

complaint

Ms H has complained about AXA Insurance UK Plc's handling of her subsidence claim, made under her home insurance policy.

background

I set out the background to and my findings about this complaint in my provisional decision issued in February 2014. The document is attached and forms part of this, my final decision.

Briefly, in 2007, AXA began dealing with a subsidence claim at Ms H's property; the policy at the time was in the name of Ms H's partner who later (while the claim was still on-going), sadly, passed away. The claim, from the start though, did not progress very well and to date, Ms H's home has still not been fully reinstated.

I made a number of findings in relation to this complaint, the full details of which are below. However, following my provisional decision, developments occurred regarding Ms H's policy cover. As such, this matter no longer forms part of this complaint and will not be considered further.

In respect of the other findings I made; AXA agreed with my conclusions, Ms H only made one comment in respect to my findings at point 2), f) interior woodwork. Ms H said there were two aspects to this, only one of which she did not want to pursue at this time (whether it had been damaged as a result of subsidence).

Ms H said that she did want to receive a decision on whether the woodwork needed to be replaced for aesthetic purposes. She explained that if AXA is not liable for replacing the woodwork, she will have to arrange for it to be redecorated herself (if it is left it will stand out and create an aesthetic imbalance) and this will have to be done to coincide with the redecoration work AXA is liable for and going to arrange. Ms H said that this means this will cost more than it otherwise would because she will have to pay for contractors to visit twice; once to prepare the woodwork prior to AXA's work and then again, after AXA has finished, to paint the woodwork.

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 note AXA's acceptance of my provisional decision and the point of concern raised by Ms H. As both parties have accepted the other findings I made, these findings will stand as those of my final decision (with the exception of *policy cover*, as explained above).

In response to Ms H's concern about the woodwork; I understand her desire to freshen this up at the same time the rest of the decor is reinstated following the subsidence damage and repairs to it. However, I also note AXA's argument (as stated in my provisional decision) that this is not necessary. As such, I cannot fairly say that any imbalance will most likely arise if the woodwork is not painted. Even were I able to find this, I am not convinced that I would also find it to be fair to order AXA to be liable for remedying this. Consequently, I make no order against AXA in respect to Ms H's interior woodwork.

my final decision

My final decision is that I uphold this complaint in part, as I have found that AXA Insurance UK Plc should follow through on the offers it has made to increase the scope of works. I have also found that it caused Ms H distress and inconvenience which she needs to be compensated for.

I, therefore, order AXA Insurance UK Plc to:

- Increase its scope of works to include a contingency for repairing; c), d) and e), as detailed in my provisional decision.
- Correct the scope of work to account for Ms H's required decorative finish as per g), as detailed in my provisional decision.
- Commence repairs without any further delay.
- Pay Ms H £1,000 compensation for the distress and inconvenience it has caused her by its poor handling of her claim.

I make no other award against AXA Insurance UK Plc.

Fiona Robinson
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Ms H has complained about AXA Insurance UK Plc's handling of her subsidence claim, made under her home insurance policy.

background

In March 2007 AXA accepted a claim for subsidence damage at Ms H's property, it appointed a loss adjuster to inspect the damage and manage the claim on its behalf. Having monitored the property, it was decided in October 2008 that it was stable. While a scope for the repair work was drawn up, reinstatement did not begin.

In 2009 Ms H's partner (who had held the policy of insurance) sadly passed away. Prior to this, Ms H had been dealing with the claim anyway and he had asked that she be added to the policy. Unfortunately, this did not occur and the loss adjuster actually began writing to Ms H's partner, even though it had previously been dealing with her. The loss adjuster then closed the claim because it had received no response to the correspondence sent to Ms H's late partner. In May 2010 the claim was re-opened following contact from Ms H but she had to take out a new policy (at a higher premium) to ensure future insurance cover.

While the claim resumed, repairs did not begin and in fact Ms H's property has still not been reinstated. Following a letter from AXA's loss adjuster in July 2012, Ms H made a complaint to this service. Ms H set out her complaint as follows:

1. AXA's failure to add her to the policy in 2009;
2. AXA's failure to carry out all remedial work necessary as a result of subsidence:
 - a) reception room ground floor;
 - b) outer porch area outside front door;
 - c) loft area above first floor rear bedroom – 3 inch crack along party wall;
 - d) crack across chimney stack above first floor rear bedroom;
 - e) external cracking to side elevation of kitchen and first floor rear bedroom;
 - f) all interior woodwork to decorated areas in schedule;
 - g) papering of walls;
3. The time taken to the resolve the claim.

Our adjudicator felt that the complaint should be upheld in part as he believed that AXA had allowed a lot of unreasonable delays to occur which had caused Ms H distress and inconvenience. He explained though that he was only considering the complaint up until the point it was made in July 2012. He said that AXA should pay Ms H £1,000 compensation and it agreed.

