

## **The complaint**

Mr L and Ms O complain that AXA Insurance UK Plc has unfairly declined a claim they've made on their buildings insurance policy following a claim for subsidence to the extension of their property.

## **What happened**

Mr L has led the complaint with this Service, so I'll refer to him throughout.

The background to this complaint is well known to the parties so I've included a summary here. References to Mr L and AXA include respective agents and representatives unless stated otherwise.

- Mr L owns a property built around the 1960s with an extension added in the 1980s. The property is covered by a buildings insurance policy underwritten by AXA.
- Mr L noticed damage to the extension of the property in spring 2020 and contacted AXA to make a claim. It appointed an agent to investigate and validate the claim. The agent said the depth of the foundations was insufficient and the claim was declined.
- Mr L complained to AXA. It said the builder should have followed the guidelines of a certain builder of new homes – which I'll refer to as "N" – in deciding on the right foundation depth. It said these guidelines showed the foundations should have been more than 2.9 metres deep but were, in fact, between 0.8 metres and 1.2 metres. It concluded they were therefore inadequate for the site conditions.
- It said the exclusion relating to defective design applied and it didn't change its position on the claim decline. So, Mr L raised a complaint with this Service.
- Our Investigator said the evidence showed the damage was to the rear extension of the property and this wouldn't have been subject to N's guidelines. Instead, Building Regulations should have been referred to. Because of this, she wasn't persuaded AXA could fairly rely on the exclusion to decline the claim.
- She said AXA should reconsider the claim against the relevant Building Regulations. AXA didn't agree and asked an Ombudsman to make a decision.

## **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.

- When a policyholder makes a claim on a policy the onus is on them to show the claim is covered by the policy. When an insurer seeks to rely on an exclusion to decline a claim, the onus is on it to show the exclusion applies.

- I've kept this in mind when considering this complaint together with what I consider to be fair and reasonable.
- AXA seeks to rely on an exclusion relating to what's not covered by the policy: "*Loss or damage...arising from the use of defective materials, defective design or faulty workmanship*". And it says because the foundations don't meet the guidelines set by N, this exclusion applies.
- AXA maintains that N's guidelines apply to the construction of the extension. AXA says, according to these guidelines, the extension foundations should have been at least 2.5 metres deep taking into account nearby vegetation.
- But I want to be clear, N's guidelines relate to the building of *new* houses and weren't the equivalent of Building Regulations when the extension was built in the 1980s. Instead, they are the guidelines set out by N in its role of overseeing and supporting improvement of building practices for new homes in the United Kingdom.
- I acknowledge the copies of N's guidelines provided by AXA but I can't see Mr L's extension was subject to these. I say that as the extension was built as an addition to an already existing property, rather than as part of a new-build. I've seen nothing which persuades me the construction of the extension was subject to these guidelines.
- So I don't think it's fair AXA relied on these guidelines to determine whether the extension foundations were adequate or not as they simply don't apply in this case. It follows I'm not persuaded AXA has shown the exclusion relating to defective design applies and so I don't think it has fairly declined the claim based on the reasons it's stated.
- I am directing AXA to reconsider the claim against the remaining policy terms taking into account the Building Regulations which were relevant at the time the extension was constructed, rather than N's guidelines.

### **My final decision**

My final decision is that I uphold this complaint and direct AXA Insurance UK Plc to reconsider the claim against the remaining terms and conditions of the policy without relying on the guidelines produced by N.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Ms O to accept or reject my decision before 14 December 2022.

Paul Phillips  
**Ombudsman**