

## The complaint

Mr J and Mrs J complain that AXA Insurance UK Plc haven't pursued costs from a third party for their flood damage, and they are unhappy with the service they received.

## What happened

In October 2018 Mr J and Mrs J's property was flooded, which caused damage to their property and possessions.

The flood followed heavy rainfall and the flood water coming down from the nearby mountains.

The local authority commissioned a flood investigation report to establish the cause of the flood, and it concluded that a third party (Mr E) had built an unauthorised structure on his property, which had caused an obstruction to a culvert, diverting the flow of water onto neighbouring properties, one of which was Mr J and Mrs J's.

They said that the structure had since been removed, and tests have shown that flood defences that were in place were adequate had the structure not been there.

Following the claim, AXA instructed their solicitors to consider whether a claim should be made against the third party to recover their losses. Following responses from the third party to the solicitors, and further enquiries with another third party who was indicated may be liable, the solicitors advised they would have to obtain further reports to see whether liability could be established. At that point AXA decided not to pursue the matter any further. Mr J and Mrs J have complained that their house insurance premiums are now high as a result of the claim, and AXA's failure to recover their costs. They also complain that AXA provided poor service and they had to continually chase for updates about the recovery. AXA have agreed that they failed to keep Mr J and Mrs J updated and they have offered £225 compensation for this, but they didn't agree that they had acted unfairly in not pursuing a claim against any third parties.

One of our investigators has looked into Mr J and Mrs J's complaint. He thought that AXA should record the claim as non fault and recalculate Mr J and Mrs J's premiums since the claim was made, reimbursing any overpayments and the claim excess, adding 8% interest per annum from whether costs were incurred until settlement. He also asked AXA to pay a further £500 compensation.

AXA disagreed with our investigator's view and so the case came to me to review.

I issued a provisional decision on the complaint. My provisional findings were as follows:  
*I am minded to uphold this complaint but on different terms to the investigator, and I will explain why.*

*What I have to decide is whether AXA have acted fairly and reasonably in dealing with the claim.*

*Following the flood, the local authority reared a report on the incident. It noted that there were three culverts close to the property, but it attributed the flood to a structure built on Mr E's land which partially blocked the culvert.*

*On the basis of this report, AXA instructed their solicitors who wrote to Mr E alleging that his unauthorised structure was responsible for the failure of the culvert to carry the flood waters away from the properties and asking for his admission of liability.*

*In July 2021 Mr E's insurers responded denying liability and advising that they had a report which demonstrated that the fault lay with a broken grille further up the hill in a separate culvert which had allowed debris to come down and block the culvert at the back of Mr E's house. They provided a witness statement from a neighbour at the time of the flood, and also photographs from the day of the incident showing debris blocking the culvert and the broken grille, and detailed the steps taken by the witness to alleviate the situation.*

*The owner of the land where the grille was situated was a housing association.*

*The solicitors therefore raised the issue of liability with the housing association. They responded and were able to demonstrate that they had adequately maintained the culvert on their land, having undertaken monthly inspections. The August inspection had picked up a maintenance issue regarding a build up of silt and sludge which was cleared, and further records showed that the culvert was inspected monthly, and that a ground maintenance contractor attended weekly to check for debris and carry out a litter pick. They didn't consider there was anything else they could have done.*

*As a result of these denials of liability, in July 2022 AXA's solicitors advised that a further experts report would be needed to consider whether there was any way they could rebut the denials of liability.*

*In the light of that advice AXA decided to abandon any recovery. Their notes record that as the third parties have denied liability and provided strong evidence in support of these denials, they don't have enough evidence to pursue it. They did discuss this further with the solicitors before making the decision.*

*I appreciate that Mr J and Mrs J feel strongly that AXA should have pursued liability, and I can understand the impact the flood and the subsequent damage has had on them. However, I can't tell an insurer to do this, I can only look to see whether the decision that they made was reasonably taken. Having seen all the notes and the reports obtained by AXA and their solicitors, I am satisfied that AXA did give proper consideration to the matter and they didn't take the decision to abandon proceedings lightly. I'm also mindful of the fact that it's their right to decide whether to take action or not.*

*So I can't say that AXA have acted unfairly here. I appreciate that the claim remaining on Mr J and Mrs J's claims record impacts their premium prices and availability of insurers, but the record accurately reflects what has happened here. If Mr J and Mrs J are unhappy with their premium pricing, that would be a separate complaint.*

*It's also important to note that when buildings claims are recorded on CUE – which insurers use to look at claims history, they aren't recorded as fault or non-fault, it would only record the claim and the value – which would be the same whether AXA pursuing a third party or not. And so I can't say that AXA pursuing liability would have made any difference to whether Mr J and Mrs J were able to secure insurance from another lender, or for a better price.*

*And so I don't agree with the investigator that there needs to be any change to the way this is recorded on CUE, or any recalculating or reimbursement of premiums.*

### **Distress and inconvenience**

*In terms of the updates provided, I do think that AXA could have managed Mr J and Mrs J's expectations about the recovery better and updated them as it became apparent that recovery was becoming more unlikely. I appreciate that AXA have the right of subrogation, but I can't see that the process of litigation, the prospects of success, and the impact this would have on their future insurance was ever properly explained to Mr J and Mrs J. They were left with the impression that if a third party could be held responsible, there would be no impact on them, and that was never the case.*

*And so I think an award for distress and inconvenience is warranted here. I see that the investigator has recommended a figure of £500. I agree that the offer should be increased from that offered by AXA, but I think a figure of £350 is more appropriate to recognise the distress and inconvenience caused by the length of time over which the matter was ongoing, and the opportunities missed to manage Mr J and Mrs J's expectations.*

### **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.

Both Mr J and Mrs J and AXA have responded. AXA have accepted my decision, but Mr J and Mrs J are unhappy that my provisional decision differs from the investigators' view.

When a case is referred to an ombudsman by an investigator, we look at the whole case afresh, and sometimes additional information is provided by the parties which changes matters, which is why I have explained above the reason why my view differs from that of the investigator. I appreciate that this has been a really difficult time for Mr J and Mrs J, and that it has been drawn out over a long period. While I think AXA were entitled to come to the decision not to pursue the case any further, I do think that AXA could have been clearer earlier on about what was happening, and that is why I have made an award for distress and inconvenience.

However, nothing that Mr J and Mrs J have said in their representations has changed my view, and so I'm making my final decision in line with my provisional findings.

### **Putting things right**

To put things right, I think AXA should:

- Pay Mr J and Mrs J £350 for distress and inconvenience.

### **My final decision**

My final decision is I am upholding Mr J and Mrs J's complaint against AXA Insurance UK Plc and directing them to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 15 January 2024.

Joanne Ward

**Ombudsman**