

The complaint

Ms G complains about how AXA Insurance UK Plc have dealt with a claim for flood damage under a buildings and contents insurance policy.

All references to AXA are intended to include the actions of its agents.

What happened

The details of this complaint are well known to both parties. So, what follows in this section isn't intended to be a full recap of everything that has happened. Although I have considered all the evidence and the comments made by the parties, this decision will only concentrate on the information I feel I need to include in order to explain my decision.

Ms G's property had previously flooded in 2012. This caused extensive damage to the property and its grounds which took many years to sort out. AXA was the insurer at the time of this claim and Ms G opted to take a cash settlement from it for the cost of these repairs. She then arranged for them to be carried out herself.

Ms G's property flooded again in October 2019, so she made a further claim to AXA for damage to her property and its contents. Unfortunately, in a very short space of time the property suffered further flooding in February 2020 and January 2021. So, this complicated the repairs process and meant multiple contents claims were made.

This complaint focuses on events that stemmed from the first claim in October 2019. I may need to refer to the other flood events, but this will be for contextual purposes only and to help explain my reasoning.

By the time of the second claim in February 2020 although the downstairs of the property had been stripped out, no repairs had started to the property.

Ms G had raised questions about the flooring of the property, whether it was properly dry and if the insulation needed to be replaced. She'd referred to the manufacturer of the insulation who recommended that after several flood events, the insulation could no longer be guaranteed to perform correctly. Ms G had also raised questions with AXA about the electrics to the property as these were damaged in the second flood and therefore these then needed repairing.

Ms G said that without AXA providing answers on these issues, repair work couldn't be started. She explained for example if she started repairing the walls and skirting board, these repairs would then have to be undone again if the floor had to be lifted or the electrics chased into the walls.

Ms G opted to stay in the property and be given a payment of £80 a day by AXA. Comparable properties couldn't be found at that time and Ms G's cats would have needed to have been placed in a cattery. Ms G installed a temporary kitchen upstairs with basic facilities in order to make staying at the property feasible.

AXA made a payment to Ms G to replace the contents of the property damaged by the 2019 flood. However unfortunately during the work to identify damaged items and dispose of them, several computers and hard drives belonging to Ms G were removed from the property and not returned.

In August 2020 Ms G was provided with a provisional sum of £120,000 in to start the repair process. However, due to the severity of the damage caused by the floods, AXA has undertaken an in-depth investigation into the circumstances of them and Ms G's property. Particularly concentrating on how the property and its surroundings were restored after the previous flood in 2012.

Over the course of AXA's investigation, it has requested Ms G attend two investigatory interviews lasting around eight hours in total and it has also asked for lots of evidence from her. Ms G has attended those interviews and says she has provided as much information as she is able to. She mentions that some of the information AXA has asked for would likely have been contained on the computer and hard drives its agents disposed of, so she is limited in what she is able to provide. Ms G says she has responded to all of AXA's queries and is unhappy the claim is not progressing.

AXA says it has specific concerns about how the money provided to Ms G after the 2012 flood claim was used to reinstate the landscaping at the property. It has agreed that repairs were undertaken, and it can't specifically point to anything it thinks wasn't repaired. However, it doesn't believe Ms G spent all of the £25,000 that was given to her.

As such, it has asked for evidence of how that money was spent before it will release anything further. AXA's position is that if it releases further funds Ms G could in effect benefit from double indemnity. Ms G has only been able to provide limited information about this, which AXA says hasn't satisfied its concerns.

AXA said due to these concerns and others that have presented themselves on the further claims, it doesn't believe Ms G is being truthful and it is therefore seeking to rely on the fraud condition in the policy. Meaning it will not make any further payments to Ms G and reserves the right to request repayment of any sums already made.

Ms G has raised several complaints to AXA about how it has dealt with the 2019 flood claim and the others (relevant parts of which are being dealt with by this service under different complaint references). This service has already considered a separate complaint about the way in which AXA's agents dealt with specific items of contents of her property after the 2019 flood. That complaint specifically centred on garden items being incorrectly disposed of, as they weren't covered by the policy and the loss of data on the computer equipment that was not returned to Ms G.

