

The complaint

Mrs S and Mr S complain about AXA Insurance UK Plc's ("AXA") handling of their claim under their buildings insurance policy.

Mrs S has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Mrs S or Mr S as "Mrs S" throughout the decision.

What happened

The background to this complaint is well known to the parties, so I won't go into too much detail but will summarise the key points. In July 2019, following a substantial escape of oil beneath her property, Mrs S made a claim to AXA. Mrs S says the damage only came to light after it was determined that the drinking water was contaminated. AXA appointed a loss adjuster – who I'll refer to as company Q. And they in turn appointed an environmental remediation contractor – who I'll refer to as company S. Excavation and remediation work was then carried out by company S. As excavation and investigation work progressed externally, it was discovered the oil had also spread to areas beneath the property so internal excavation work was also required to Mrs S' kitchen.

In May 2021, AXA made a cash settlement to Mrs S for the replacement kitchen and the remainder of the external reinstatement works.

Following this, there were issues raised about company Q's project management and about poor workmanship on the areas company S completed. This led to a building and construction company producing a defect report on areas they felt required rectification. This included areas company S had worked on, and areas of work that were yet to be completed under the cash settlement offered by AXA. AXA and company Q considered this report and explained which areas they felt they were responsible for, and which areas had already been covered by the cash settlement made.

A broker – who I'll refer to as company M – was also corresponding with AXA on Mrs S's behalf. Company M emailed AXA with a proposal for them to settle all outstanding issues by way of a cash settlement to Mrs S of £20,000.

AXA responded and agreed there were areas which still required reinstatement or rectification and offered Mrs S a cash settlement of £15,000. This cash settlement was in addition to the previous one made in May 2021, and AXA said was to allow for work that needed to be corrected or completed, over and above what they had already paid for. Company M declined this on behalf of Mrs S, following which Mrs S made a complaint. Through the claims process Mrs S raised complaints about delays and poor workmanship and AXA paid compensation for areas of the service they'd upheld a complaint about. In relation to the cash settlement for the outstanding work, AXA responded and explained, following receipt of the defects report, discussions had taken place about bringing the claim to a conclusion. AXA provided a breakdown of the specific areas of work they and company Q felt are still outstanding together with costings. The total costs they'd arrived at was £12,087.24. They referred to further items and said this would bring the proposed settlement

amount within the region of £14,000 to £15,000. So, they felt £15,000 represented a fair settlement. Mrs S felt this wasn't fair and referred her complaint to our service.

After considering all of the evidence, I issued a provisional decision on this complaint to Mrs S and AXA on 20 February 2024. In my provisional decision I said as follows:

"My role requires me to say how a complaint should be resolved quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. I think it's important to add, I won't be commenting on every event during the claim and complaint process, instead I have taken a broad approach to the overall service provided."

Delay

AXA are expected to handle a claim promptly and fairly. And I can see that was the case in the early stages of the claim. I can see the claim was first reported to AXA in July 2019. Over the next few months company S carried out work which included emergency excavation and remediation work. As their investigations progressed, it was discovered that the escape of oil covered a larger area than originally thought. This led to further excavation and remediation

I can't say there were any avoidable delays in the early stages of the claim as it's clear this was a claim involving significant property damage – a point acknowledged by company M in their correspondence with AXA. It's clear the initial stages of the excavation work didn't uncover the full extent of the damage – and I don't think that's unreasonable in the circumstances here as further investigations were being done in parallel with additional excavation work to identify the full area affected by the escape of oil.

The claim notes say Mrs S was considering a change of design to the garden and AXA then explored the option of a cash settlement for the external reinstatement work. Mrs S had also instructed her own contractors to install a kitchen which AXA say was done without their prior agreement on costs.

In early 2020, Mrs S submitted invoices to AXA for work carried out and this included a claim amounting to £25,716.40. AXA considered this and queried some of the items being claimed which they felt didn't form part of the claim – and they also reviewed the claim for the kitchen as they believed parts of the replacement kitchen amount to betterment.

The information shows company Q sought to validate the claim for the kitchen and gave suggestions on what documentation could be provided to assist with the enquiries. This included the original purchase receipt, if available, and/or providing photographs of the new kitchen so it could be compared to the original one. Through April to May 2020, there were negotiations around the replacement kitchen and company M responded in July 2020 with a revised proposal and AXA responded with a revised offer. The information shows there's no further response to this offer from Mrs S or company M despite company Q chasing in late 2020 through to early 2021. The information does show though that in late 2020, Mrs S had prepared a snagging list and company S hadn't returned to attend to this due to AXA's non-payment of their costs.

