

The complaint

Mrs N complains that AXA Insurance UK Plc has acted unfairly when declining to cover her ongoing alternative accommodation costs following a claim made on her building's insurance for an escape of water.

What happened

Mrs N returned home from a family trip at the end of December 2022 to discover her home had been damaged following an escape of water. She notified AXA of the claim and explained the house was not habitable due to the extent of the damage. Mrs N said she and her family needed to find alternative accommodation (AA) and she'd found a local hotel that would suffice in the short term.

Mrs N moved into the hotel accommodation and AXA's agent looked to source a property in the local area which was suitable to Mrs N and her family's needs.

On 21 February Mrs N was provided with the details of a proposed property to rent, this was not responded to and the property was let to someone else. On 2 March, two further properties were sent to Mrs N. One of these was unsuitable due to the property not accepting pets and the other was declined as Mrs N was unhappy with the landlord and how they spoke to her.

On 7 March Mrs N said she had found a property on gumtree she wanted to view as this appeared to meet her needs. The advert said this was available from 1 April 2023. Mrs N viewed this property on 13 March and asked to proceed with it.

AXA's agent contacted the landlord to confirm the details of the property on 16 March and also sent another 3 options to Mrs N to consider – all of these were rejected by Mrs N. On 23 March Mrs N sent an email to AXA chasing to see if a response from the landlord had been received for the property she had found as she said she really wanted to move into this.

AXA's agent asked for a move in date from the landlord on 24 March and chased the landlord for a date on 29 March. On 5 April the landlord responded to say the property was now vacant and they'd need to assess any remedial work following the departure of the previous tenant and then a date for when Mrs N and her family could move in would be provided. On 13 April, it was confirmed they could move in from 25 April.

On 30 April Mrs N called AXA's agent to say the landlord would not let her move into the property until the first month's rent of £2950 had been paid. It said this had already been paid and a move in date was agreed for 8 May 2023.

In total AXA's agent paid over £43,000 to accommodate Mrs N and her family in the hotel accommodation, before they were able to move into the property they asked to move to in May.

In August 2023, Mrs N explained to AXA's Loss Adjuster (LA) that both the hotel she had stayed in with her family as well as the rental property she later moved to are owned by her

parents. It also became apparent that previously the rental accommodation had been let by another family member with a monthly rent charged of £1300 per month. Following this, AXA had a number of concerns and questions over the two accommodations used. It was also highlighted that the alternative accommodation cover limit, set out in the policy schedule had been reached already.

On 4 October 2023, the LA wrote to Mrs N setting out the concerns it had about alternative accommodation which had been used. It highlighted a condition within the policy which covered its approach if fraud is established. It asked that Mrs N reply to its letter within 21 days with further comments and responses to what it said.

Mrs N provided a response and explained why she didn't feel she had done anything wrong, when not telling AXA sooner about the ownership of the two properties she stayed in. She said the transactions were completed as commercial transactions and the price paid was in line with market averages.

In November 2023, AXA appointed its solicitor to deal with the claim and concerns about the AA. They wrote to Mrs N and set out the concerns AXA has in relation to the AA costs. It said that it would need to interview Mrs N's parents separately and be provided with unredacted bank statements from Mrs N from 1 January 2023 to date.

AXA said it would not be continuing to pay for the AA as the policy limit had been reached, and it wanted reassurance this hadn't been reached prematurely through exaggerated costs being claimed for.

Mrs N has complained about AXA's decision to not continue to provide the AA costs. She said she was not informed of this directly and it was unprofessional for AXA to not inform her of its intention to stop paying this. She is struggling financially to cover the costs herself and doesn't think she has done anything wrong with the information provided to AXA. She said she was never asked if there was a relationship between the landlord of the guest and rental house and herself, so she hadn't mis-represented anything.

Mrs N says she was not warned she was reaching her policy limit, nor does she think it is fair to have an expectation on her to have negotiated a discount with her parents who are the landlords of both properties. She said she paid the market rate and this is fair and any costs were negotiated by AXA's agent who dealt with the AA. Mrs N feels it is right for AXA to continue to pay her these costs until the repairs on her property are completed and has highlighted how these costs not being met are impacting her and her family.

