

## The complaint

Mr A complains on behalf of the estate of Mrs A about the way AXA Insurance UK Plc has handled a claim made under a home insurance policy.

## What happened

The circumstances aren't in dispute, so I'll summarise the background:

- Mr A got in touch with AXA in January 2023 to make a claim. The estate had been trying to sell the late Mrs A's property when crack damage was noticed.
- AXA considered the matter. It went on to accept the damage was caused by subsidence and covered by the policy. It took steps to identify the cause of the subsidence and stop the movement.
- A number of complaints arose during the claim, primarily about the way AXA was handling it – the decisions it made, the time taken, and communication.
- AXA issued complaint responses. It broadly accepted there had been failings in the way it had handled the claim. Up to and including its January 2025 response, it offered Mr A a total of £1,525 compensation.
- Our investigator thought AXA had caused around ten months of avoidable delays and communicated poorly. She noted this Service doesn't have the power to award compensation for distress and inconvenience to the representative of an estate. So she couldn't consider whether AXA's compensation offer to Mr A was fair. But she thought AXA should pay council tax and utility costs incurred by the estate from October 2024, due to the avoidable delays she'd identified.
- An agreement wasn't reached, so the complaint has been passed to me.

## My provisional decision

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- The scope of this complaint is limited to events up to and including AXA's complaint response in January 2025. Whilst the claim has continued in the meantime, I won't be considering anything that has happened since that response.
- The scope includes AXA's complaint responses from August and November 2023. An Ombudsman has previously decided we have the power to consider them. I understand AXA may disagree with that position, but I can't reconsider this point – I must follow the decision made by another Ombudsman.

- It's accepted the damage was caused by subsidence and covered by the policy, so there's no dispute about that. The complaint is primarily about how the claim has been handled, together with associated costs or losses. That's what I'll focus on. But first, I think it would be helpful to set out the limitations to what I can consider.

#### *Limitations to what I can consider*

- Mr A was acting as a representative of Mrs A's estate. I don't have the power to award compensation to a representative. So I can't award any compensation to Mr A, whether that's for distress and inconvenience or financial loss. As I can't make such an award, I won't consider whether I think AXA should pay Mr A anything further.
- Within the scope of this complaint, AXA has offered Mr A a total of £1,525 compensation for distress and inconvenience caused by the way it handled the claim. For the reasons given above, I won't consider whether I think that's fair.
- An estate can't suffer distress and inconvenience, so I can't award it that kind of compensation. As I can't make such an award, I won't consider whether I think AXA should pay the estate any compensation for distress and inconvenience.

#### *What I can consider*

- What remains is whether AXA should pay the estate any financial losses it's incurred. That could be because such losses are insured by the policy. Or, because I consider it would be fair and reasonable in the circumstances for AXA to pay such losses, despite them being uninsured.
- I may consider it fair and reasonable for AXA to pay for uninsured losses if I thought it had acted unfairly *and* that had directly caused the estate a financial loss. The only way I think that could be the case here is if AXA caused *avoidable* delays – and those delays directly caused the estate a financial loss. Or, to put it another way, were it not for the avoidable delays, the losses wouldn't likely have been incurred.
- That means if certain losses are uninsured – and not caused by AXA's avoidable delays – I won't require AXA to pay for them. That may leave the estate at a loss, but that's not something I can hold against AXA. It's not responsible for any losses which inevitably arise from the original subsidence problem, or from the steps necessary to deal with it.
- AXA has accepted it caused avoidable delays. That means it's not in dispute there are *some* avoidable delays. So I'll consider to what extent AXA caused any avoidable delays. And then whether those delays caused the estate a financial loss.

#### *Avoidable delays*

- AXA is required to handle claims promptly and fairly. There's no set timescale for how long a subsidence claim should take – it's dependent upon the specific circumstances of the claim.
- I've considered how long this claim took, and why, to estimate how much of the time is attributable to avoidable delay. Whilst I've read all the information provided by both parties, I won't comment on each and every claim event. I'll focus on the points I consider key and summarise my thinking.

