

## **The complaint**

Mr and Mrs H complain AXA Insurance UK Plc settled their insurance claim unfairly.

Mr and Mrs H have been represented for this complaint. For simplicity I've referred to the representatives' actions as being their own. Similarly I've generally referred to AXA's agents' and contractors' actions as being its own.

## **What happened**

In October 2021 Mr and Mrs H made a claim against their AXA commercial and residential landlords insurance policy. The lower ground floor area of their property had been flooded. AXA initially declined the claim, but later accepted it.

Mr and Mrs H weren't happy with how the claim was progressing. AXA issued a complaint response in November 2021. It offered £250 compensation for delay and the incorrect claim decline. Mr and Mrs H didn't refer that complaint to this service. So I haven't considered the relevant issues and AXA's response.

In March 2022 Mr and Ms H made a further complaint. They were unhappy about various aspects of AXA's claim handling. Its response, in May 2022, included the following. It said the policy terms limit its liability, when policyholders use their own contractors, to its own contractor's costs. It didn't accept a wait of 10-12 weeks for its contractor to begin reinstatement works meant it should settle that part of the claim based on Mr and Mrs H's contractor's estimate. AXA didn't accept it was responsible for any avoidable delays or that it had breached FCA principles.

Mr and Mrs H weren't satisfied so referred their complaint to this service. Their key concerns are AXA's cash settlement of the claim being too low and that they have unfairly incurred costs to rent alternative office space.

Our Investigator considered the complaint. He felt AXA's decision to cash settle, based on what it would have cost it to use its own contractor, was fair. He said he wouldn't expect AXA to pay VAT on a settlement unless the policyholder had incurred that charge. The Investigator said the cost of the office space wasn't payable under the terms of the policy. And he didn't agree those costs were only incurred due to AXA delaying the claim. So he didn't recommend it pay Mr and Mrs H anything more or that it do anything differently. Mr and Mrs H didn't accept that outcome, so the complaint was passed 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr and Mrs H and AXA have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything they have said or sent in. Mr and Mrs H have said AXA's breached various FCA

principles. Whilst I haven't referred directly to those principles, I've taken them into account when considering their complaint.

I've first considered the settlement offered by AXA for the reinstatement works. When a policyholder chooses to use their own supplier to repair damage it's usually reasonable for the insurer to settle based on what the work would have cost it – as AXA has done in this case. But it's only reasonable when the insurer has offered to actually undertake the repairs using its own contractors – something that AXA did do.

Mr and Mrs H say the cash settlement isn't enough to reinstate the property to the condition it was before the loss. I've seen theirs and AXA's contractors' costed schedule of works. I'm satisfied AXA could have had the work completed for the amount it's offered. So it seems, in principle, to be a fair settlement as Mr and Mrs H wished to use their own contractor. That's something they were very firm about from early in the claim.

But Mr and Mrs H feel it's unreasonable to base the settlement on AXA's contractor's costs as, when they later requested for it to complete the work they were told that wouldn't happen for 10-12 weeks. It seems the change of position by Mr and Mrs H and then using their own contractor for earlier stages of the work, was responsible for at least some of that estimated timescale.

In any event that still leaves a lead in time of a few months at least. In the circumstances I don't consider that an excessive or unreasonable delay to the start of reinstatement works. The affected area was a basement. As far as I'm aware it didn't include primary living areas like a bathroom, bedroom or kitchen. I've considered a reported medical condition. However, the area was sealed off to address such health concerns.

I'm not persuaded that Mr and Mrs H had to use their own contractors through necessity or due to an unreasonable situation created by AXA. It seems to have been their preferred option from the outset. So I'm not going to require AXA to settle the reinstatement works based on Mr and Mrs H's contractors' costs – or to pay them anything extra for that work.

According to Mr and Mrs H AXA pressured them into accepting an initial settlement of around £5,000 for reinstatement works. I haven't seen anything to persuade me pressure was applied, or any unreasonable steps were taken to get them to agree to that proposal.

AXA refused to transfer funds for estimated VAT to Mr and Mrs H's representative unless invoices from contractors, including that charge, were provided. That seems reasonable. I wouldn't usually expect an insurer to cover VAT for reinstatement works unless the policyholder had actually incurred those costs.

Mr and Mrs H would like AXA to cover rent paid for office facilities required for work. Their usual space on the ground floor couldn't be used. The policy terms do provide for costs of alternative accommodation – but only when 'the residential portion of the property cannot be lived in'. They were able to live in the property. So I can't say AXA not paying office space costs, under the terms of the policy, is unfair or unreasonable.

Mr and Mrs H feel AXA was responsible for significant unnecessary delay – with the impact including additional office space costs. Causes of delay they have referred to include AXA proposing inadequate settlement figures and the lead in time for its contractor to begin reinstatement works.

There was some discussion about the reinstatement cash settlement. It's not unusual, as a claim develops or the extent of damage becomes clearer, for that to happen. AXA engaged in discussions reasonably as far as I've seen. In any event as far as I've seen AXA's final

proposal, that I haven't found fault with, was made around about the time drying of the property had completed. So that can't be responsible for any significant delay in works beginning.

I've said, in the circumstances, I don't feel AXA's contractor lead in time to be unfair or unreasonable. And it was only ever theoretical as Mr and Mrs H didn't accept that option. They chose to continue with their own contractor – so if there was any delay beyond that it can't fairly be attributed to AXA. Overall I haven't seen that it caused any significant unnecessary delay. So I'm not going to require AXA to pay compensation or reimburse any office costs.

Finally Mr and Mrs H would like AXA to cover the cost of putting right damage to floorboard stain when tape sealing the basement area was removed. They feel the tape, and so the damage, was a necessary part of the claim. AXA feels the cause is insufficient care by Mr and Mrs H's contractor. That contractor's opinion is the stain only lifted because of poor preparation when it was originally applied. It seems to me to be a snagging issue to be resolved between Mr and Mrs H and their own contractor – rather than something for this service to get involved with.

### **My final decision**

For the reasons given above, I don't uphold Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 23 October 2023.

Daniel Martin  
**Ombudsman**