

The complaint

Miss N has complained that AXA Insurance UK Plc ('AXA') had delayed progress of her claim for flood damage under her home insurance policy.

What happened

Unfortunately, the ground floor of Miss N's home flooded in December 2022, as a pipe had burst in the utility room. The flood caused saturation damage to flooring. Miss N submitted her claim to AXA as she held home insurance with AXA at the relevant time. AXA approved the claim however the parties reached an impasse over progress of reinstatement works. Miss N complained about the length of time it has taken to get the work done as that she was told that she firstly had to get some work done herself, which she believed should be covered by her insurance. Miss N also felt that AXA had made inappropriate assumptions about her financial situation.

AXA stated that uninsured works to install a damp-proof membrane needed to be carried out by Miss N before claim-related works could take place. If this didn't happen, it said that its contractor would be unable to guarantee its work. It considered that the correct process had been followed and it couldn't identify any undue delays. AXA maintained its stance following a complaint made by Miss N and she then referred her complaint to this service.

The relevant investigator upheld Miss N's complaint. It was his view that AXA had a duty to ensure that repairs were effective and lasting. He recommended that AXA should complete the repairs, including installing the damp-proof membrane and pay compensation to Miss N of £150 for the stress and inconvenience caused by the delay in settling the claim.

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.

In summary, Miss N said that her home had been in a state of upheaval since the flood in December 2022. She accepted that AXA had initially responded very quickly in appointing a surveyor to attend and assess the cause of the flood and the damage caused at her home. She felt that since then, the process had dragged on. She referenced the impasse about the work AXA said she needed to get a waterproof self-levelling compound membrane installed before it would undertake reinstatement works.

As to the background detail, Miss N said she'd had to chase to get an update following the surveyor's visit. AXA's agents then removed the flooring, causing some damage, and took away samples to test for asbestos. Miss N then had to chase again, and eventually received contact in mid-March 2023 about drying equipment, which was installed at the end of March 2023 and remained at Miss N's home for a month. At the beginning of May 2023, Miss N received a cash settlement offer and scope of works, which she said was incorrect. When she queried the scope, she was told she would have to measure the rooms herself if she wanted an accurate scope. She was also told that the carpet would be refitted, when she considered that it was water damaged and then further damaged by AXA's workmen.

Miss N also felt that AXA was unhelpful and was unable to advise about the waterproof membrane required, in which rooms it was needed, what sort of company would install it and how she would know if she'd used the correct compound to satisfy AXA that it was *'up to current building standards.'* Miss N thought that if AXA's contractors couldn't install the membrane, then they needed to find another contractor who could do so. She made it clear that she didn't want to get the works done herself and felt that this work was covered by the relevant policy. Miss N didn't think she should be penalised for her property being built before current building standards were introduced. Miss N said that the relevant carpeting company informed her that she shouldn't need a self-levelling waterproof compound, as for example, flooring comes with waterproof underlay, and it wasn't required in other spaces.

Finally, Miss N felt that AXA had incorrectly made arrogant assumptions about her financial situation in relation to works with an unknown cost. Miss N said that she'd had to chase AXA a number of times. She also found AXA's responses to be confusing and contradictory. In the circumstances, Miss N considered that goodwill gesture payment of £25 to be insulting. She said that the whole process had taken far too long and that the stress and anxiety caused by the delays and the *'insistence that I have to pay for the waterproof compound'* had affected her health.

I now turn to AXA's submissions regarding this matter. As to Miss N's request for AXA to appoint contractors to complete the reinstatement works, it said that; *'due to lack of any damp proof membrane within the property prior to the incident,'* its contractors had confirmed they would only complete the claim-related repairs once compound has been installed by Miss N's contractor at her own cost. AXA said this was to ensure the prevention of rising damp issues occurring in future and to enable AXA's contractors to offer guarantees. It acknowledged that this led to an impasse on the claim and ultimately the complaint. It said that it had offered a cash settlement of nearly £2,500, less the excess, so Miss N could choose to use some of the settlement money towards a membrane. It had confirmed that its contractor was unable to do this as a private job for Miss N to accompany the main works.

AXA explained that the drying certificate had a caveat that the property would remain dry only if a damp proof membrane was installed and that it otherwise could not ensure the property would remain dry. As for the carpet, it agreed that there had been an oversight and said a carpet company would be engaged to look into the matter.

As to any delays, AXA said that potential asbestos concerns had been identified after the initial January visit. It said it was important that this was tested prior to works proceeding as dryers could potentially help circulate asbestos into the air. The tests were thankfully negative and specialist removal wasn't required. It said that drying was completed, with the relevant caveat in mid-April. It said that Miss N was then contacted in early May 2023 to discuss the waterproof self-levelling compound. In summary, AXA said that this work is seen as *'betterment'*, *'as it was not present prior to the incident so the cost for its installation would not be covered.'* AXA accepted that there may have been points where *'certain actions could perhaps have been taken quicker'* and it considered that its agents had acted reasonably in trying to move things forward.