A cash settlement of £27,636.20 was then paid to Mrs S in early March 2021 for the replacement kitchen and external reinstatement works. The information shows, over the next few months AXA chased Mrs S for outstanding invoices and there were

further discussions around poor workmanship issues. In November 2021, company M emailed AXA and raised areas of poor workmanship and AXA responded in December 2021 after consulting with company Q. AXA then chased company M through the early part of 2022 for a response. Between February and March there were discussions around instructing an independent surveyor and I can see AXA and company Q also felt the specific areas of poor workmanship hadn't been made clear.

Then in April 2022 a building and construction company prepared a defects report. This was sent to AXA who in turn forwarded it to company Q who provided detailed comments on the areas raised. In June 2022, company M emailed AXA and set out two options to progress the claim. They said the first option was to proceed with the appointment of a locally based surveyor to deal with the matter by carrying out a site inspection, scoping, quantifying and supervising the snagging and remedial works to completion. They said the second option was to offer a cash settlement. They said the earlier agreed cash settlement elements were paid net of VAT on the basis this would be reimbursed upon submission of appropriate invoices. Company M said they think £4,941 should be reserved against such elements. Company M said, taking into account all outstanding aspects, and including the amounts already proposed to be reimbursed by company S, Mrs S would be prepared to accept a final payment of £20,000 – they said this would allow Mrs S to carry out the remedial works and finalise the repairs.

AXA responded with a cash settlement offer of £15,000 on a full and final basis. And, following a complaint being raised, AXA, together with company Q, valued the cost of all outstanding work and items at £12,087.24. They referred to additional items for which they were awaiting further information and explained if this is also included then the total would arrive at a figure between £14,000 to £15,000. On this basis, they maintained their offer of £15,000 as being fair. And, following Mrs S referring her complaints to our service, AXA agreed to increase their cash settlement offer to £20,000 – but this was declined by Mrs S.

Taking this all into account, I agree things have taken longer than they should've and there are periods where progress appears to have slowed down. For example, the claim notes from around May 2020 show a separate company were instructed to provide commentary on the costs being claimed by company S for the remediation work and proposed reinstatement schedule. They concluded that the estimate of costs for the outstanding external reinstatement works is overpriced and recommend an alternative estimate. The claim notes say no alternative estimate had been received to date and this was now delayed due to Covid-19 lockdown measures in place. The claim notes say, once an alternative estimate is received, company Q will consider this to assess whether it's competitive and then look to discuss settlement options with Mrs S. AXA chase company Q in early June 2020 to ask whether they're in a position to respond and progress the claim to a conclusion. The claim notes show company Q were still awaiting lockdown restrictions being lifted to arrange an alternative estimate. While I accept the lockdown restrictions were out of AXA's control, it's not clear from the information provided why alternative estimates couldn't have been sourced prior to this.

I can see company Q then obtained alternative estimates and they asked Mrs S to confirm if she was looking for these works to be undertaken by them or if she preferred a cash settlement. Around this time there appears to be some uncertainty around what work has been completed and what remains outstanding, so AXA and company Q arranged a conference call. The claim notes show around this time company M queried why company S hadn't returned to deal with the snagging list – and it appears this was down to non-payment of their fees by AXA for two months.

Also, in late 2021 through to the early part of 2022, it's clear there was a dispute around poor workmanship. There was discussion about instructing an independent surveyor, but it appears a defect report was then commissioned by company M to help move matters forward. AXA are the experts here, so I think they should've taken a more leading role in progressing matters when it appears the parties had reached an impasse.

While I've found AXA are responsible for some periods of avoidable delay, I can't say they're wholly responsible for the time the claim has taken. I say this because I've seen there have been periods where AXA or company Q have been waiting for information from Mrs S or company M. For example, in May 2020 AXA make a settlement offer for the replacement kitchen but they don't hear back until July 2020. And I can see there was a further period of a few months between July to November 2021 where AXA were chasing Mrs S and company M for invoices. In December 2021 AXA emailed company M and explained Mrs S had raised issues with the work carried out but not provided particulars – and they chased for a response over the next couple of months.

So, I think there have been avoidable delays caused by AXA and I also think they could've taken a more leading role at times to progress matters where disagreements slowed down progress. I think it's reasonable in the circumstances for AXA to pay compensation for the trouble, frustration and inconvenience caused to Mrs S, but I'll address this later in my decision.

