

## **complaint**

Mrs C owns an unoccupied house which has suffered subsidence damage. She would like the damage to be properly assessed by an independent loss adjuster and settlement to be carried out satisfactorily. The policy is provided by AXA Insurance UK Plc.

## **background**

In late 2009 Mrs C reported that she had noted distortion to the rear door and cracking to areas of the unoccupied house she owns. AXA's loss adjuster felt the damage had been brought about by nearby willow trees, which it intended to remove in order to allow the soil to recover. The adjuster also noted there had been movement to the front of the garage, but he felt this was historic and so should not be dealt with as part of the claim.

Mrs C had intended to sell the house in 2010 as soon as it was repaired, but due to delays the trees were not removed for many months. Mrs C's letter in August 2010 complained about the delay in repairing the house and said she was incurring substantial maintenance costs while the house was waiting for repairs. She held written evidence of having recently consulted an estate agent with the intention of selling.

The adjuster questioned whether Mrs C's buildings sum insured of £120,000 was sufficient to allow for full rebuilding. He calculated that rebuilding all buildings at the site would cost around £150,000. As a result he said AXA would reduce its payment from 100% of the finalised claim to 80%, this being the ratio the £120,000 bears to £150,000. This was detailed within the policy wording in the event of underinsurance. He said Mrs C would have to pay the remaining 20% of the finalised claim.

While the claim was being assessed extra damage was noted, as a result of which there were increases in the amount Mrs C was asked to contribute as her 20% share. AXA intended to appoint a builder to carry out the repair work, but Mrs C wanted her own builder appointed. At her request this builder had already visited her during early 2011 and had quoted almost £50,000 for repairs. The adjuster felt the repairs should instead cost around £15,000. He therefore did not agree to appoint Mrs C's builder as this quote was considered excessive and included work to undamaged areas.

The adjuster arranged for boreholes to be dug and carried out drain testing in March 2011. Its letter of 26 April 2011 suggested that Mrs C conclude the matter by agreeing to use AXA's builder to carry out the repairs, or that she accept a cash payment of £11,290 so she could organise whatever level of repairs she wanted via her own builder. Mrs C did not agree to either proposal. From the latest information received after my provisional decision I am now to understand that the boreholes and soil testing were not done until some time later and that only drains testing took place in March 2011.

A firm of structural engineers was appointed to provide a further opinion as to the damage and the extent of repairs required. The engineer visited twice during 2011 and identified insufficient foundations to the garage wall, a leaking drain, rainwater discharge into the soil at the side of the garage, possible clay shrinkage and the action of nearby conifers as problematic. He recommended substantial remedial works, or demolition and rebuilding of the garage with new foundations. I have now seen further background information on these points.

The adjuster's repair schedule was altered in January 2012 to include the demolition and rebuilding of the garage as it said that the garage had deteriorated while the repairs remained outstanding. Mrs C sent the adjuster a cheque for £5,249 to represent her 20% share of the increasing repair costs, including her £1,000 contribution (the policy excess) towards the claim. She later contributed a further £1,568.

Repair work started in spring 2012 but was suspended as AXA's builder found the garage's foundations to be in a worse state than previously thought and so would not be able to support having the new garage wall built off them. A piling scheme was devised so the new wall could instead be supported from firm ground at a substantial depth, again increasing the overall cost. The adjuster's letter in October 2012 asked Mrs C to contribute a further £1,299.72 towards the piling and associated costs, but she could not afford to do so and would not agree to offset this cost through AXA not carrying out other minor repair work to this value. AXA was not prepared to waive the £1,299.72, so work stopped. By this time Mrs C had referred her case to this service.

### *our initial conclusions*

Our adjudicator sent an adjudication report to both parties in April 2013 recommending that AXA reimburse Mrs C's costs of maintaining the house from April 2011 to the end of December 2011 as he felt these had been incurred as the loss adjuster had failed to acknowledge the full level of damage more promptly. He said AXA should also pay £400 for distress and inconvenience, clarify the cost of its security fencing and the possible payment of interest on the 20% contributions Mrs C had made. He suggested that Mrs C agree to offset the outstanding £1,299.72 for minor repair work.