- The claim began in January 2023, when Mr A first got in touch with AXA. It appointed a loss adjuster to inspect the damage and consider the wider circumstances. AXA found the property had been unoccupied for some time, had previously been underpinned and thought it was in a poor condition. AXA made enquiries. By May 2023, AXA had completed its enquiries and was prepared to accept the claim.
- I'm satisfied AXA was entitled to make these enquiries before accepting the claim. But I think it took longer than it should have done. It took around four months, but there were gaps during that time that haven't been explained and seem unnecessarily and unusually long to me.
- After that, the claim could continue – but it didn't for several months. An arborist was appointed and inspected the nearby vegetation. I understand an arborist had to reattend the property later, as a report wasn't completed the first time. I think this was avoidable and caused an avoidable delay. It's usual practice for a report to be produced soon after the inspection, so the results can be assessed and the next steps taken promptly. The delay with the report delayed these next claim steps.
- In the remainder of 2023, the loss adjuster arranged for site investigations, installed a datum for level monitoring, and considered drainage repairs. These were all reasonable steps to establish the cause of the subsidence problem.
- I understand the site investigation was carried out in two stages, at different times, as the contractor was unable to complete it the first time due to the ground conditions. I haven't seen any evidence to show this could be considered avoidable or contributed to an avoidable delay.
- The first level monitoring readings were taken in February 2024 and readings continued throughout 2024. During this time, the loss adjuster followed the arborist advice to have some vegetation removed that was thought to be contributing to the subsidence movement. Mr A thought the removed vegetation wasn't the main cause of the movement.
- Later in 2024, after the vegetation was removed, level monitoring showed continued movement. I think AXA broadly agreed with Mr A that the vegetation removal up to that point hadn't stopped the movement. It agreed to take further arborist advice and monitoring readings and review the matter further. The arborist said further vegetation was the cause of the remaining movement, but noted a heave risk if removed. Mr A thought further tree removal wouldn't stop the movement.
- By January 2025, at least one further reading was planned, so the monitoring exercise hadn't ended. I understand AXA intended to take and review that reading in conjunction with the other information gathered during the claim and decide how to proceed with the claim.
- I don't think the monitoring exercise could be considered avoidable or contributed to an avoidable delay. It's an important investigation for establishing the extent and direction(s) of movement and provides objective information to support decision making about the right steps for a claim. And when level monitoring readings are taken, they're usually taken for at least a full yearly cycle to understand how the property moved over the seasons.
- Overall, for the reasons given above, I consider there were around six months of

avoidable delays within the scope of this complaint.

### *Financial losses*

- The main financial losses Mr A has asked AXA to pay are for council tax, as well as utility bills and the like.
- Whilst the claim has been outstanding, the estate has been liable for these costs, but has been unable to sell or rent the property.
- The policy covers loss of rent in certain conditions. And, where those conditions arise, loss of rent cover is often extended to include associated costs that a tenant would usually pay – such as council tax and utility bills. But those associated costs aren't strictly covered by the policy and wouldn't usually be paid in isolation.
- I don't think Mr A has claimed for loss of rent. Prior to the claim, I understand Mr A intended to sell the property – not to rent it. And that remains his intention once the claim is complete.
- So, there isn't a loss of rent claim for AXA to consider under the policy. And, as a result, I don't think there's any loss of rent cover that could possibly be extended to include the associated costs.
- That means I'm not satisfied the policy covers the financial losses caused by council tax, utility bills and the like.
- However, as noted above, I may consider it would be fair and reasonable in the circumstances for AXA to pay such losses, despite them being uninsured. That would usually only be the case if I thought AXA had acted unfairly *and* that had directly caused the estate a financial loss.
- I found above there were around six months of avoidable delays within the scope of this complaint. Were it not for this delay, it's likely the claim will be completed six months sooner. And it's likely Mr A will go on to sell the property six months sooner. Once it's sold, the estate won't be responsible for council tax, utility bills and the like.
- As a result, I'm satisfied the six month avoidable delay has caused the estate a financial loss. And, as AXA is responsible for that avoidable delay, I consider it would be fair and reasonable for it to reimburse the loss caused during that delay.
- AXA seems to disagree with this, because it hasn't agreed to make an offer to cover this loss. But its focus has been on whether the policy would respond to a loss of rent claim, which, as noted above, Mr A hasn't made. So I think that focus misses the point. Perhaps AXA is also arguing that Mr A could have mitigated the estate's loss by renting the property out. I think that's a relevant consideration here.
- AXA says the property is habitable. Or, if it is uninhabitable, that's not because of the subsidence problem, but because of other, unrelated damage, which Mr A could have repaired. So, in either case, the property could be rented out.
- However, it also notes that the extent of damage to be covered as part of the subsidence claim is uncertain. And it accepts it hasn't been clear with Mr A about which damage it would cover – so it wouldn't have been clear to him what work he could carry out to the other damage if he were to try to make the property habitable.