Our investigator looked at this complaint and thought AXA needed to do more. They felt it had acted fairly in investigating the concerns it had over the AA and the information it had been provided in relation to this. But they didn't think it had been proven that Mrs N had done anything wrong. In the absence of this, the costs claimed were fair.

He accepted the limit of the policy had been reached but he felt this had been reached as a result of AXA and its agent failing to highlight the limit sooner or be proactive in controlling these costs. And as the claim had been delayed with the reinstatement work in the property, the delays now meant Mrs N was fair in expecting AXA to cover the AA costs until the building work was completed. The investigator recommended AXA cover these additional costs until the building work is completed and make a payment of £500 to Mrs N for the distress and inconvenience caused. Mrs N accepted the recommendation made.

AXA said it couldn't agree to the recommendation. It said that there had been a lack of focus on the actions of Mrs N which led to the £75,000 limit being reached sooner than necessary. And there had been very little thought placed on the actions of Mrs N and her failing to notify

AXA sooner that the properties are owned by her parents.

AXA said there was delays caused by Mrs N and her family with the alternative accommodation and this had a direct impact on the costs incurred and the speed at which this happened. And although it accepts there has been delays in the handling of the claim, the actions of Mrs N and her family have meant the policy limit was reached sooner than it would have been. This is clearly set out in the policy documents and it believes Mrs N should have been aware of this.

Because AXA disagreed, the complaint was passed to me for decision.

I issued a provisional decision on this complaint on 23 July 2024. I explained I was planning on reaching a similar answer to that of our investigator, but there were differences in what I thought AXA needed to do to put things right. I've included what I set out below:

I am planning on asking AXA to do something to put things right here, but I don't think it is fair it covers all additional costs Mrs N is now facing, and will explain why.

Mrs N has highlighted the Consumer Duty and AXA's obligations within this. This came into effect on 31 July 2023 and is not retrospective. So a large proportion of the timeline complained about was prior to this. But I have considered this where relevant when considering the actions of AXA in relation to this claim.

The crux of this complaint is whether AXA is acting unfairly when relying on the policy limit for the AA costs. And if it is not, what is fair and reasonable to expect for it to put things right.

As a starting point, AXA is correct to say the policy limit for the AA is £75,000. This is set out in the policy wording and is not hidden in any small print. But when a claim is made and costs are starting to add up, it is not unreasonable to expect the LA or insurer to highlight this to the customer. And if there is a failure to mitigate and manage or contain these costs, it can be fair to ask that any continued costs for AA are covered if these have been added to as a result of delays to the claim handling.

AXA, when disagreeing with our investigator said that although there has been delays with the handling of the claim, delays with Mrs N and her family when arranging the rental accommodation meant it spent more on the hotel accommodation for longer than was needed. So it doesn't think it is fair to ask it to continue to cover the ongoing AA costs as a result of this.

Did Mrs N add any delays or fail to mitigate her costs?

As I've set out in the background above, Mrs N first notified AXA that she'd found a property on gumtree on 7 March and that she'd like to visit this. At this point Mrs N had already been in the hotel accommodation for over 8 weeks and she had only been provided with two properties to consider moving to. Both of these had only been provided within the last few weeks. So I don't think there is any indication she was delaying the process at this point and adding to AXA's costs. And as AXA had agreed to the cost of the hotel accommodation with no negotiation or any attempt to reduce or contain these costs, I don't think Mrs N can be said to have increased these.

The advert for the property Mrs N provided said it was available from 1 April but Mrs N and her family didn't move in until 8 May. It later transpired that another relative was living in the property until 8 May and moved out as Mrs N moved in. Mrs N also assisted her father with the advert for the property.

It is not clear why the advert said the property was available from 1 April 2023 when it doesn't appear that it was. The result of Mrs N not being able to move in from this date has an impact on the amount of alternative accommodation costs being spent by AXA as they continued to need to accommodate Mrs N and her family in the hotel accommodation. In total, this amounted to around £43,000 worth of costs with an average weekly cost of just under £2,400 per week over the 18-week period.

