimes as an optional extra – to capture causes of damage to a home that don’t fit under the other definitions typically included on a policy. Whilst the definition of accidental damage varies between policies, it generally covers damage that is sudden, unexpected, and caused by something external.

Mr and Mrs M could have added ‘accidental damage’ to their AXA policy, but they hadn’t. I don’t know if their claim would’ve been successful under this cover if they’d taken it out, but I don’t think AXA acted unfairly in pointing out that the damage, if it was to fall for cover anywhere, it sounded most likely to fit in with ‘accidental damage’.

As there is no cover under the policy for the damage that occurred, it follows I consider AXA was reasonable in declining the claim. I realise this leaves Mr and Mrs M in a difficult position; their home has suffered damage through no fault of their own. But, unfortunately, not all damage is covered by their AXA home insurance policy. I understand they’ve paid for the structural engineering report, but as I’ve decided the claim has been declined fairly, it follows that it wouldn’t be reasonable to ask AXA to fund the cost of that report.

AXA did pay compensation of £50 for not responding to Mr and Mrs M’s letter in early 2024. I agree this would have caused frustration and could’ve been avoided. I consider £50 was a reasonable compensation payment for the frustration caused in Mr and Mrs M having to chase a response to that letter, so I’m not going to require AXA to do or pay more to put matters right.

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 Mrs M and Mr M to accept or reject my decision before 23 April 2025.

Michelle Henderson
Ombudsman