- Regardless of the extent of other damage that may have been present prior to the claim, even if Mr A could have repaired the other damage, the house would still be suffering from subsidence – and seemingly to a significant extent. AXA tried temporary repairs to the subsidence damage twice, and neither was successful. And AXA has accepted that Mr A couldn't reasonably have carried out any repairs until the property was stabilised. In these circumstances, I think it's unlikely that Mr A would have been able to rent the property with subsidence damage and an ongoing subsidence claim, particularly when the timescale for repairs is uncertain.
- Taking all of this into account, I'm not satisfied Mr A could have mitigated the estate's losses by renting the property out.
- Overall, that means I'm satisfied the estate has suffered a financial loss, which Mr A couldn't mitigate, as a result of the avoidable delays caused by AXA. So, I consider it would be fair and reasonable for AXA to pay for this financial loss. I'll set out in the section below what AXA should pay.
- There are some additional, potential financial losses Mr A has asked AXA to pay.
- Mr A has said the property value has fallen as a result of the claim. It's common for properties that have suffered subsidence to be seen as less valuable than they would have been without subsidence. That's unavoidable and not something I can hold against AXA – it didn't cause the subsidence. And I haven't seen any evidence to show the way AXA handled the claim has caused an additional loss of value, over and above that which is unavoidable. There may be an inevitable loss of value because of the subsidence problem, regardless of how AXA handled the claim.
- As it stands, there is no financial loss of this nature as the property hasn't been sold. And there's no evidence to suggest the way AXA handled the claim up to January 2025 has caused, or will cause, an additional reduction in value.
- Mr A mentioned he'd carried out regular visits to the property. As noted above, I can't make a compensation award to Mr A – whether for financial or non-financial loss. I haven't seen any evidence to suggest such visits have meant the estate incurred a financial loss. So I don't think there's any loss I could potentially award to the estate, even if I thought it was fair to do so. Because of this, I haven't considered this point further. And, even if I did, I would have to bear in mind that AXA could only possibly be held responsible for the cost of visits incurred as a result of it acting unfairly.

#### *Claim developments since January 2025*

- As explained above, any claim developments since the January 2025 complaint response are outside the scope of this complaint and haven't been considered.
- But, as a general point, I would expect AXA to keep in mind its requirement to handle claims promptly and fairly. Mr A is entitled to raise a new complaint about events since the January 2025 complaint response if he wishes.

#### *Putting things right*

- At this stage, I don't know exactly what losses the estate incurred for council tax, utility bills and the like, during the relevant time. So I can't award a specific figure and will have to set out the principle for both parties to follow.