This weekly cost was expensive, especially when considered against the total limit of the policy and money available for these costs. I've said it before but it's important to keep highlighting that I think AXA's agents could have done more to manage this situation. But when other properties were provided and dismissed after Mrs N had found a house she wanted, I can see why they assumed this would have been taken from 1 April. And I am not sure if, at this point whether Mrs N would have been able to or would have done anything differently if the AA limit had been brought to her attention.

I think Mrs N was likely very set on the property she knew well as her old family home and I think she would have always wanted to continue with this property. This wasn't available until 8 May and I think Mrs N would have been aware of this. With this in mind, even if the alternative accommodation limit had been highlighted, I don't think Mrs N would have been able to move sooner nor do I think she would have looked to select another property offered by AXA.

So it follows that I don't think it would be fair to say that AXA caused a delay in Mrs N not being able to move into the house from 1 April and had it been available, this would likely have happened. And from this point, AXA should not have needed to pay the weekly cost of the hotel accommodation and these funds would have been available to further extend the rental period for the rental property. This means around £12,000 could have been saved over the five-week period.

Cost of the rental property and hotel accommodation

AXA has questioned the cost of the rental property and whether this was inflated compared to what was charged before. I can understand why, when it was identified that the previous tenant paid £1300 a month that questions have been raised about the charge of £2950 a month. But AXA and its agent agreed this was within the range it had set for property in the area and if they felt this was too high, I would have expected them to negotiate with the landlord. They had the details to correspond with them and so had the opportunity to do this if they wanted to. Instead they agreed the cost and payment for six months' rent.

When there was no negotiation on the price or effort made to bring to the attention of Mrs N the impact of her choosing a property that was at the top end of the budget, the AA funds and amount Mrs N had was reduced quicker than it could have been. But I think it is unfair to say this is because of Mrs N and her actions and the failure to bring this to her attention meant she was not aware of any need to do anything differently.

Using the cost of the rental accommodation as agreed by AXA, means around four months' worth of rent could have been provided to extend the tenancy when thinking about the additional cost spent with hotel accommodation. This would have meant the rent on the property could have been covered until around the end of February 2024.

Is it fair to expect AXA to continue to cover the AA costs?

The escape of water happened at the end of 2022. On 17 January 2023 the preliminary report was provided by the LA which put an estimated timeline for completion of the works for mid-August 2023. To date, AXA has not completed the remediation work or settled the

claim.

AXA has said the works have not been completed due to the concerns it has over the AA and what has been paid for this and to who. But I don't think this explains the delay in the action on the claim prior to this. Concerns were not noted until August 2023 and although only an initial preliminary report, the work could have been completed by this point.

This case is unusual and while I accept that AXA has been justified in having concerns about the information provided by Mrs N, I don't think it has demonstrated the claim was progressed ahead of these concerns as quickly as it could have been.

When the concerns were raised AXA asked Mrs N further questions about what she had told them and why. And although she was never asked directly if there was a relationship with the AA providers, it was not something she indicated. To the contrary the tone and descriptions used throughout gave no indication. So it is understandable why when it was discovered, that AXA had concerns.

However, Mrs N has answered the questions asked of her and done what she was asked here. And although her parents have not, I don't think it would be fair for Mrs N to lose out as a result.

In November 2023, AXA was provided advice on the claim and its concerns. It was said that gathering more information from Mrs N's parents would be needed to help confirm if Mrs N had benefited financially from the payments made to cover the AA costs. But it was felt it is unlikely this Service or a Court would determine that the parents, as third parties to the policy could be made to comply with the request. I agree, I don't think it is something AXA is able to do and it needed to decide whether it was fair to continue to progress with the claim and or the AA costs in the absence of this being received. And this was provided as part of the advice and options AXA needed to consider in November 2023.

Unfortunately, this decision doesn't appear to have been taken quickly and as of 16 July 2024 the claim has not yet been settled or damage to Mrs N's property repaired.

I've set out that I think a delay was added when the rental property was not available that Mrs N wanted and she was aware this might have been an issue, bearing in mind her relationship to the landlord. And when a delay was added, more was spent on the hotel costs than would otherwise have been. With this in mind, it isn't fair to expect AXA to increase its payments to cover this period of time as a result or pick up the short fall added when this additional cost was incurred as a result of this.