Mrs C agreed to pay the £1,299.72 but in her letter from May 2013 she said that she did not accept she was underinsured. She maintained that her builder had been right all along as to the level of repairs that was required and she did not agree there had been only nine months of avoidable delay while assessing the damage. She said that had the matter been dealt with correctly then repairs could have been concluded within a year. Despite the updates and details from AXA very little of the detail changes the overall status of the complaint. I see the point it makes about the costs in comparison to Mrs C's contractors costs and any issue that would have created about the sum insured. Although AXA refers to "*forced betterment*" if works are required in order to allow the repairs to take place then it is all part of the claim as far as this service is concerned.

AXA did not accept the adjudication, saying it did not agree that the full extent of works could have been realised sooner and that it was not prepared to pay Mrs C's costs in maintaining the house, or pay any of the other costs. The adjudicator gave further consideration to the matter and also raised the question of under-insurance with both sides as he felt that the issue needed to be further explored.

Our adjudicator wrote to both sides in July 2013 requesting final representations. In this letter he explained to Mrs C that he had changed his mind over the house maintenance costs since issuing his adjudication report and now did not feel that AXA should be liable for these. AXA did not reply to the letter. Mrs C's reply criticised AXA's and the adjuster's handling of the claim. She disputed she was underinsured and repeated that the adjuster's delay had lost her the opportunity to sell or to let the house, as a result of which she had sustained many further expenses.

Mrs C remained unhappy and requested a final decision from an ombudsman. She wanted reimbursement of her costs and financial losses, interest on cash already paid, compensation for stress and ill health and a contribution towards putting the house back into good decorative order. She would like a certificate of structural adequacy to be issued on completion of repairs.

### **my provisional decision**

I set out my provisional decision the main findings of which are repeated here:

*"I am not minded to agree to Mrs C's request for an independent adjuster to be appointed. After such a period of time on this claim I am unconvinced that an independent engineer would be able to add value to this situation.*

*I am minded to take account of Mrs C's point about settling the claim satisfactorily. Based upon the start of the claim being late 2009 I think she has a point. I find some of the details sketchy in relation to real action being taken until the structural engineer got involved and issued his findings in 2011. It was clear at this point that a lot of work was required and this did not appear to have been fully appreciated up until this point even though the claim had first being referred to AXA in 2009.*

#### *inability to sell sooner*

*Mrs C believes she should be compensated for not having been able to sell the house sooner. In this case I am willing to accept Mrs C's point. There is potential for debate around the condition of parts of the property which could have affected a potential sale price but that is not relevant to her complaint. I am minded to suggest that if correct works had been dealt with from the start in 2009 Mrs C would have been able to put her property on the market much earlier.*

*I can see from the details provided that lots of issues did not appear to be clear to our adjudicator during the case. Part of the problem does seem to be the period of time the claim and complaint have gone on for. This was clear from early on when there was a delay in felling the trees in 2010 but distress and inconvenience was awarded specifically for this issue in a separate complaint with this service.*

*In the follow up details from AXA a lot of comment is made about the trees. I have not spent a lot of time referring to this as mentioned above it was dealt with separately.*

#### *cost of maintaining the unoccupied property*

*Overall, I am not convinced that AXA and its agents have dealt with the claim quickly enough. The repair schedule kept increasing and there were the vastly different estimates from both sides' builders. I have considered the delay in the adjuster submitting the full schedule of repairs before January 2012 and that this had delayed the work, during which time Mrs C funded expenses on the empty house. In our adjudication AXA was asked to contribute to charges as our adjudicator believed that in spring 2011 the adjuster had missed the roof related items that Mrs C's builder (Firm A) had included in the repair specification.*

*The adjuster stated that by late 2011 any need for additional works was due to recent deterioration of the fabric and was not subsidence damage that was missed during his late 2010/early 2011 assessments. However, a pattern does emerge on this case, the delay with*

*the tree felling on the original case, delays in advising Mrs C that her property was underinsured and that she would have to make a contribution. Further delays included conducting thorough trial investigations, the delay with the drains work and delays in relation to the garage works. Therefore, I am unable to accept such deterioration as suggested by the adjuster would suddenly happen so quickly and not be linked to the findings made previously by the structural engineer. To me this highlights Mrs C's point that it was an issue and should have been considered from the start of the claim. There is nothing in the further submissions that explains why the damage was sudden and proven as such so it does not change my decision.*