Overall Ms G is unhappy about how long it has taken AXA to deal with the claim and the way in which it, and its agents, have conducted themselves and how they have acted towards her.

She also complains AXA did not make her aware at the start of the claim that she could appoint her own Surveyor. She believes had it of done so, this would have made the claim smoother and a lot of the issues to do with the reinstatement works would have been dealt with earlier.

Further developments

I considered in detail AXA's concerns about the way in which this claim (and the other claims) has been presented by Ms G. And I wrote to both parties setting out my thoughts on

this.

In summary I said that I didn't think AXA is acting in a fair and reasonable way in looking to rely on the fraud condition in the policy. I was therefore not intending to support this, and I would look to consider the merits of Ms G's complaints about how AXA has handled the flood claims.

AXA provided further comments and information on why it believes it would be fair for it to rely on this condition. It also raised that it believes the award limit of £355,000 would apply to this complaint and that all sums it has paid to Ms G to date, would be included within this amount. It does not think that a separate award limit would apply to the two other complaints which Ms G has made and thinks that a single award limit of £355,000 applies to the three complaints together.

While Ms G hasn't explicitly complained about AXA's decision to rely on the fraud condition, she has disputed it and expressed her dissatisfaction about it. I thought it appropriate I consider this matter. As, the outcome of that review would determine if I needed to consider further, the other points in dispute.

I sent my provisional findings to both parties setting out that I thought the complaint points Ms G had raised should be upheld. I explained why I didn't think AXA could reasonably rely on the fraud condition in the policy and that it should continue to deal with the claim.

AXA responded saying that while it didn't intend to challenge my findings it reiterated its opinion that the award limit of £355,000 would apply to the totality of the complaint points Ms G had raised across her three complaints.

Ms G provided a detailed response to my findings. Overall while she was happy that I was intending to uphold her complaint, she said there were aspects of my findings that she didn't believe she had asked me to consider or that she didn't require me to make a finding on. Including the following:

- The application of the fraud condition by AXA wasn't part of her original complaint, but she understands that it was deemed necessary to address this in order for the rest of the complaint points to be considered. She does however want AXA to remove all references of fraud from internal and external databases.
- The cost of landscaping was assigned to the 2020 flood claim by AXA as this was where the majority of the damage occurred.
- She didn't complain about flooring issues in her complaint letter in 2021.
- She asked that I not consider the service she received from AXA in dealing with the claim or consider if any compensation is due as this is something she will pursue separately.
- She didn't complain about AXA's contribution to the Loss Assessor's fee and believes this is also linked to the level of service AXA has provided that she wishes to pursue separately.
- The matter of the surveyor's appointment wasn't part of her complaint but was raised as AXA questioned if there had been a prior arrangement between them.

In considering both responses, I gave further thought to the matters Ms G raised and how they related to how a complaint is defined within the Financial Conduct Authority's Handbook Glossary, This says a complaint is....." *any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, ... which (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and (b) relates to an*

activity of that respondent...”

Having given further consideration to this issue, I decided to issue new provisional findings which I believed more accurately reflect the matters in dispute.

My provisional findings

I issued my provisional findings on 3 June 2024. I said I intended to uphold the complaint for the following reasons:

“Subject of the complaint

Ms G has referred a number of complaints to us in relation to the three flood events in 2019, 2020 and 2021. Three of the complaints are open and I will be issuing decisions on them. Although this decision only relates to one complaint, I think it will help the parties understand my reasoning if I explain how I have analysed the three complaints and the acts or omissions which fall within each complaint.

I have considered whether the different complaint points which Ms G has raised are about one or more “provision[s] of, or failure[s] to provide a financial service”. In my view, the majority of the issues which Ms G has raised all stem from the 2019 flood claim and how AXA has handled the reinstatement of the property following that claim. I think its handling of this claim was the provision of a single financial service. I think the contents claims relating to the 2020 and 2021 floods are separate issues resulting from separate acts or omissions by AXA, each of which involved the separate provision of a financial service, and they are therefore the subject of separate complaints.

