

complaint

Mr and Mrs D are unhappy with their home insurer AXA Insurance UK Plc. They say it failed to properly identify the cause of the subsidence at their home which led to nine-years of further damage, lots of distress and their property's value decreasing.

background

In 2009 Mr and Mrs D advised AXA that there was cracking in their utility room and garage. AXA accepted the claim and appointed a loss adjuster. The adjuster arranged for a borehole to be dug and soil samples taken. He also arranged for the drains to be assessed and these were found to be leaking. He concluded (given the soil from the borehole didn't contain any roots) that the property had subsided due to the leaking drains.

Mr and Mrs D weren't convinced. They said there were other cracks in their home. The loss adjuster dismissed those as being unrelated and having been caused by thermal movement. The cracks that were accepted as having been caused by subsidence were monitored. In September 2011 it was concluded that the monitoring confirmed the property was stable. Mr and Mrs D thought the monitoring was flawed because only the accepted cracks had been considered, and only then sporadically.

In 2012 Mr and Mrs D reported that a crack in the study, that AXA had fixed after the monitoring concluded, had re-opened. The loss adjuster was asked to investigate. He concluded it was a snagging issue, not related to on-going movement.

In 2016, after further contact from Mr and Mrs D, AXA agreed to appoint a new loss adjuster. The new loss adjuster found the property was subsiding and likely due to the nearby trees. AXA accepted this was a continuance of the initial claim but said its original loss adjuster's opinion had been right based on the available evidence at that time.

Mr and Mrs D were dissatisfied. They said it was clear the original findings had been flawed. They said their property had suffered the stigma of an on-going subsidence claim for many years as a result of the original loss adjuster's negligence. This, they said, had affected its market value and caused them to have more costly insurance. They complained to us.

Our investigator thought AXA had acted fairly when it had relied on the advice of its expert loss adjuster. He didn't think it had done anything wrong. Mr and Mrs D remained dissatisfied and the complaint was passed to me to consider. I felt AXA had failed Mr and Mrs D but that its failures had been unlikely to have affected the value of their home. I said it should pay them £500 compensation though for the distress and inconvenience I was satisfied its failures had caused. I've set out a copy of my full provisional findings below:

"I am able to comment on the loss adjuster's actions as he is seen to be an agent of AXA's. AXA is entitled to appoint an expert and rely on its opinion but I am able to consider whether that opinion was reasonable and/or reasonably reached or not. So if the loss adjuster failed then AXA is seen to have failed.

I think it was very odd for the loss adjuster in 2009 to conclude that the leaking drains were the only issue. That's because we're talking about a property built on known shrinkable clay. And with large trees in the vicinity. It is fairly commonly accepted that where pipes leak

into shrinkable clay soils this will likely mask the effect of subsidence caused by trees, rather than be the cause of the damage.

However, the monitoring in 2011, in many ways, vindicated that 'odd' conclusion. Even though regular readings weren't done over the summer months I think it was reasonable for AXA to have concluded, via its loss adjuster's advice, that the property at this point was stable. The readings taken in April and September are very similar. One would expect that a property being affected by tree roots would move downwards over the summer and recover gradually over the wet winter months. So a property that has the same reading in September as it did in April, reasonably doesn't appear to be moving.

And I wouldn't expect an insurer, even where there is clay soil and trees, to monitor every crack visible in a house. As an expert it is reasonable for an adjuster to look at cracks and determine if they are likely related to subsidence or not. And as the cracks in the initial area of damage were stable I think it was reasonable for these other cracks, that seemingly weren't typically suggestive of subsidence movement, to be dismissed.

However, within a month of the monitoring concluding a managing loss adjuster visited the property to consider the other cracking that had been dismissed (and so not monitored). He was satisfied those cracks weren't related but he noted that a crack in the area of the kitchen had got significantly worse. But this was seemingly dismissed as maybe having resulted from some different cause of movement. Nothing further was said about this. But I'm not sure how this evidence of a subsidence crack having significantly worsened sits right with a conclusion that monitoring shows the property to be stable.

And later the loss adjuster dismissed the re-occurrence of damage in the study as having been a 'snagging issue'. But no evidence has been supplied to justify this conclusion. Again, re-occurrence of damage is highly suggestive of further movement. So I really can't understand why the damage was put aside so easily.

The original loss adjuster, as I've mentioned did test the soil and did monitor the property – and in many cases, once a loss adjuster has done that and drawn conclusions based on those results, I'd likely be persuaded that was enough. That an insurer relying on such an expert opinion has acted fairly and reasonably. But the circumstances of this loss, along with the later further damage make me think the loss adjuster's findings, in spite of the technical evidence, were unreliable and potentially flawed, in turn making AXA's reliance on them unfair and unreasonable.

However, that being said, I'm not convinced that AXA's unfair actions have impacted Mr and Mrs D that much. Yes, they've had the worry and inconvenience of living with damage that keeps getting worse and attempting to pursue things with AXA, which ultimately got them nowhere. And for all of that I think AXA needs to pay them £500 compensation. But I don't think AXA's poor claim handling has impacted the value of their home. If that has been affected it will likely be due to the fact of subsidence, rather than how long the claim has continued for. And likewise the cost of insuring the home with other providers – it will be the fact of subsidence that impacts the premium, not its on-going nature."

responses to my provisional decision

AXA said it had no comment to make. Mr and Mrs D disputed what I'd said about the effect of AXA's failures on the price of their property. They said it was common sense that a property with a long unresolved history of subsidence was less attractive than one where

the problem was quickly rectified. They provided a valuation report from 2017 which they said showed the property's value had decreased by 10% because of its specific subsidence history. They added that this could have been resolved quickly in 2009 if AXA had acted properly and they would have been able to sell their home later without any negative affect on its value because time had passed since with no further issues arising. Mr and Mrs D also said that the £500 compensation I'd awarded wasn't enough given everything they'd been through.

my findings

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

I understand why Mr and Mrs D believe their property's value has been affected by AXA's actions. But I don't agree this is the case. And I don't agree that the valuation report they've provided supports their position.

The valuer says the property's value has likely been affected by around 10% because of the subsidence history. But he doesn't say this is due to its *specific* history, a long term claim for subsidence that is unresolved. And the valuer does talk in general terms about how a property having been affected by subsidence is viewed by potential buyers. No distinctions were made between properties where subsidence is identified and rectified quickly and those where problems are on-going or unresolved.

I agree if things had been resolved in 2009 and the property had remained trouble free for a number of years this would be a negotiating point in Mr and Mrs D's favour if they had come to sell the house as they say they'd planned to. But I simply have no way of knowing what is most likely to have happened. It's possible things might have played out as Mr and Mrs D believe they would have – but it's also possible that things may well have been entirely different. And even if they had come to sell and negotiated with a buyer, using the positive gambit of subsidence not having been an issue for a number of years – I don't know if that would have overridden any concerns that buyer may have had about buying a property that has suffered from subsidence (and as referred to by the valuer, such as the difficulty in obtaining insurance).

I know this whole thing has been frustrating and upsetting for Mr and Mrs D. However, I'm satisfied that £500 is fair and reasonable compensation in the circumstances here.

my final decision

I uphold this complaint in part. I require AXA Insurance UK Plc to pay Mr and Mrs D £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 12 December 2018.

Fiona Robinson
ombudsman