Outstanding/rectification work and cash settlement

The main dispute here relates to the outstanding work, and how much of this is attributable to poor workmanship which requires rectification. I think it's important to mention again, the approach I've taken here is to determine how the complaint should be settled with minimal formality. It's clear there has been a breakdown in trust and Mrs S doesn't want company S to carry out any further work. There doesn't appear to be any dispute between the parties about concluding the claim by way of a final cash settlement – the dispute relates to the value of the cash settlement. So, I've taken into account all information here to decide what I think is fair in the circumstances.

Following conclusion of the excavation and remediation work, AXA provided a cash settlement of £27,636.20 in March 2021. I've seen the scope and breakdown of this settlement and, as well as including the kitchen, it also includes external reinstatement work, such as reinstatement of the garden and driveway. There was then a dispute around poor workmanship and a defect report was prepared. This covered 19 areas which the building and construction company felt should be rectified. I can see company Q then provided their detailed comments on those 19 areas.

Looking at this more broadly, there are areas which they say have already been factored into the earlier cash settlement, areas which they disagree require rectification, and areas they agree need to be rectified. This then forms the basis of their calculation of costs in the sum of £12,087.24 to complete the outstanding work – and their offer of a final settlement in the sum of £15,000.

I can see the dispute at that point was over £5,000 – as company M, on behalf of Mrs S, felt £20,000 was a fair settlement amount. Mrs S has since obtained a surveyor's report setting out a scope of works which remain outstanding. This provides a total building works estimate of £34,660. This report has been forwarded to AXA for their

comments and they maintain their final settlement offer of £20,000 is reasonable. In support of this, they've provided detailed comments on each area of work outlined in the surveyor's report. For simplicity, I've broken this down into three broad headings; the areas which AXA agree with and have factored into their offer of £20,000, the areas they say have already been factored into the previous cash settlement of £27,636.20, and the areas they don't believe fall within their responsibility.

Looking at the areas which AXA agree with, I can see they accept work needs to be carried out in removing the AGA and repairing and altering the plinth. They also accept work needs to be carried out to an external water pipe. The surveyor's report says work needs to be carried out to excavate tracks to expose the existing water main and excavation to increase the depth of the track to allow for suitable cover to the water main. I can see AXA agree there is some work required here although they dispute parts of the scope set out in the surveyor's findings. AXA say company S installed the water pipe to a greater depth than the original one, and that they couldn't advance deeper due to the presence of mudstone boulders. They say the current installation just requires lagging around the "2-3 linear m section installed."

I can see company S have maintained this position since the defect report was shared with them. Company S have provided detailed comments on how the depth of the water pipe laid by them meets the relevant installation regulations, but they accept lagging would be appropriate here to the section of the water pipe where the presence of boulders prevented them from installing it at the same depth as the remainder of the water pipe. Given that I haven't seen any persuasive evidence to suggest this wouldn't be a suitable action to address the water pipe issue, I think AXA have acted fairly here in applying the scope of work they have to this area. So, having compared the surveyor's scope of work with AXA's scope of work, I'm persuaded the areas of work agreed by AXA are reasonable to address the outstanding work which falls within their responsibility.

In relation to work which AXA say has already been factored into their previous cash settlement, I've compared the surveyor's scope of work with the settlement scope and terms prepared by AXA at the time. I've also taken into account AXA's detailed comments on the surveyor's scope of works. I won't be commenting on each individual line set out within the scope of works and will comment on it more broadly, but I do wish to reassure Mrs S I have gone through the information carefully.

I can see the surveyor's scope refers to internal decorations and the cash settlement scope shows this work was factored into the initial cash settlement of £27,636.20 paid to Mrs S. The surveyor's scope of works also refers to external reinstatement works, for example paths and paved areas and shrub areas. The cash settlement scope shows this covered work for reinstatement of the driveway, reinstatement of the garden, and reinstatement of planters, paths and plants. So, I don't think AXA's approach has been unreasonable here in not including these areas of work in their final cash settlement offer.

Turning now to the areas of work AXA believe don't fall within their responsibility, I can see the surveyor's scope of works includes internal work, for example, floor finishes and work to existing skirtings. It also refers to areas of rectification required to kitchen fittings and disposal installations. The information shows the replacement kitchen formed part of the previous cash settlement and the work was carried out by Mrs S' own contractor. AXA say these areas of work don't therefore fall within their responsibility as any rectification work would need to be carried out by the contractors who carried out the work. Given that the work wasn't carried out by AXA

or their contractors, I don't think it's fair for them to be responsible for any work not carried out by Mrs S's contractors or requiring rectification.