I think the issues covered in this decision (fraud, landscaping, flooring, appointment of a surveyor, alternative accommodation, storage and redecoration upstairs) all result from the provision of a financial service stemming from the 2019 flood claim because they relate to the reinstatement of the property and ensuring a lasting and effective repair is achieved. It is also appropriate to consider in this decision issues which link to this such as alternative accommodation, the provision of Ms G’s belongings during the reinstatement and AXA’s actions in relation to the progress of the reinstatement and subsequent refusal to consider matters further. The landscaping of the property was initially impacted by the 2019 flood claim albeit to a lesser degree than by the floods in 2020 and 2021, therefore I think it is appropriate to consider that within this decision as the damage still stems from the 2019 flood event.

I have also recorded in this decision that there are two points which Ms G has asked me not to consider or to stop considering (the Loss Assessor’s fee and the impact on her of the service provided by AXA and delays).

AXA has also said that it thinks Ms G is in breach of the fraud condition in the policy in respect of all three flood claims. I have considered the main issues relating to the fraud allegations in this decision, but there are specific allegations in relation to the 2021 contents claim, which I have considered in the decision relating to that claim.

Fraud

I have previously written to both parties with my thoughts on this matter. And I’ve subsequently considered AXA’s further comments and reviewed the extensive further information that has been provided by the parties.

In terms of our approach to such complaints, my role here is to decide whether AXA is

entitled to rely on the fraud condition. This means looking at whether, on the balance of probabilities, it's more likely than not that Ms G acted fraudulently. I then need to consider what's fair and reasonable, in all the circumstances of the case.

Overall, having considered all of the information made available to me, I am not satisfied AXA has fair or reasonable grounds to rely on the fraud condition in the policy.

While I support AXA's entitlement to pursue necessary investigations to validate a claim, in this instance I believe, based on the review of all of the information, it's investigation in this instance went beyond that. From reviewing some of the comments on file, the case handlers appeared fixated on finding information to prove Ms G had acted fraudulently. They ignored evidence to the contrary as it didn't support that narrative and pursued lines of enquiry that they had been advised would not be supported or for which the evidence was weak and/or circumstantial. Based on the evidence on file, I don't think it's more likely than not that Ms G acted fraudulently, in line with the test I've set out above.

I therefore intend to direct that AXA cannot rely on the fraud condition and must continue to review the claims in line with the remaining terms and conditions of the policy. With the aim of bringing the matter to a conclusion as soon as possible. I also intend to direct that it should remove any references to fraud from internal and external databases.

Landscaping

I asked AXA to detail any items it believes were not repaired from the previous flood in 2012. As understandably AXA would not need to indemnify these items again if they were not repaired the first time. AXA however has not been able to point to anything specific and has admitted it isn't suggesting work wasn't done. As such, I take it from this it is satisfied it is now required to indemnify Ms G for the damage caused again to the property from the 2019 flood and beyond.

AXA's concerns in this area seem to have stemmed from a relatively flippant remark made by a surveyor that the work done didn't look like it cost £25,000. A statement which has since been relied heavily upon and has initiated several substantial lines of enquiry to forensically examine exactly what happened post settlement for the landscaping in circa 2014/2015.

Ms G has provided evidence to AXA from her bank accounts at the time. And, while AXA believes she could get more based on information it has obtained from an informal source, this is not what is being supported from the information Ms G has provided from the banks in question.

AXA has since suggested it needs this information to be able to properly indemnify Ms G and support what was at the property in 2019. However, I would question why it would need to do this, agents on behalf of AXA visited the property on many occasions and would have been able to verify and substantiate this information. If this was not done, then this is a failing on behalf of AXA. Not something which a consumer should be put to unnecessary lengths to prove in considerable detail some 7 years after the event.

Having considered all of the evidence available to me I think AXA should now move forward with the claim for damage to the landscaping at the property. As the damage to the landscaping from the 2019 flood was relatively minor compared to the later floods. It should be relatively easy for AXA to establish from the information obtained by its agents in 2019 as to what the landscaping consisted of at that time. If for some reason its agents failed to obtain adequate information of this, it will need to rely on the information that has been provided by Ms G as to what was in place at that time.

