

The complaint

Q, complains AXA Insurance UK Plc has unfairly declined a claim it made for possible subsidence damage.

Q is being represented in bringing this complaint by Mrs C, who's leasehold property is a beneficiary of Q's policy with AXA. Mrs C in turn has been represented in bringing the claim and complaint. But for ease, I've referred to all comments and actions as being those of Mrs C.

What happened

Mrs C owns a leasehold property insured by AXA, with the policy starting in May 2023. In late 2023 Mrs C made a claim, having discovered a crack in the wall of her property. AXA carried out some investigations, but it ultimately declined the claim. It said it considered the damage had happened before the policy started. It also said it appeared the foundations of the property had previously been underpinned, but it hadn't been informed of this, which was a breach of its policy.

Mrs C complained about AXA's decision, she said she'd lived in the property for more than 35 years, and it hadn't been underpinned. She disputed that the cracks had been there for some time and said she made a claim promptly having discovered the damage.

AXA responded with a complaint final response letter (FRL) on 5 September 2024. It didn't agree to change its position in relation to the claim.

Unsatisfied with AXA's response, Mrs C referred her complaint to the Financial Ombudsman Service for an independent review. Our Investigator wasn't satisfied AXA has reasonably shown the damage had happened before the policy started, particularly given she wasn't persuaded by AXA's arguments that the property had been underpinned since its construction. She recommended AXA reconsider the claim in line with the remaining terms and conditions of the policy; she also recommended AXA pay Mrs C £300 to recognise the distress and inconvenience caused by the delays in the claim.

AXA didn't accept that outcome. It maintained the damage had happened before the policy began and said as such, it doesn't need to diagnose the cause of the issue.

As the matter wasn't resolved, it came to me to decide. I told AXA that I also intended to uphold the complaint. I said Mrs C's property had benefited from continuous cover, with AXA seemingly taking on Mrs C's policy (at renewal in 2023) as part of a transfer from the previous insurer. As such I said it was fair and reasonable that the principles of the Association of British Insurers' (ABI) domestic subsidence agreement should be followed. And given the notification date of the damage to Mrs C's property, following those principles would mean AXA should assess the claim.

I also said I wasn't persuaded the property had been underpinned. I said AXA seemed to have formed this view based on a report, provided by Mrs C, from an expert showing the foundation on two levels. But I said the report made no mention of underpinning of the foundations, so I didn't think that was a reasonable conclusion for AXA to draw, without any clarification from Mrs C's expert.

In response AXA said it had only purchased the renewal from the previous insurer. And it said given this is a commercial policy, taken out in the name of a limited company, the

principles of the domestic subsidence agreement do not apply. So, as it considers the damage pre-dates the policy, it says Mrs C needs to refer matters to her previous insurer.

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.

Having done so I'm not satisfied AXA has fairly declined this claim. As such, it will need to carry out further investigation into the property to assess the cause of damage.

I accept, as AXA has set out, that the ABI domestic subsidence agreement covers domestic properties owned by an insured in a personal capacity. And that in this case, it is a limited company which has insured the building. However, I don't think this necessarily means that the guidance, which this Service sees as good industry practice, should not fairly and reasonably apply to Mrs C's situation. And I think there are instances within the agreement where it seeks to protect those whose policies are insured on a 'block basis' but are owned and occupied in a personal capacity, much like Mrs C's. It seems to me those types of arrangements would benefit from cover under the agreement.

However, in any event, even if the agreement doesn't apply to Mrs C's situation, my outcome would remain the same. That is because AXA hasn't persuaded me that the damage most likely happened before the policy started in May 2023. Its report dated November 2023 noted the damage as "*probably settlement*". However, in this report there are no photographs of the cracks in the initial November 2023 report, with the report itself naming the wrong property when discussing the damage. As such it's not entirely clear whether AXA was even looking at the area of damage that had been claimed for by Mrs C. With all of that in mind, I don't find the report to be persuasive.

A later report said the cracks were 'discoloured', which meant they'd been present for some time, and so had predated the policy. However, there isn't any further explanation of how long the cracks might have been there for, and why it wouldn't be possible that the cracks could have reached the same appearance/discoloration if they were a few months old, rather than a few years old. So I also don't find this to be persuasive.