- The scope of this complaint ends with the 15 January 2025 complaint response. I've found there were six months of avoidable delays. So I'll set the relevant time for financial losses as 15 July 2024 to 15 January 2025 inclusive.
- AXA should pay the *necessary* cost of council tax, water, electric, gas and buildings insurance during the relevant time. I emphasise the word 'necessary', as I would only expect AXA to pay any losses the estate had to incur during that time. That would include taking into account any discounts it may have been able to achieve, whether due to the occupancy and/or condition of the property.
- The necessary cost doesn't include any costs the estate incurred due to late payments or other charges incurred over and above that which was necessary.
- AXA will be entitled to evidence of these costs. Though a degree of pragmatism and compromise may be required from both parties, as Mr A may not be able to show the exact cost for the relevant time, and some estimation may be needed.

### **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.

- AXA said it had no further evidence to provide and it accepted my provisional decision.
- Mr A responded to make a number of points. I won't respond to each one individually, though I have read and considered them all. I'll focus on those that I consider to be key to reaching and explaining my decision. That reflects the informal nature of this Service.
- The scope of this complaint is limited to matters up to and including AXA's January 2025 response. Whilst the claim has continued beyond that time, no further complaint has been referred to this Service. So there's no further complaint for me to consider at this time. This Service doesn't consider matters as they arise whilst an insurance claim progresses. It retrospectively considers a complaint once an insurer has had the chance to respond to it.
- If Mr A would like to make a further complaint, he's entitled to do so, in which case he should get in touch with AXA in the first instance. That can include any matters from AXA's January 2025 response onwards – including any ongoing costs. AXA is entitled to the opportunity to respond to any such complaint and seek to resolve it. If not resolved to Mr A's satisfaction, he would then be entitled to refer it to this Service.
- The scope of this complaint is also influenced by a decision made by an Ombudsman in March 2025. In short, that decision found we could consider all of AXA's complaint responses up to and including January 2025.
- Another factor which influenced the scope of this complaint relates to ownership of the property. During the claim, up to and including AXA's complaint response in January 2025, the property was owned by the estate of Mrs A. It was also the policyholder. That means the sole eligible complainant is the estate of Mrs A. And, as a result, Mr A has brought this complaint as a representative of the estate of Mrs A. For the reasons I gave in my provisional decision, I therefore can't consider his

personal financial losses and/or distress and inconvenience.

- I know Mr A disagrees with this, because he says he and his brother are the owners of the property. I recognise they may stand to receive the property as beneficiaries. But the Land Registry shows they didn't own the property during the scope of this complaint. So I'm satisfied they weren't the owners – and, as a result, they aren't eligible complainants in their own right. I haven't seen any evidence or legal opinion to suggest otherwise. So my position on this point hasn't changed.
- Mr A has questioned why I found fewer avoidable delays than our investigator did and highlighted two particular points – the site investigation and the monitoring. I remain satisfied both of these were unavoidable for the reasons I set out in my provisional decision. And, as I explained my findings about the extent of avoidable delays in detail, I don't see a benefit in repeating them here.
- But it may help to explain that monitoring readings don't need to be taken at exactly equal intervals. Usual best practice is to take sufficient readings, broadly spread across the seasons, to understand the pattern of movement over a reasonable period of time, generally at least a year. I'm satisfied that was achieved in this case.
- It may be that Mr A had to chase for readings for to be taken, and I note the monitoring exercise was incomplete at the January 2025 complaint response. But neither of these things mean the monitoring amounted to an avoidable delay.
- Given the scope of the complaint, and my findings about the extent of avoidable delays within the scope, I remain satisfied the remedy I set out within the *putting things right* section of my provisional decision is fair and reasonable in the circumstances.
- That will leave both parties to discuss the next steps for settling the complaint, including gathering relevant information. Mr A has said there were no council tax discounts available for the property. And, in 2024, council tax increased significantly because the property had been empty for a long time. These things may impact the amount AXA has to pay to settle the complaint.

### **My final decision**

I uphold this complaint.

I require AXA Insurance UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs A to accept or reject my decision before 14 October 2025.

James Neville  
**Ombudsman**