I am of the opinion that AXA has exhausted reasonable avenues of enquiries around this matter to obtain strict proof on what was there. And as such, in order to move matters, forward it now needs to take the information it has received on good faith.

For completeness, during the claims process, AXA has said to Ms G that it wouldn't be liable to cover damage to her lawn as this is not covered by the policy. Lawns are specified in the policy to only be covered if they are damaged by emergency services attending the home. As such, I think AXA has been reasonable in explaining to Ms G the lawn wouldn't be covered.

Flooring

The flooring has been impacted by all three flood events, however as repairs were never started, I believe it is appropriate to address this matter under this complaint as it stemmed from the first flood in 2019. This matter was commented on in Mrs G's complaint letter as contributing to the delay in the claim being dealt with and it was specifically addressed by AXA in its final response letter, therefore it is appropriate I consider it here.

It is clear there is some concern around the flooring, both from Ms G's point of view and from the latter drying company. It refused to issue a drying certificate for the floor as it had not been tested and confirmed as dry.

I can see from the file both the opinions of the drying company and a surveyor were sought by AXA. With it choosing to rely on the comments of the surveyor about the likely condition of the floor and proposed repair meaning testing most likely wouldn't be required.

However, it appears to me from the information I have seen on file AXA initially withheld this information from Ms G rather than discussing the matter in an open and honest way. This may have been due to the number of case handlers involved in the claims at that point and other agents. However, the matter was revisited several times and on occasion it appears the enquiry had been forgotten about or other matters were felt to be more important at that particular time. Whatever the reason, this matter being outstanding caused Ms G frustration and meant the matter was at an impasse for some considerable time.

I do think the matter of the flooring was something that definitely needed to be resolved prior to rectification works starting, as to start works and then have to lift the floor at a later date would cause additional work and inconvenience. So, AXA's suggestion later on that simply because it had provided Ms G with some money, she is solely responsible for the delays in the work starting, I think was unfair.

I understand AXA put to Ms G that she could have used the advanced money to either conduct the testing she thought adequate or take steps to replace the insulation herself. Its suggestion was that at least this would have moved the repair forward. I accept Ms G could have done this, however, I'm also mindful that doing so could have meant this potentially may have left her short of funds in the interim to complete other necessary repairs.

I can see AXA did offer to test the floor however, Ms G thought the test it wanted to perform would be inferior based on information she had obtained on a different type of testing. And, in any event later, the information she received from the manufacturer suggested that regardless of any testing done, after multiple flood events the performance of the insulation could not be guaranteed. So, Ms G put it to AXA the cost of this needed to be included in the scope of repair works.

I wouldn't expect a manufacturer to confirm the performance of its product some years after it was installed and after repeated flooding. So, I don't find this information, in itself

particularly persuasive. However, it does raise a point that should be considered.

I can't see from the file Ms G's concerns were discussed directly with her, although I can see this issue was discussed internally at AXA. So, it doesn't appear she was given a clear answer on this and was waiting for AXA's response. There was also a tender process that took place however this didn't directly address the matter either, even with a surveyor being appointed. So, the matter remained unresolved.

AXA suggested at one point in the process that the insulation should have been replaced in 2012, (and as such, implied that this isn't something AXA should fund again). However, I haven't seen any evidence from AXA that the insulation, specifically in relation to the sub floor (not the walls) was paid for previously. In any event, the floor was deemed dry after the 2012 flood, so this does bring this suggestion into question.

It isn't for me to say what the correct position should be here. However, I do think at least the floor should be tested to confirm once and for all if it is dry. I do recognise here Ms G's concerns about the testing only being specific to certain areas and this could cause a repeat of what happened previously, where an area that hadn't been tested potentially wasn't completely dry and caused issues later on. However, it's important this matter now moves forward, and I assume, from the information put forward on file, this testing will also provide some reassurance to any contractor in the future. AXA would be entitled to undertake whatever type testing it feels would be adequate to achieve this aim.

