

The complaint

Mr S and Ms C complain about how AXA Insurance Plc dealt with a claim for subsidence on their home insurance policy.

What happened

Mr S and Ms C claimed on their home insurance for subsidence at the front of their property. AXA reviewed the claim and discovered the cause of the subsidence was due to clay shrinkage. To remedy the situation AXA said it needed to remove the boundary hedge, as this was causing the clay soil to dry out and shrink.

Mr S and Ms C and their neighbour agreed to having the boundary hedge removed in order to stabilise the property. Mr S and Ms C asked AXA what it would replace the boundary hedge with as it meant there was now no boundary between their house and their neighbour's. AXA explained the policy didn't provide cover to replace the boundary and said this would be a cost for Mr S and Ms C to cover. Unhappy with this response, Mr S and Ms C complained.

AXA reviewed the complaint and didn't uphold it. It said the policy covered loss or damage to their property and removal of the hedge was mitigation which AXA would assist with but said replacing the hedge was not covered by the policy. Mr S and Ms C didn't agree and referred their complaint here, they said their policy didn't say anywhere that this wasn't covered.

Our Investigator reviewed the complaint and recommended it be upheld. She found that by AXA removing the hedge, Mr S and Ms C weren't put back in the position they were before the claim, as they now didn't have a boundary between their property and their neighbour's. She recommended AXA pay for a fence to be installed in replacement of the boundary hedge. Our Investigator also recommended AXA pay £150 for the distress and inconvenience caused.

Mr S and Ms C accepted our investigator's outcome, AXA did not. It said it was an accepted approach that it didn't need to replace the hedge which it had removed and referred to another final decision issued by this service.

As AXA didn't agree the complaint has come to me to decide.

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.

The terms and conditions of Mr S and Ms C's policy say it covers: "Loss or damage resulting from subsidence or ground heave of the site on which the buildings stand, or landslip."

AXA hasn't disputed that Mr S and Mr C's property has suffered from subsidence, it also hasn't specified whether there is a policy exclusion which relates to this. So, as it appears an insured peril has occurred and is accepted by AXA, I've not considered that further here.

Furthermore, as AXA hasn't specified which policy term it's relying upon to decline paying to replace the boundary hedge, I've looked at whether it's acted fairly and reasonably in the circumstance of this complaint. Having done so I'm not persuaded it has. I say this because the policy defines buildings as: "The structure of the home including fixtures and fittings and the following if they form part of the property:... Walls, gates, fences, hedges, terraces, patios, drives, paths, artificial lawns, statues, decking, railings, gazebos, pergolas."

It's accepted that Mr S and Ms C have a subsidence claim for the front of their house, and before the claim Mr S and Ms C had a boundary between their property and their neighbour's. Their boundary hedge has now been removed and so I'm satisfied that's a loss to Mr S and Ms C, which is covered by the policy.

To rectify the damage to their house, AXA removed the boundary hedge to ensure the clay soil no longer suffers shrinkage. In the circumstances this seems like a fair and reasonable solution to the subsidence to Mr S and Ms C's claim. However, it now means there is no boundary between their house and their neighbour's. When considering this, and that Mr S and Ms C haven't been put back in the position they were before the claim, loss of the boundary hedge between their property and their neighbour's, I'm not satisfied AXA has acted fairly and reasonably in this case. I'm therefore satisfied that our Investigator's recommendation of paying for a replacement fence is fair and reasonable one, as it puts Mr S and Ms C in the position they were before the claim.

So to be clear, when taking into account the policy terms, I'm satisfied the fair and reasonable outcome is for AXA to pay to replace the boundary hedge it removed, with a fence. It should also pay Mr S and Ms C £150 compensation for the unnecessary distress and inconvenience caused by it declining to do this. Mr S and Ms C have explained they have been concerned there would be no boundary between their property and the neighbour's, I'm satisfied £150 is fair and reasonable compensation for this.

I've also considered AXA's point about other decisions issued by this service. I would like to assure AXA that I've considered these, and while I have, I also need to consider the fair and reasonable answer in the individual circumstances of this case. So, while AXA believes the situations are similar, I'm satisfied this is the fair and reasonable answer in this particular case.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. I require AXA Insurance Plc to pay Mr S and Ms C for a fence to replace the boundary hedge it removed. AXA Insurance Plc also needs to pay Mr S and Ms C £150 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr S to accept or reject my decision before 21 December 2023.

Alex Newman
Ombudsman