In summary, AXA considered that the correct processes and decisions were made in line with the terms and conditions of the relevant policy. However, it acknowledged and apologised that it had exceeded timescales to respond to concerns and it referred to its goodwill payment of £25 in this respect.

In its exchanges with the investigator, it said he was correct in stating that AXA had a responsibility to ensure a lasting and effective repair, but that this didn't extend to preventative measures. AXA said it could complete the repairs without a membrane *'and this*

would return the property back to its pre loss condition and the risk to the property from all events remains as it was...'. However, it said it had a duty of care to provide relevant information to its customers, and it considered that it had done so here. AXA considered that this case was no different to cases where no tanking existed, and an insured event resulted in identifying that tanking would be required as good practice. It said that this service had been clear that where no tanking existed prior and it was not regulatory requirement, then it is not the insurers responsibility to foot the bill. It said that the policy afforded no cover for preventative measures, and insurers shouldn't be expected to pay for such 'under the banner of lasting and effective repairs.'

I've also considered AXA's case-notes. These show that the contractors had advised that a waterproof membrane needed to be installed as this was good practice to avoid issues with rising damp. It said, *'The contractors have advised they cannot guarantee the works without this being completed, but this is not a regulatory requirement rather good practice, so the policy does not provide cover for this.'* It said it had been trying to re-assure Miss N that such works were usually priced reasonably.

The starting point in considering cases of this nature will be the wording of the relevant policy documents. I note that Miss N made a valid claim under the policy for flood damage, so AXA agreed to settle the claim. The policy's introduction notes that the policy *'... is designed to protect you against the risk of things happening suddenly which you could not have expected such as fire, theft, flood and storm. It is not designed to protect you against losses that arise due to the gradual deterioration or poor maintenance of your home.'*

Under the relevant wording of the policy as to steps to be taken, it makes it clear that; *'We may repair, reinstate or replace the lost or damaged property.'* It goes on to say; *'If we cannot replace or repair the property we may pay you the loss or damage in cash... Where we can offer repair or replacement through a preferred supplier, but we agree to pay you a cash or cash alternative settlement, then payment will not exceed the amount we would have paid the preferred supplier. If no equivalent replacement is available then we will pay you the full replacement cost of the item with no discount applied.'*

I note that AXA has said *'This is not deemed as required work and would be classed as betterment in this case as this is works which are not required. However, this would be required in order for the works to go with our contractors in the contractor network'*. Miss N has made it clear that she wished AXA to do the work on her behalf and I've seen no evidence to suggest that one of AXA's preferred suppliers would have been unable to carry out this necessary standard repair work. Whilst I appreciate that the contractor appointed by AXA had identified an issue as to guarantees, I've seen no evidence that AXA has made reasonable attempts to source other contractors or other solutions to place Miss N back in the position she would have been prior to the insured incident.

The self-levelling waterproof membrane is clearly central to the unfortunate impasse between the parties. However, in the absence of evidence that the work cannot reasonably be carried out by AXA, I'm persuaded by Miss N's submission that a self-levelling membrane wasn't necessarily required by flooring specialists. AXA has accepted that a membrane isn't a regulatory requirement and is regarded as a matter of best practice only. I also note that AXA considered that the membrane shouldn't be a costly solution.

In all the circumstances, I'm satisfied that AXA should now instruct its own contractor, whether or not on its existing network, to carry out the necessary reinstatement work at Miss N's home, adopting an appropriate solution to fairly and reasonably place Miss N back in the position which she was in prior to the insured event. If it insists on installing a waterproof membrane, then I'm satisfied that this could fairly and reasonably be supplied and covered

by AXA in a cost-effective manner as part of the reinstatement works. It should no longer delay this work to wait for elective work by Miss N which she has elected not to carry out.

As for delays in process, I note that AXA has now accepted that it didn't respond adequately at all times. I agree that there are occasions prior to issue of its final response letter in August 2023 where there had clearly been avoidable delays. It's most unfortunate that AXA hadn't fairly and reasonably progressed this matter much sooner as above, however this decision deals only with the period up to August 2023. In the circumstances, I agree with the service's investigator that £150 represents the appropriate level of compensation for the distress and inconvenience caused to Miss N by delays in process up until that point.

In conclusion, I'm satisfied that AXA should now diligently proceed with the necessary and long overdue reinstatement works, and also pay Miss N £150 in compensation.

My final decision

For the reasons given above, I uphold Miss N's complaint and I require AXA Insurance UK Plc to do the following in response to her complaint;

- Diligently proceed to complete reinstatement work at Miss N's home
- Pay compensation of £150 for the distress and inconvenience caused within 28 days of the date of this Final Decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 22 February 2024.

Claire Jones
Ombudsman