If Ms G thinks an alternative, more expensive, test should be performed then she would need to contribute the difference that it would cost for that testing to be performed.

Once those results are known. AXA should then give thought to the information Ms G has provided and whether it would be prudent to replace the insulation in the sub floor. It maybe that AXA and the surveyor Ms G appoints believes another technical solution would be sufficient to enable a lasting and effective repair to be completed. If this is the case, this should be explained to Ms G.

It may well be then for Ms G to decide if, for peace of mind, she would like it replaced. However, this would then be her decision to do so, at her own cost.

Storage

After the first flood in 2019, AXA provided a storage container for Ms G to place her contents in while the repairs to the ground floor were carried out. However, for various reasons, Ms G had to have this container removed from her property and she rented one off site. AXA refused to pay towards this and eventually, due to the length of time the claim was ongoing, and partly due to its cost, Ms G gave up the container and moved her items back to her property.

I think all the while the property was not reinstated the requirement for storage remained and AXA had a liability to cover this. Items had been moved out of the house that were salvageable after the first flood in 2019.

Given the reasons the onsite container had to be removed from the property I think it was reasonable for Ms G to source alternative storage offsite. Ms G was however only able to rent a larger container at an increased cost and this was something AXA had no input into. So, reasonably I think its liability for assisting with storage costs should remain at the rate it originally agreed to, which based on the information on file appears to have been £73.66 per month.

AXA should therefore make any outstanding payments due to Ms G up to the date she gave up the offsite storage. It should add interest at 8% simple per annum on this amount from the date it stopped making payments to the date it makes payment to Ms G in respect of this amount.

I've considered the fact Ms G incurred costs in moving her possessions to the offsite storage and specific to this claim, back again. Considering the reasons why the storage was moved offsite, I think this is a cost AXA would more likely than not incur in any event, even if it had been the one to arrange the storage. As such, subject to Ms G providing evidence of what it cost her to arrange this. AXA should pay an equivalent amount to Ms G of what it cost her to arrange for the contents to be moved back to her property. It should also pay interest on this amount at 8% simple per annum from the date Ms G paid the invoice to the date it makes payment to Ms G in respect of this amount.

Should Ms G ideally need storage facilities going forward and, while the claim is still under consideration, she should discuss this with AXA.

Confusion about the appointment of a Surveyor

AXA's position in its final response letter in December 2021, is that Ms G was made aware she could appoint her own surveyor at the start of the claim. It has previously said she was sent a letter about this. Ms G's position is she never received this letter and it was never mentioned to her until late in the claims process.

I haven't been provided with evidence by AXA, such as system screen shots etc, which supports this letter was sent. And by all accounts, all other communication has been sent by email. So, it seems strange only this communication was sent by post.

However, it also appears at the time Ms G was quite engaged in the progress of the claim and had suggested she may oversee the repairs herself. So, it is possible there was a miscommunication here about this. Either there was an assumption by AXA the letter had been sent and offer declined or given Ms G's apparent position, a surveyor wasn't required.

I don't have the evidence available here to make a definitive finding on whether the letter was sent, or if as Ms G has suggested, this information was deliberately withheld from her.

However, based on what has happened with the claim and how it became more complex as time went on, I do think this is something that should have been revisited with Ms G earlier than it was. And had this happened, this possibly may have resolved some of the issues that later presented themselves and reduced the impact on Ms G.

Loss Assessor's fee

Ms G asked to be supported at the second investigatory interview by a loss assessor, and AXA agreed to pay a contribution towards this. While I am aware AXA and Ms G disagree on how much that contribution should be, I have not considered any arguments or evidence about this as Ms G has asked me not to. She has said she has yet to complain about this formally to AXA and considers it to be part of the service AXA has provided to her, which she wishes to pursue separately.