Mrs C says she noticed damage in her bedroom and mentioned it to a friend shortly after. She denies the cracks had been there for a period of time before she notified her expert. And her report makes no comment on the likely time period any damage has occurred. I find Mrs C's testimony on this to be reasonable; she instructed her own expert promptly, having noticed the damage. The damage was in a bedroom, some of which was not, to my knowledge obstructed from view by any furniture or such like. So I find it most likely that, had the damage happened at an earlier point, Mrs C would have a) noticed it and b) instructed someone earlier.

I think this view is supported by AXA's loss adjuster's later review. It recommended, having interviewed relevant parties, that AXA accept the claim (notwithstanding what it had said in earlier reports). It said this was given Mrs C's property had benefited from continuation of cover. And its view was that any argument for late claim notification (I think this refers to there being a few months gap between Mrs C receiving an expert report on the damage and her making the claim) might appear 'harsh in the circumstances'. It also concluded the property had been decorated in the last five years, most likely in 2021, with the cracks appearing after that time. It seems then, that AXA's loss adjuster was no longer confident it could say the cracks pre-dated the start date of the policy. As such, I'm not persuaded AXA can fairly and reasonably decline the claim on the basis that the damage happened before the policy started.

I also don't think it's fair and reasonable to decline the claim on the basis that the property has previously been underpinned. Firstly, there is no evidence that there has been

underpinning of the property owing to a previous episode of subsidence. AXA's loss adjuster felt Mrs C had given a reasonable explanation for the foundations being extended, in that she agreed to purchase the property (in the late 1980s) on the basis that an extension be added for a bedroom, which it was. She considered this the likely reason for foundations being at differing levels or extended. AXA's loss adjuster accepted that as a *"logical explanation given the absence of previous subsidence of other damage occurring"*. And I haven't seen any good reason from AXA why this clear and persuasive opinion put forward by its own expert should be ignored. So I find that there is no evidence of underpinning owing to a subsidence claim.

I also consider that even if the property had been underpinned at some point, I can't see that AXA's policy terms would then allow it to decline a claim for subsidence. It seems to me that the matter of underpinning might be relevant when considering if any misrepresentation of fact was given when the policy was taken out/renewed. But I note AXA hasn't sought to rely on any misrepresentation as a means to avoid the policy (treating it as though it never existed) and so decline the claim. And it wouldn't be fair or reasonable to Mrs C for AXA to revisit its position now in relation to information given when the policy was taken out or renewed. Put simply, AXA cannot now seek to avoid the policy on the basis of it not being told about any possible underpinning.

As such, AXA will need to carry out further investigations into the property. It might be that, having done so, AXA considers there hasn't been subsidence at Mrs C's property, and that the damage has another cause. But it cannot simply refuse to assist Mrs C because it considers the damage pre-dates the policy, because it hasn't persuaded me it would be fair and reasonable for it to do so.

As to what investigations AXA carries out, I will leave to it and its experts. If, having reached a decision on the claim, there is any further dispute about the damage and the cause of it, this Service could consider that as a new complaint, once AXA has had an opportunity to respond.

I've no doubt that declining to investigate the damage will have caused unnecessary distress and inconvenience to Mrs C, and there were delays in AXA's consideration of matters. I am aware that AXA seems to have made an offer of compensation of £250 for delays in the claim. I haven't been provided with its complaint response containing that offer. But I've already set out to AXA that, notwithstanding any offer of that amount, I consider it should pay £300 for the distress and inconvenience it caused by unfairly declining Mrs C's claim without proper consideration. Awards at this level are made when a business' mistake has required a reasonable effort to sort out, which I'm satisfied has been the case here.

My final decision

My final decision is that I uphold this complaint and direct AXA Insurance UK Plc to:

- Consider Mrs C's claim for subsidence damage, in line with its policy terms.
- Pay £300 compensation (in addition to any other amounts of compensation offered/paid by AXA) for unnecessary distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Q to accept or reject my decision before 4 March 2026.

Michelle Henderson
Ombudsman