*I do accept that Mrs C was involved in the delay when the work stopped in October 2012 as Mrs C and her representative Mr B did not agree that £1,299.72 of minor work could be offset. That is AXA would pay Mrs C's part of the costs (£1,299.72) and as a result AXA would not carry out minor repairs, such as decorating, ceiling artexing and skirting board replacement up to the same value. I can understand that Mrs C had probably had enough of the claim at this point, she also said that she did not have the money. I have reviewed a letter from Mrs C that refers to mistrust and maladministration. Mrs C may have felt that she had already paid out enough, the delays had continued and the reserve costs overall were spiralling. Also Mrs C probably felt that points she had made from the start were now becoming accepted parts of the claim and were being dealt with. To Mrs C these were points that she had made all along. Mrs C has since agreed that she will pay the contribution amount (£1,299.72). At this point though I do not think it would be reasonable for AXA to continue to return to Mrs C for any further or subsequent underinsurance charges. The reserve on this claim has gone from £9,000 in March 2011 to £45,000 in December 2012. This is not caused by the actions of Mrs C.*

*Therefore, at this point I am minded to require AXA to pay the reasonable maintenance charges associated with the house while Mrs C has been waiting to get the house on the market and sold. In this case I am minded to suggest that AXA acted unreasonably and that it should consider evidence that Mrs C can provide in relation to costs associated with the ongoing maintenance. In my opinion this claim should really have taken no more than 12 months to deal with in reasonable circumstances. Therefore, the maintenance ongoing costs paid by AXA should take this into account.*

*In conclusion of this issue Mrs C agreed to pay the October 2012 request for £1,299.72 but does not want her cheque for this amount to be released to the builder until the job is done. As a compromise, I think this is a reasonable request. However, I am minded to require this to be AXA's last request for a contribution.*

#### *alleged underinsurance*

*The adjuster has said in this case that Mrs C is underinsured, in that she has a £120,000 sum insured rather than the allegedly required £150,000. Our adjudicator asked for further clarification as he was not persuaded by the presented figures. Mrs C stated that local builders could rebuild the house for the £120,000, but the policy defines "buildings" as including outbuildings, which there are several of at the site. When these outbuildings are included within the sum insured they allegedly take the total reinstatement costs to £150,000. Mrs C's latest letter says no one could believe it would cost £58,600 to rebuild just the garage. However, adjusters say this figure also includes the shower/utility area behind the garage and all of the outbuildings. AXA state therefore that overall Mrs C is underinsured. Based upon the evidence I am not convinced either way. However, based*

*upon my point above regarding no further contribution charges to be requested from Mrs C I am minded to make no finding on the underinsurance issue.*

*AXA have requested a caveat here to allow it to revisit the issue of requests for contributions from Mrs C if further unforeseen issues arise which would increase costs further. I would hope that after so many experts have visited the property little else would be uncovered. However, I do not consider this an unreasonable request in the circumstances. What I would say is that if the extra costs are in relation to works and issues already well known but the costs have just increased, even if these are extensive this should not be considered. If the issue is entirely new then AXA could revisit the issue.*

*miscellaneous issues*

*Mrs C had raised further points regarding:*

*interest*

*Mrs C says that she should get interest on the policy excess and on the 20% cheques she sent last year and which were cashed. She sent cheques for £5,249 and £1,568 which were cashed in early 2012. She raised this with our adjudicator in January 2013.*

*AXA's position is that cheques should only be cashed by the builder upon completion of the works. However, Mrs C's bank statements clearly show the cheques have already been cashed. On balance it is clear to me that the usual process was not followed here. This may have impacted on Mrs C's actions in not wishing to part with further money based upon the work not being finished. It is clear that AXA's usual process has not been followed here and therefore should be rectified. I am minded to require that Mrs C get the interest for the money she has paid from the date it was cashed to the date of final settlement of the claim. Interest should be at our usual rate of 8% simple interest per annum less any tax properly deductible. However, this does not apply to the policy excess.*

*Despite the further comments here I cannot see that anything changes. Effectively AXA or its agents had Mrs C's money and the works had not been done.*

*fencing*

*Mrs C believes that the fencing is useless as someone could get underneath it. AXA do not accept this. Points have been raised about health and safety and who requested the fencing in the first place. Either way, the matter here has not been handed particularly well and I am minded to require AXA to deal with any costs associated with the fencing.*