However, based on the progress of this claim and the cost this has resulted in to Mrs N, I think it is fair and reasonable to ask AXA to go further.

I think Mrs N's AA pot would have reached its limit by the end of February 2024 – this through a combination of the management of the claim and costs by AXA and its agents and through the actions of Mrs N remaining in the hotel accommodation for longer than she could have.

The claim at this point should reasonably have been settled, based on initial estimates of work and timeframes. It wasn't because it doesn't appear to have been progressed promptly and because of the concerns AXA had about the AA costs and its investigation into this.

While I accept these concerns and the reasons for them, advice was given on next steps and what needed to be considered and why if information wasn't available. And AXA would have been aware that not progressing the claim and continuing to refuse to cover the

ongoing AA costs for Mrs N would cause foreseeable harm as she needed to try and cover the costs of two properties.

Mrs N has highlighted the impact the claim is having on her with this not being settled and the difficulty she's faced in needing to cover the costs of the AA herself. She also explained why she is vulnerable and she expected AXA to provide her with ongoing assistance. So I've considered this when thinking about the impact of the complaint.

I think there has clearly been distress caused with this claim. Some of this is attributed to the investigation that I think AXA was fair to conduct with the questions over the family and accommodation. But the result of it not making a decision on the claim sooner has prolonged the claim and I don't think it demonstrated this is justified. As a result it hasn't handled the claim promptly or paid due regard to Mrs N's interests or treated her fairly.

Putting things right

It would be unfair for Mrs N to lose out as a result of AXA's handling of this claim and it not being done promptly. So to put things right, I plan on asking AXA to do the following:

To cover the AA costs Mrs N has incurred from the end of February 2024 until the point at which this claim is settled. (AXA previously agreed the rental accommodation is within the budget it has for Mrs N's area so despite being at the higher end of the budget, I see no reason to suggest this cost is unfair going forwards)

If Mrs N has paid costs already that need refunding, I would expect it to consider these costs with additional interest added at a simple rate of 8% to be paid from the date Mrs N can demonstrate she made the payments until AXA makes the refund.

If AXA decides it appropriate to cash settle this claim, then I would expect it to provide provision for the AA needed, in line with the expected schedule of works for the repairs with this payment.

To recognise the impact of this claim on Mrs N, I will also be asking AXA to pay an additional £1000 for the distress and inconvenience added.

Response to the provisional decision

Mrs N responded to say she broadly accepted the proposed outcome, although she didn't believe she had added any delays to the process with the rental accommodation and said she was chasing AXA's agent for updates on a moving date. She asked that this be considered with the complaint before the final decision is issued.

Mrs N also made a comment in relation to the proposed redress and the cash settlement AXA has made since the provisional decision was issued. She says the amount offered for the repair works is the lowest of the quotes provided and is an out-of-date quote, not reflective of today's costs. She also said AXA has currently proposed to return all of her belongings and stop paying for storage when it makes a cash settlement. Storage is not something she is able to afford herself and she's asked that this is covered for the duration of the proposed schedule of works for the repairs.

AXA responded to say it is disappointed with the proposed outcome and does not feel that its concerns over the relationship of Mrs N and her family and the guest house and rental accommodation have been truly considered.

It says the advice I've referred to in my provisional decision was provided in April 2024 and

not November 2023. Between November 2023 and May 2024, requests were made with Mrs N's parents to arrange an interview and answer its questions. The parents asked for a list of questions in February 2024 but didn't confirm this would not be answered until May 2024 and this added a delay.

AXA feels at the very most, it would only be fair to ask it to pay for the AA costs from June 2024 onwards with the lack of co-operation from Mrs N's parents causing the delay prior to this. It also feels the settlement should be agreed promptly by Mrs N as further delays are adding to its costs.

The complaint has now been passed back to me to consider.

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.

I've decided to uphold this complaint in line with my provisional decision set out above. I appreciate AXA will be disappointed by this, but I'll explain why, despite being very aware of its concerns over the AA accommodations, that it is fair and reasonable to ask AXA to take steps now to put things right.

