

The complaint

Mrs S complains about AXA Insurance UK Plc (AXA) handling of a claim for subsidence under her home insurance policy.

Reference to AXA includes its agents and contractors.

What happened

The details of this complaint are well known to both parties, so I won't repeat them here in any detail. Instead, I'll focus on the reasons for my decision.

A claim was made on the policy for subsidence in January 2023. AXA instructed their contractor to investigate and manage the claim on its behalf.

Mrs S made a complaint a few months later due to the lack of communication. AXA awarded £50 compensation in recognition of these issues.

In March 2023, a surveyor inspected the building, due to the damage noted, site investigations including a drainage survey took place in June 2023 and AXA concluded that clay shrinkage subsidence was evident, it also noted some accidental damage to a couple of the drainage runs but it was concluded that this wasn't related to the subsidence.

An arborist was instructed in September 2023 and it to concluded that the damage was consistent with clay shrinkage due to moisture abstraction by vegetation. It recommended some vegetation was removed and other vegetation to be maintained at the current size.

In October 2023, AXA's contractor wrote to Mrs S, within this letter it explained that the implicated trees included trees owned by the Local Authority (LA) - so more investigations would be required to demonstrate the influence they were having on the property. However, the contractor also noted Mrs S' concerns regarding the removal of the trees destabilising the bank by her property. Given the concerns and that it was highly unlikely that the LA would agree to removal, and it too acknowledged the impact tree removal may cause to the stability of the bank, it explained as an alternative to removal, it would instruct engineers to prepare a root barrier scheme. This would then be presented to AXA to consider further.

The contractor also explained the drain surveys had highlighted some accidental damage to the underground drainage. It confirmed this wasn't causing the movement to the property but that a separate accidental damage claim could be logged with AXA to deal with this. Mrs S subsequently moved forward with this.

It also noted that Mrs S had indicated she would obtain her own expert report as she doesn't feel the cause of damage had been correctly identified. Mrs S has told our Service she has had conversations with experts who have suggested other causes – but no formal report or findings have been provided.

In November, Mrs S raised her concerns to AXA's contractor. Amongst other things, she explained she felt the desiccation had not been proved, and that if it was present, the depth of the desiccation zone hadn't been established.

On 30 November 2023, AXA issued a final response letter (FRL). It outlined Mrs S' concerns that a meeting had been cancelled, the claim had been disorganised and had included no monitoring. Mrs S was unhappy she had to keep chasing the contractor with queries and requests for reports and therefore felt she needed to instruct her own surveyor. AXA explained this would be at Mrs S' own cost as its contractor was progressing the claim.

In terms of monitoring, it explained the claim was still currently under review and that it was awaiting the outcome of this review. It said if the outcome of this review left Mrs S unsatisfied, she could raise a new complaint. Regarding the service received, it agreed the handling could have been better and awarded £275 compensation. It also agreed there had been issues in dealing with the accidental damage claim and failed call backs from the insurance intermediary. It awarded a further £100 compensation to reflect the distress and inconvenience this caused.

Mrs S responded to AXA in December 2023, unhappy with the complaint response. She outlined in detail her concerns with the investigations undertaken from the outset of the claim and why she felt these were inadequate – including areas that she felt hadn't been sufficiently inspected by AXA's contractor. Also, Mrs S was unhappy with the contractors leaving behind rubbish when they dealt with the drains – and although she asked AXA not to have the same contractors return, they turned up unannounced one evening to retrieve the debris it had left. She was also unhappy with the failure to compact the ground following drain work and that the contractors had needed to return to makegood.

Since bringing the complaint to our Service Mrs S made a follow-up complaint and received an FRL dated 15 February 2024. This was regarding not receiving a report with regards to follow up investigations. AXA acknowledged it mismanaged Mrs S' expectations on timeframe to receive this and awarded a further £100 compensation. AXA has agreed we could look at this matter within this complaint, but any further complaints will be addressed separately.

Overall, Mrs S' main point of unhappiness was with the proposed solution for a tree root barrier and the impact the matter is having on her and her family. Unhappy with the responses she has received Mrs S has asked this Service to look at her complaints.

Our Investigator considered Mrs S' complaint but didn't recommend that it be upheld. Mrs S didn't accept the Investigator's view. She also wanted the complaint to remain open until she had received the report and had time to consider its contents.

So, the complaint has been passed to me, 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.

In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not to unreasonably reject a claim. Insurers should settle claims promptly once settlement terms are agreed.

To be clear I am only looking at this complaint up to the FRL issued on 15 February 2024. I appreciate Mrs S wants this complaint to remain open as the claim is ongoing. But this isn't something I can do. If Mrs S is unhappy following the results of the further investigation, she would in the first instance need to raise that complaint with AXA and if she remains unhappy with its response then she can ask us to look at that part of the complaint.

I acknowledge Mrs S has strong views about what has happened in the life of this claim and especially as this claim is still ongoing the impact this is having on Mrs S and her family. But insurance claims, especially of this nature, will often cause distress and inconvenience to the policyholder. Whilst we can't tell AXA to compensate for this, we can tell it to compensate for the trouble and upset it has caused to the policyholder because of its poor handling of the claim or the service it has provided. It's clear that AXA's service and handling of this complaint could've been better.