*Even though I have read the further points from AXA and its agents I am not convinced that what has been said add anything. The one interesting point made by AXA's inspecting agent was "I was able to simply lift the fencing" which is similar to what Mrs C said.*

*council tax*

*I consider council tax bills and other utility bills to be the same as the earlier point I made about maintenance costs. I am minded to require AXA to consider reasonable costs evidenced by Mrs C in relation to utility bills she has paid and will continue to pay until the property is sold. AXA should consider these costs from the date of claim up to the point where it has concluded all of the claim works. However, as in line with the maintenance*

*costs argument I would accept that a claim of this nature should have been dealt with in a 12 month period. It would be reasonable for the policyholder to have to deal with utility costs in the initial 12 month period. Therefore, AXA should consider all reasonable costs after the first 12 months of the claim.*

#### *alternative accommodation*

*Mrs C's in correspondence said AXA would have had to pay this had she not have moved out already. Although I understand the point Mrs C is making I am not convinced costs here should apply. Therefore, I am minded to suggest that no alternative accommodation costs should be paid.*

#### *sundry items*

*Regarding the skips left on Mrs C's driveway which have left behind cracks and damage, AXA states that these areas will be repaired on completion of the claim. She will also be issued with a certificate of structural adequacy on completion of the repairs. This is a reasonable outcome. I have read the further loss adjuster comments but nothing here changes, agreement had been given that repairs will be carried out and this should be the case.*

*This leaves an issue of costs regarding the toilet which are not clear. The old toilet was bedded into a concrete floor and was apparently damaged upon removal. Supposedly the cost of a new one was added to the repair costs. However, other later correspondence suggests that it was removed without damage and decreased costs by £84.80. The further photograph I have now seen does give the impression that there is no damage to the toilet so I do not expect AXA to pay the £84.80 cost for this.*

*There is also debate about the removal of the conifer trees and whether this was required or advisory. I am minded to think that if Mrs C was advised to remove them and as she took that advice it would be reasonable for AXA to reimburse the costs it would have paid had it instructed its own experts to undertake the work.*

*In relation to the decorative order of the property that Mrs C referred to I am only minded to consider this point in relation to areas of the property that have been affected by the subsidence and therefore require subsequent repair. I would suggest AXA would deal with any issues of this type as part of the works.*

*I am minded to require AXA to ensure Mrs C is provided with an up to date schedule of works as soon as possible to avoid any further unnecessary delays.*

*Finally, in relation to distress and inconvenience our adjudicator had suggested an award of £400 in view of the time taken, the difficulties Mrs C has faced in handling so much of the claim and her medical conditions. There have been a couple of occasions in April 2011 and October 2012 when Mrs C was involved in some of the delays. Therefore, overall I consider the £400 to be a reasonable offer in this case."*

#### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also reviewed the further submissions from both parties.

Mrs C referred to issues in relation the building plans, the outbuildings and the underinsurance. AXA has said even though it does not agree with all elements of the decision it does feel it provided enough further evidence previously.

Based upon the evidence, I do not depart from my conclusions set out in my provisional decision. In relation to the main issue which seems to be the underinsurance I am satisfied that a reasonable outcome has been found. If Mrs C does find that new further problems arise following the works starting to progress she would be entitled to make a further complaint.

### **my final decision**

I uphold this complaint.

I require AXA Insurance UK Plc to:

- supply Mrs C with an up-to-date schedule of the works to be undertaken and make no further requests for underinsurance contributions;
- recommence work at the site and hold Mrs C's cheque for the £1299.72 and not cash this until the work is done;
- pay for Mrs C's council tax, utility bills and other associated expenses she has had to pay to maintain the house during the period (after the first 12 months) of this claim and until the property is repaired and sold;
- on completion of the works arrange for a certificate of structural adequacy to be issued to Mrs C;
- pay interest on the £4,249 (this amount is minus the £1,000 policy excess) and £1,568 from the date the cheques were cashed to the date of settlement;
- pay the costs for the fencing;
- repair the damage to the driveways at conclusion of the claim;
- pay suitable costs it would have paid for the removal of the conifer trees;
- In relation to any cash sums paid to Mrs C this should include 8% simple interest per annum from the date of claim to the date of settlement less any tax properly deductible. Except on any items noted above that have specific time periods shown;
- pay £400 for distress and inconvenience.

I make no other award against AXA Insurance UK Plc.

John Quinlan  
**ombudsman**