AXA has said the advice I referred to in my decision to consider simply progressing the claim at this point and avoid further investigation or delay was not provided until April 2024.

The email and advice I refer to from November 2023 is on page 3829 of a 4025-page document sent to us by AXA to demonstrate what has happened in the lifetime of this claim. The email was sent on 3 November 2023 by AXA's solicitor to it with details of their thoughts on the claim and concerns AXA had raised.

The email set out that further investigations would be needed to establish whether the concerns AXA had could be validated. But it highlights that being able to compel Mrs N's parents to provide information to the detriment of Mrs N would be something unlikely to be supported by this Service or the Court. And the email ended with the following:

"Finally, it would be remiss of me not to mention that one option open to AXA is to simply not proceed with the additional investigations highlighted above, but to agree to deal with the claim on the basis that the AA limit has been exhausted and so future costs should be met by Mrs N."

So while I understand the need for AXA to want to investigate the concerns it had, many caveats were in place and highlighted to it on this course of action. And I have to consider the delays on its handling of this claim prior to this point and the impact of its decision here.

As I've said previously, the initial schedule of works and quotes indicated the claim should have been settled with works completed by November 2023 if not sooner, had there been no delay. When AXA took the decision to continue to investigate its concerns and not progress the claim after this point, Mrs N and her family were left needing to stay in AA for longer than would have been needed.

Mrs N was not being asked to provide more information to allow the claim to progress, instead it was her parents. Neither of Mrs N's parents are on Mrs N's policy and when their co-operation wasn't received, it is not them losing out with a delay to the claim process. So while I can understand why questions were asked, I don't think waiting as long as AXA did to stop pursuing this course of action is fair on Mrs N.

Ultimately, while there has been some valid concerns set out by AXA, these cannot be proven to show that Mrs N has benefited and I don't think it is fair that she loses out as a result.

Mrs N has said she was chasing AXA's agent on a date to move into the property. While this has happened, it doesn't change my opinion on this from what I set out before. I think she would have been aware when the property was going to be ready based on the family member being in it previously. And I don't think this was explained to AXA when it could have been to allow it to decide whether to push for another property to be selected in its place.

Mrs N has raised concerns about the settlement now offered. This is not the issue in dispute with this complaint and I cannot fairly comment on whether a proposed amount is or is not fair. But I would expect AXA to continue to cover storage costs in line with any extension to the AA for the period of the proposed schedule of works based on any quote relied on when offering a settlement for the claim. And I would expect Mrs N to make sure she acts promptly to engage with AXA on any settlement offered so this matter can be brought to a close.

Overall, I accept this complaint has a number of points to it which mean it has not been straightforward and the concerns of AXA are understood. But the delays added at the start of the claim and built upon when the investigation was pursued, at all costs to some extent, mean Mrs N is in need of AA for longer than she would have been.

When AXA and its agent failed to manage the claim from the start or highlight the increasing costs to Mrs N in relation to her policy limit, it meant this was reached sooner than it might otherwise have been. But with the additional time added to the claim for the reasons I've set out, I think it is fair and reasonable that these costs are covered now by AXA. And it needs to recognise the additional distress and inconvenience caused with the handling of this claim.

Putting things right

To put things right, AXA should do the following:

Cover the AA costs Mrs N has incurred from the end of February 2024 until the point at which this claim is settled. (AXA previously agreed the rental accommodation is within the budget it has for Mrs N's area so despite being at the higher end of the budget, I see no reason to suggest this cost is unfair going forwards).

It should also cover any storage costs for Mrs N's possessions until this point.

If Mrs N has paid costs already that need refunding, I would expect it to consider these costs with additional interest added at a simple rate of 8% to be paid from the date Mrs N can demonstrate she made the payments until AXA makes the refund.

If AXA decides it appropriate to cash settle this claim, then I would expect it to provide provision for the AA and storage costs needed, in line with the expected schedule of works for the repairs with this payment.

To recognise the impact of this claim on Mrs N, AXA should also pay an additional £1000 for the distress and inconvenience added.

My final decision

For the reasons I've explained above, I uphold Mrs N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 20 September 2024.

Thomas Brissenden
Ombudsman