Reinstatement costs

Ms G has previously raised some concerns about the reinstatement costs that have been proposed and has, as I read it, suggested items have been deliberately undervalued by different parties. However, the claim has moved on since those concerns were raised, with

the instruction of a new surveyor and a further tender process. As such, I don't intend to consider those specific points here as the way in which matters have moved forward has effectively made them redundant.

If Ms G has any concerns about any new costs proposed following the tender process and as AXA moves the claim forward, then she would be entitled to complain about that decision in the usual way and if necessary, bring such a complaint to this service. We'd then consider the arguments and evidence presented. It is likely a further complaint would be subject to the current £355,000 award limit as set out in my award below, rather than being subject to a separate award limit. But this would need to be determined at the point any new complaint is considered.

Alternative accommodation

At the start of this claim in 2019 there were attempts to source alternative accommodation however there were none that were suitable/available.

AXA agreed for Ms G to stay in her property and live upstairs. Which would require her to install temporary cooking facilities in one of the rooms. However, in recognition of the inconvenience this would cause, it offered a disturbance allowance of £80 a day.

However, it did agree that the flood in 2020 would have naturally meant further repair work would have been needed and that this would have caused further inconvenience to Ms G.

So, it agreed to continue with the disturbance payment until the end of 2020.

The property unfortunately suffered a further flooding event in late January 2021, and while AXA later agreed the third flooding event in January 2021 would have meant a further period of payments would've been necessary, no payments were made at that time.

For completeness, I do think while there are outstanding issues with regard to reinstatement of the property and the liability in that respect not being fully concluded, AXA needed to continue to make a disturbance payment to Ms G. I do not think it acted reasonably when it stopped making disturbance allowance payments to Ms G in December 2020 as the property had not been reinstated or had its liability been concluded.

While there was a dispute about whether the flooring needed to be tested this didn't prevent AXA from releasing further funds to aid the full reinstatement of the property. I do accept Ms G had some funds available to her which could have been used to start the repair of the property and mitigate her position however I think it's more likely than not, the need for disturbance allowance payments would still have been required as it wouldn't have been possible to fully reinstate the property on the initial funds released by AXA and its refusal to release further payments has meant that need has continued.

AXA should therefore arrange to make any outstanding payments to Ms G from the date it stopped making payments, to the date it makes payment to her in respect of this outstanding amount. It should add interest at 8% simple per annum on this amount from the date it previously stopped payments to the date of payment of any outstanding amounts. Any future payments should be made as agreed, until the time payment is made to Ms G for the full reinstatement costs of the property (subject to the impact of the award limit).

Redecorating upstairs

Ms G has asked whether AXA would consider covering the costs of redecorating the upstairs of her property as it has suffered additional wear and tear due to the fact she has been

solely living there over the past few years. I can't see from the file whether AXA has provided a definitive answer to this, but I do think it is something it should consider going forward.

My thoughts on the matter are that the upstairs of the property would naturally have suffered wear and tear regardless of whether it was the sole living space. However, I do acknowledge the fact that adjustments have had to be made, at AXA's agreement, to install temporary kitchen facilities and it has been necessary to run a temporary electricity supply through the property. So, I think it would be reasonable for AXA to consider covering the costs of removing the kitchen facilities and returning that space to its original intended function. I think it would also be sensible to assess the state of the upstairs decorations and decide whether the wear and tear experienced is over and above that which would usually be expected, and whether that is due to the fact it has been used as the main accommodation.

However, this isn't something that can be completed at this time as the property has not been reinstated. AXA will therefore need to consider this aspect as it moves the claim forward.

If it decides not to cover these costs, and Ms G is unhappy about that, she would be entitled to complain about that decision in the usual way and if necessary, bring such a complaint to this service. We'd then consider the arguments and evidence presented. It is likely that a further complaint would be subject to the current £355,000 award limit as set out in my award below, rather than being subject to a separate award limit. But this would need to be determined at the point any new complaint is considered.

Delays and customer service

I haven't included arguments or any determination about the delay in settling Ms G's claims or the customer service AXA provided, including its contribution to the Loss Assessor's fee as Ms G has asked me not to. Therefore, I've not made any consideration for a payment for trouble and upset in line with our usual approach given Ms G's position on this issue.