He also said that AXA needed to address c), d) and g) in respect of remedial repairs and explained why he was not suggesting that any action (or any further action) be taken in respect of the other points raised. AXA said it had added a contingency to the scope of repairs in respect of c) and d) and it would discuss with Ms H her requirements in respect of wallpaper (g).

However, the adjudicator did not feel that AXA was responsible for any financial loss that may have resulted from Ms H not being added to the policy cover in 2009 because it did not administer the policy. That being said, he felt that the claim had been affected by the loss adjuster's sudden change in whom it was dealing with over the claim and that this had caused an unreasonable delay, which he had taken into consideration when suggesting that AXA should pay £1,000 compensation.

Ms H was dissatisfied with the adjudicator's findings as she felt £1,000 was not enough compensation for what she had been through. She said that the last four years had been a nightmare and the claim should reasonably have been resolved in early 2010. She was frustrated by the fact that repairs were still not underway, let alone complete. She was disappointed that AXA was not being made to replace her internal woodwork but acknowledged that she would need expert evidence to challenge this, which she said she feels unable to get.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

1) adding Ms H to the policy

In 2009, the policy covering Ms H's property was administered by her building society and it was the society that Ms H's partner (and later herself) had written to, in order to request that she be added to the cover. AXA has said that it never received notification of this request and that, as the administrator of the policy, the building society would have organised this anyway.

While I do believe there were some failings on the part of AXA in respect of how the claim was handled, following the loss of Ms H's partner I do not believe AXA is responsible for the fact that she was not added to the policy prior to his death. However, regardless of which business was responsible for not adding Ms H to the policy, I do not believe she should be left out of pocket in this situation and I will explain why.

It is good industry practice within the insurance sector that where a property that has suffered subsidence changes hands the insurer will transfer the existing terms and conditions of the policy to the new purchaser. The only time that this would not be done is where the new purchaser, as an individual, was an unacceptable risk. Taking the spirit of this into account, I consider that AXA should have offered Ms H a policy on exactly the same terms as that which was already in place to cover herself and her home.

I know that Ms H has had to pay increased premiums since the change of policy, but I am not sure if there is a legitimate reason for this increase (because the policy offers cover that she needs/wants but did not have before, for example). If that is the case then AXA should explain the cause of the increased premium to Ms H. If it is not, then I consider that AXA should alter the terms of the policy Ms H currently holds with it to reflect the terms and conditions that were in place for the policy held by her late partner. Any additional premiums paid to the new policy should be refunded to Ms H, along with interest at 8% simple from the date of the premium payment to the date of settlement.

2) remedial subsidence works

In general terms, I can see that trying to agree a scope of works here has been problematic. There have been multiple visits to Ms H's property and various scopes produced. AXA has suggested that each review was necessary, but Ms H has said that the scopes missed things that had been previously agreed upon and/or contained little of difference from what had gone before. I will come back to the scopes again when I look at compensation, but I can see why Ms H may have lost faith in the various experts employed by AXA to produce a scope that covered everything that needed repairing as a result of subsidence. Therefore, I have considered each of the points raised by Ms H and have given my view on AXA's liability below.

a) reception room ground floor

Ms H has said that this is a double room with continuous décor throughout. However, only one half was damaged by subsidence and is in need of repair. AXA has agreed to redecorate following the repairs, but Ms H believes the redecoration should extend to the undamaged areas of the 'double room'.

I have seen pictures of Ms H's property and I am satisfied that, while the décor may be the same, there is a clear divide which creates two separate and distinct rooms. As such, I find that AXA has no liability to extend the redecoration plans for the subsidence damaged room into the undamaged one. It follows that I find that AXA's refusal to agree to this request made by Ms H was not unfair or unreasonable and I do not intend to make any award against it in this respect.

b) outer porch

There is a crack in the outer porch; Ms H believes that this is subsidence damage and needs repairing under the claim. AXA has said that the crack is not consistent with subsidence damage and is remote from the area of the house affected by the subsidence. As such, it has refused to add this repair to its scope of works.

Having reviewed the photographs of the damage I am persuaded that AXA's expert's opinion of the damage was not unreasonable. Therefore, I find that AXA's refusal here was not unfair and I do not intend to make any award against it in this respect.

c) crack in the loft

Several years after the claim was made (and during which time the loft had not been inspected) Ms H found a crack in the party wall which allowed her to view her neighbour's loft. She told AXA about this and it agreed to consider its position on it. After our adjudicator contacted AXA, it confirmed that, at the very least, the subsidence of the property would have made any pre-existing crack in this wall much worse. It, therefore, agreed to cover the damage as part of this claim and, to avoid a further site visit, deal with this by adding a contingency to the existing scope of works.

I am pleased that AXA has agreed to deal with this crack. If it had not done so, I would likely have been minded to find that it should. For the avoidance of doubt, however, I will include this issue into my award detailed below.

d) chimney stack

This is cracked and although it had not been included in any previous scope of repair, AXA has said it has written to Ms H advising that it has now included it into the scope of works.

