

## **The complaint**

Mr C complains AXIS Speciality Europe SE (AXIS) has unfairly declined his claim for accidental damage to his property.

## **What happened**

The background of this complaint is well known to both parties. So, I'll summarise the key points I've focused on within my decision.

- The claim was first considered under the 'subsidence' peril however AXIS' contractors didn't find evidence to support this occurring.
- Mr C provided AXIS with a structural engineer's report who confirmed that nearby works on a road could've caused vibrations through the property, causing the damage to the walls.
- AXIS requested further information on what, and when, these works took place.
- Mr C provided information from his builder who said the works may've taken place around April 2022.
- AXIS didn't proceed with the claim as it couldn't establish its liability.
- Mr C referred his complaint to our service and an investigator didn't uphold it; she said that it was reasonable that AXIS needed to validate the claim and she was satisfied that Mr C hasn't done this.
- Mr C disagreed with our investigator, saying damage to his house was caused by vibrations in a one-off physical occurrence; he's listed several possibilities of events relating to the works that were carried out that could've caused the vibrations.
- Mr C says the damage was caused during a window of work that his builder was carrying out at the property, and therefore says the damage was caused in the last two weeks of April 2022.
- As Mr C didn't agree with our investigator the complaint has been passed to me, an Ombudsman, to make a final 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.

As our investigator has previously said to Mr C, with an insurance claim the onus is on the policyholder to show that they have a valid claim that the policy can respond to. The claim must be one that can be considered under an insurable peril, and an insurance policy can't cover for every eventuality.

AXIS have reviewed the claim under the insurable perils of 'subsidence' and 'accidental damage'. its contractors have ruled out subsidence and I haven't seen any evidence from Mr C to show otherwise.

The damage could potentially be considered under 'accidental damage' however it needs to be shown what event caused the damage. 'Accidental Damage' is defined in the policy as *'Physical damage caused suddenly and accidentally, and not through wear and tear, breakdown or malfunction.'* Unfortunately, I don't consider Mr C has shown with evidence that the damage he's claiming for is a result of such an event.

The testimony from his builder says that around April 2022 he was carrying out some repairs at the property when he heard machine noise outside and saw cracks and dust appear in the room. Due to the small replastering that was needed, Mr C didn't inform his insurer of what had happened. It was only when the same builder was carrying out works externally that cracking in the stone facade was noticed. It's at this point Mr C raised the claim to AXIS in June 2022.

I'm not doubting Mr C's version of events, or the testimony of his builder and the comments from a structural surveyor who reviewed the property. My role here is to say whether AXIS have handled the claim as I would've expected it to do.

There's clearly cracking at the property however I'm not persuaded Mr C has shown it's a result of 'Accidental Damage'. Mr C has provided comments on when he thinks the damage occurred and what caused it, for example roadworks or the preparations needed for the G7 summit that took place in his area. However, the latter doesn't correlate with when the damage was said to have occurred in April 2022.

Having knowledge of when the damage was caused is important, and there's a degree of responsibility on Mr C to evidence this. By not doing this, AXIS is unable to validate if the claim is an insured peril.

Overall, I'm not persuaded that Mr C has shown what the event was that caused the damage, or when, therefore it's reasonable that AXIS isn't able to progress his claim. If Mr C is able to provide further evidence of cause of damage to AXIS, then I would expect it to consider it in line with the remaining terms and conditions.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 September 2023.

Angela Casey  
**Ombudsman**