For all the reasons explained above I intend to uphold this complaint.

Award limit

As both parties are aware, where we uphold a complaint, an ombudsman can award fair compensation to be paid by the respondent business up to the relevant award limit. That limit is determined by the date of the act or omission by the business as well as the date the complaint is referred to our service. In this case, the limit is £355,000. If we think fair compensation is more than our award limit, we can recommend that the business pays the balance, but the business wouldn't be obliged to do this, even if the consumer accepted our decision.

However, the following are excluded from the award limit:

- any interest on the amount payable under a money award; and*
- any costs awarded (and any interest awarded on those costs). For the avoidance of doubt, the reference to "costs" here concerns the costs of a complainant bringing a complaint to the Ombudsman Service.*

Here the total amount is yet to be decided as it's not yet been calculated, so I'm not able to award a specific total amount (or recommend a specific amount beyond that). If my final decision remains the same as my provisional decision, then I'll be directing AXA to continue considering the claim in line with the remaining terms, conditions, limits and excesses, without relying on the fraud condition, as I've outlined above.

I should make it clear that I consider this to be a direction and not a money award. However, the effect of this direction is that the policy will be subject to the £355,000 limit on a money award in relation to this claim. If, having considered this claim, AXA decides that it is appropriate to settle further aspects of it, the £355,000 limit will apply to the total amount payable.

AXA's reliance on the fraud condition within the policy has the impact of bringing all payments and expenses, or other payments made by AXA in respect of the claim, into dispute. As such, any payments made so far will be taken into account when determining the maximum amount payable.

AXA would need to pay Ms G, if she accepted my decision, up to that maximum amount.

If the settlement exceeded that amount, then I'd recommend AXA pay Ms G the balance up to the applicable policy limits for each section of cover. But that recommendation wouldn't be part of my determination or award. AXA doesn't have to do what I recommend.

And it's unlikely Ms G would be able to accept my decision and go to court to ask for the remaining balance. So, if my final decision is the same as my provisional decision, Ms G may want to get legal advice before deciding whether to accept the decision.

But as this is a provisional decision, the outcome, or any of the points above could change based on the responses I receive from both parties.

My provisional decision

Intended Decision and award: I intend to uphold the complaint. I think that fair compensation should be calculated as below. My decision is that AXA Insurance UK Plc should pay Ms G the amount produced by that calculation – up to a maximum of £355,000. Plus, the amounts produced by the awards of 8% simple interest per annum that I have set out below.

Intended Recommendation: If the amount produced by the calculation of fair compensation is more than £355,000, I intend to recommend that AXA Insurance UK Plc pays Ms G the balance.

Part 1

- A. Deal with the claim in line with the remaining terms and conditions of the policy. It is not able to rely on the fraud condition to decline the claim further or seek to recover any sums already paid or incurred.*
- B. Remove any references to fraud in relation to Ms G's three flood claims from internal and external databases.*
- C. Move the claim for landscaping forward based on the information known to it about what was in place in 2019 prior to the flood event. If it requires further information from Ms G about this, it will need to take this at face value.*
- D. Arrange for the subfloor to be tested and the result made known to Ms G and her appointed surveyor. AXA would be entitled to undertake whatever type testing it feels would be adequate to achieve this aim. If Ms G thinks an alternative, more expensive, test should be performed then she would need to contribute the difference that it would cost for that testing to be performed.*
- E. Once the results of the floor tests are known. AXA should give thought to the*

information Ms G has provided and whether it would be prudent to replace the insulation in the sub floor. If it believes another technical solution would be sufficient to enable a lasting and effective repair to be completed it should explain this to Ms G and her appointed surveyor.