Taking this all into account, I haven't seen any information which shows the £20,000 cash settlement being offered by AXA isn't sufficient to address the outstanding work. I'm further persuaded the offer is reasonable as, looking at it more broadly, the surveyor estimates costs for the building work and VAT in the sum of £43,392. But payment of the £20,000 will bring the combined value of AXA's cash settlement to £47,636.20. So I can't say there is a significant difference between the two amounts – particularly in light of the fact that some areas are being reasonably challenged by AXA as falling outside their responsibility. The calculations provided by AXA show the outstanding work can be completed for a sum lower than the £20,000 so that's why I believe this, as a global offer, is fair and reasonable in the circumstances as it also factors in compensation for Mrs S for the delays caused by AXA."

So, subject to any further comments from Mrs S or AXA, my provisional decision was that I was minded to uphold this complaint and require AXA to pay a cash settlement of £20,000.

Following my provisional decision, AXA haven't provided any further comments. Mrs S has responded to my provisional decision, and I think it's important to add, I won't be commenting on every event and each representation made, instead I have taken a broad approach to the overall service provided.

Mrs S says the claim could've been resolved much sooner had company Q sent a representative to carry out a site inspection and evaluate the damage for themselves. She also says, it became clear that the job became much bigger than company S had originally anticipated and, while they were well equipped to deal with the ground contamination parts of the work, other aspects of the work were outside their normal expertise.

Mrs S says she shouldn't be responsible for making good the plinth as it could cause additional damage while correcting this, and AXA should be taking the risk for this. Mrs S also refers to the work carried out by company S in relation to the water pipe and the issues this now presents.

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.

Having done so, I see no reason to depart from my provisional decision. So, I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above, as well as the reasons set out below.

I do acknowledge Mrs S' point about AXA, company Q and company S' role in the claim. I've mentioned in my decision that I don't believe they were proactive at times and, given they're the experts here, they should've taken a more leading role at times to progress matters where disagreements slowed down progress.

So I wish to reassure Mrs S I have taken this into account when deciding on the steps AXA should take to put things right. I do agree with Mrs S' point about the job becoming bigger than was originally anticipated. But I haven't seen any evidence that this was identifiable at the outset. As I've mentioned, the extent of the area affected by contamination was becoming clearer as company S' excavation and investigation progressed. I accept there were periods of delay attributable to AXA and that has been factored into my findings.

In relation to the AGA and plinth, AXA say this was first raised during a telephone call to company Q in March 2021. I can see an email was sent by AXA explaining that these issues would've been highlighted when Mrs S' own contractors were carrying out work. They said this wasn't raised until after the kitchen was fitted and, had it been brought to their attention at the time, company S would've rectified it – and this could've been done without the additional work that would be necessary now. I can see AXA have estimated the costs they would've incurred in arranging any rectification work at the time, and I think that's reasonable in the circumstances given that they weren't given an opportunity at the time to rectify this.

I acknowledge Mrs S' points about the water pipe and the work carried out. AXA do appear to accept further work is appropriate here, which is why they've factored this into their assessment of outstanding work – and in the cash settlement made. Given that I've seen no persuasive evidence to suggest the rectification work identified by AXA won't be a suitable action to address the water pipe issue, I think AXA have acted fairly here.

I understand why Mrs S has complained, and I do acknowledge she has been caused trouble, frustration and inconvenience during the claim process. But, for the reasons I've mentioned, and given that I haven't seen any evidence which persuades me otherwise, I think the cash settlement of £20,000 is fair and reasonable in the circumstances. I wish to reassure Mrs S I've read and considered everything she has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Putting things right

I've taken the view that there are outstanding areas of work which AXA are responsible for, and they've also caused periods of delay in the claim. So, I think the £20,000 cash settlement being offered as a global amount is fair and reasonable in the circumstances to allow Mrs S to complete the outstanding work and also factors in the trouble, frustration and inconvenience caused to Mrs S as a result of the delays. So, AXA should pay a cash settlement of £20,000 to Mrs S and Mr S.

My final decision

My final decision is that I uphold the complaint. AXA Insurance UK Plc must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 17 April 2024.

Paviter Dhaddy
Ombudsman