I appreciate Mrs S doesn't feel that AXA's contractor has diagnosed the cause of the subsidence correctly. But as our Investigator has explained we are not subsidence experts and so we have to assess the expert evidence provided and consider, on balance, what we find most persuasive.

In this instance, I can see AXA's contractor has undertaken the site investigations that I would expect to see on a subsidence claim. I understand Mrs S is unhappy that it hasn't completed any monitoring on the property. I've considered this carefully, but monitoring isn't always required. I say this because Insurers will put it in place if it needs to establish if movement is occurring – in this case that isn't disputed. Or if evidence needs to be provided to third parties if an Insurer intends to pursue it for recovery of costs. In this case although the trees are on LA land due to the concerns about the stability of the bank it is highly unlikely that the trees can be removed safely and therefore it unlikely that the LA would agree to remove them. So, I'm satisfied based on what I've seen that it was reasonable at this stage for monitoring not to have occurred.

Once the claim is at a stage that works have been undertaken to mitigate the subsidence then monitoring is often used to establish if the property is still moving or not. But the claim is not at this stage yet and depending on what mitigation is done the Insurer will decide if this is required or not.

Mrs S has explained that she feels root barriers are only suitable prior to a home being built. I don't dismiss her comments, but it isn't uncommon to see root barriers put in place in subsidence claims when trees can't be removed. Though Mrs S feels underpinning her property is the only solution, there has been no expert reports or engineer findings put forward to support this opinion. AXA's experts have investigated matters and concluded a root barrier is a reasonable solution – and I've seen no expert evidence to oppose this.

I'm aware the claim investigations have moved on since Mrs S brought her complaint to our Service. AXA has explained that its contractor has since agreed to undertake further site investigations, primarily boreholes to try and reach a depth of 6m to understand how deep the root growth is. This will give it a better insight into the extent of the trees influence and the extent of desiccation under the property. These are things Mrs S has also wanted to understand as she wasn't convinced that AXA had determined the cause of the subsidence correctly or the extent of desiccation if the cause was correct. So, whilst this may not change

that a root barrier is the best option, it's a way forward that I agree is fair and reasonable especially given Mrs S' concerns.

AXA's contractor has also changed the technical manager on the claim due to Mrs S' concerns if the root barrier is the right option and therefore this will offer a second opinion. Given the circumstances, and the complexity of this claim, I'm satisfied this is a reasonable step to move things forward.

I appreciate Mrs S would've liked me to tell AXA to underpin her property, but I'm afraid this isn't something I can tell AXA to do at the current time. Ultimately Mrs S' concerns are not supported by expert reports – and AXA has already agreed and done some further site investigations to assess whether a root-barrier is the right course of action. It's also instructed an alternate technical manager to give a second opinion. So, for the period of time, I am considering under this complaint, I'm persuaded this a fair course of action for AXA to take, and I won't be instructing it do anything further at this stage.

As I've said above if Mrs S remains unhappy with report findings and any proposed remedy for the subsidence then she will need to address her concerns under a new complaint with AXA.

During our investigation Mrs S has submitted a further FRL from February 2024. Mrs S has complained about the delay in receiving the report following the further investigations mentioned above.

AXA awarded a further £100 compensation for mismanaged expectations in terms of timescales to send the report, and AXA explained the report was still being prepared and the request for it to be issued to Mrs S had been escalated. I'm satisfied the compensation offered for this is a fair for mismanaging Mrs S' expectations.

Overall, with regards to the service Mrs S has received, it's evident that there have been shortfalls made by AXA and its agents/contractors. This includes delays in progressing matters in a timely manner, missed appointments, poor communication and not receiving promised reports etc. This should've been avoided, and Mrs S shouldn't have needed to chase AXA for updates. AXA has awarded in total for this £425 compensation which I'm satisfied is fair in the circumstances of this complaint and is in the region of what I would have instructed it to have paid if it hadn't already done so.

With regards to the claim for accidental damage to the drains, the expert evidence I've seen suggests the subsidence damage is being caused by the trees (supported by both site investigations and a separate Arborist) – so I've nothing to suggest the drain issues shouldn't have been considered under a separate claim.

But I acknowledge there were also issues with the contractors who undertook the drain repairs leaving rubbish at Mrs S' property, and not compacting the ground after the repairs. Mrs S complained and asked that the same contractors didn't return, but they still turned up unannounced to remedy this. I can fully appreciate Mrs S' frustration. But if there is an issue/problem with works completed by a contractor the Insurer will normally ask for the same contractor to return to make it right. However, AXA should've explained this to Mrs S and if it had done so it could've prevented upsetting Mrs S further. AXA has acknowledged this and awarded Mrs S a further £100 compensation. I'm satisfied that this amount is fair in the circumstances.

Overall, AXA has paid a total of £525 compensation to account for its shortfalls in service. I'm satisfied that this level of compensation recognises the considerable distress, and

inconvenience caused to Mrs S. So, I won't be instructing AXA to do anything further under this complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 19 December 2024.

Angela Casey
Ombudsman