I am pleased it has done this and will treat it as c) above.

e) external cracking to side elevation of kitchen and first floor rear bedroom

AXA told our adjudicator that it had already included external cracking to the first floor bedroom wall in a previous scope. It also told our adjudicator that it accepted that any cracking to the external wall of the kitchen below was also likely to have been caused by subsidence and so it would add a contingency to the scope to allow for repairs to this area.

My view on this is the same as c) and d) above. I will deal with it in the same way.

f) interior woodwork

AXA has said that the woodwork was not damaged by subsidence and would not create an aesthetic clash if it was left undecorated in an otherwise renewed room. Ms H believes that some of the woodwork in her home was damaged by subsidence as it has cracked. She also believes that if the original woodwork is left in rooms that are otherwise re-decorated, the aesthetic look of her home will be compromised. However, she has accepted that she will need an expert opinion to challenge AXA on this further.

Ms H has asked that this aspect of her original complaint is not considered further. Therefore, at this time, on the evidence available, I am not going to make any award against AXA in this respect. Should Ms H obtain an expert opinion at a later date then she could submit this to AXA for its opinion. If she remained dissatisfied with AXA's final response on this, then she could submit this new evidence to this service for consideration.

g) wallpapering

Ms H has explained that her property has a plaster and paint finish. There is no wallpaper in the property and lining paper has not been used either. Despite this, all the scope completed by AXA's representatives have included an amount for wallpapering. AXA acknowledged to our adjudicator that it needed to reinstate Ms H's property to the same standard it had been before the subsidence and said it would talk to her about the finish she required.

I find that if Ms H had a plaster and paint finish previously, this is the way in which her property should now be reinstated. While AXA has already agreed to resolve this aspect, as above, for clarity, I will include an award in this respect below.

3) delays in resolving the claim

Given that the property was declared stable in 2008 and no underpinning was necessary, I am surprised and disappointed to find that AXA has still not discharged its liability for Ms H's loss. I believe it should do so now, without any further delay. That being said, I can only look at AXA's failings in this up until July 2012. For any distress and inconvenience Ms H has suffered after that time, she would need to refer to AXA in the first instance and, if she was dissatisfied by its answer (which I truly hope does not happen after everything that has gone wrong here) she will be able to make a further complaint to this service.

For the upset that AXA caused up until July 2012, I am satisfied that £1,000 is fair and reasonable compensation. I have noted that apologies have already been given for delays that have been accepted and acknowledged, but that does not mean that Ms H is not entitled to compensation for the upset caused.

AXA had been happily dealing with Ms H from the start of the claim but then started, for no apparent reason, to write to her late partner. When no response was received, the claim was closed. Given the detailed involvement AXA had with the claim up until this point and the contact it had established with Ms H, I have no idea why it chose to take this action. I am in no doubt though that it caused distress and inconvenience to Ms H and for the claim to be delayed by several months.

Throughout the years of this claim, various scopes of work have been compiled. I do not believe that it was necessary for the claim to progress in this way. For example, AXA has now accepted that some aspects, not previously costed for, should be repaired and has agreed to add a contingency to the scope to cover these. I see no reason why such a reasonable approach could not have been used earlier in the claim. I do not doubt the frustration that Ms H has felt every time a further request for a visit has occurred. On top of that, it is clear that Ms H has then often had to wait for a lengthy period after the visit to receive the new scope.

Furthermore, on one occasion, when Ms H explored the possibility of a part cash settlement, it took a very long time for figures to be supplied. Then when Ms H did receive the value, it was for all of the reinstatement work when she had requested details of the amount she would receive for the redecoration only.

I do not doubt that it has been extremely trying for Ms H, living with this on-going and unresolved claim for so long. Above are some of the key issues I have noted when assessing Ms H's complaint, but I can assure her I have considered the upset she has been caused as a whole. I appreciate that Ms H feels £1,000 is insufficient, but I find that it is fair and reasonable compensation for the distress and inconvenience caused by AXA in failing to handle her claim effectively.

my provisional decision

My provisional decision is that I am currently minded to uphold this complaint in part, as I believe that AXA Insurance UK Plc should follow through on the offers it has made to increase the scope of works. I also believe that it caused Ms H distress and inconvenience which she needs to be compensated for.

I, therefore, intend to order AXA Insurance UK Plc to:

- Alter the terms and conditions of Ms H's policy to reflect those of the policy held by her late partner. Any premiums paid to the new policy over and above those that would have been payable had the old policy terms been transferred to her should be refunded with interest at 8% simple per annum from the date of the premium payments to the date of settlement. Tax can be deducted from the interest payment if appropriate.
- Increase its scope of works to include a contingency for repairing; c), d) and e) above.
- Correct the scope of work to account for Ms H's required decorative finish as per g).
- Commence repairs without any further delay.
- Pay Ms H £1,000 compensation for the distress and inconvenience it has caused her by its poor handling of her claim.

I make no other award against AXA Insurance UK Plc.

Fiona Robinson
ombudsman