- F. Make payments for storage at the initial rate. This should be calculated from the date AXA stopped making payments to Ms G up to the date Ms G gave up the offsite storage.*
- G. Subject to Ms G providing evidence of payment, AXA should pay an equivalent amount to Ms G of what it cost her to arrange for her contents to be moved back to her property.*
- H. AXA should pay Ms G any outstanding disturbance allowance payments from the date it stopped making payments to the date it makes payment to Ms G in respect of this.*

Part 2

- I. Continue considering the building part of the claims in line with the remaining terms and conditions, in order to calculate this part of the claim settlement.*
- J. Continue considering the contents claim for the October 2019 flood in line with the remaining terms and conditions, in order to calculate this part of the claim settlement.*
- K. Pay Ms G fair compensation, up to a maximum of £355,000, to be calculated using the following formula: previous interim claim payments (made to Ms G and expenses incurred directly by AXA) + F + G + H + I + J*

Part 3

- L. Pay Ms G 8% simple interest per annum on F, from the date each payment was due to the date payment for F is made to her.*
- M. Pay Ms G 8% simple interest on G from the date Ms G paid the invoice to the date payment for G is made to her.*
- N. Pay Ms G 8% simple per annum on H from the date it previously stopped payments to the date AXA makes payment to Ms G of any outstanding amounts.*
- O. Income tax: if AXA Insurance UK Plc consider it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Ms G how much it's taken off. If requested, it should also provide her a certificate showing the amount deducted, so she can reclaim it from HM Revenue & Customs if appropriate".*

Responses to my provisional decision

Ms G said that she had nothing further to add and that she hoped the matter would soon be settled in line with my findings.

AXA responded and provided further arguments for me to consider. In summary it made the following points

- It wasn't sure I'd understood or appreciated the arguments it had raised as to why it considers the fraud condition to have been breached.

- I have overlooked and not addressed clear evidence of Ms G giving at least two different accounts of what happened with the landscaping claim in 2012 where only one can be true.
- I have looked at whether or not I believe Ms G has acted fraudulently but the fraud condition doesn't require proof of fraud, only that a false statement has been provided and therefore it considers I have used the wrong test.
- It doesn't believe it is for AXA to show the money wasn't spent on the 2012 landscaping claim, it believes it is for Ms G to prove it was and she hasn't done so.
- It wants clarity on how long it should pay disturbance allowance for the 2019 flood.
- It intends to apply the financial cap to the complaint
- It is concerned Ms G will attempt to bring further complaints to this service about matters related to the three floods in 2019, 2020, and 2021, in order to engage further award limits and it will potentially be exposed to further liability in this respect.

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.

AXA is correct that in my provisional decision I referred to deciding whether or not Ms G had acted fraudulently, however my reference to this was meant to be clear that I meant this in relation to the context of the fraud condition within the policy. Not whether Ms G had acted fraudulently to a criminal standard, which is something that can only be decided by a court of law. The fraud condition states that:

“Throughout your dealings with us we expect you to act honestly. If you or anyone acting for you:

...

- *knowingly makes a false statement in support of a claim...*

Then:

- *we may cancel your policy*
- *we will not pay any fraudulent claims*
- *we will be entitled to recover from you the amount of any fraudulent claim already paid under the policy since the start date...*

Having then decided whether I thought Ms G's actions had met the requirements set out in the fraud condition of the policy, this then informed my decision on whether or not AXA could fairly and reasonably rely on that condition to decline the claim.

I can confirm I have not ignored the evidence AXA has sent. Both parties will be aware that a substantial amount of information has been provided in support of this complaint. And, I have considered everything that has been provided. However, as I mention above, my decision only concentrates on the information I feel I need to include in order to explain my decision. This means I won't answer every argument or address every piece of evidence the parties have provided.

In summary, AXA's position is that Ms G has been dishonest, and it has provided evidence and arguments which it believes supports that position. The fraud condition in the policy refers to a policyholder, or someone acting for them, providing knowingly false information or statements. It also references exaggerating a claim. In my provisional decision, set out

above, I explained that having considered everything, I didn't think AXA could fairly or reasonably rely on the fraud condition in the policy to decline the claim. I mentioned there was evidence available on file which didn't support its position and arguments.

Both parties will also be aware that these matters have already been covered in detail during the course of this complaint being investigated, including previous communications I have had with the parties. And both have had the opportunity to provide representations on these issues. Also, the matter of AXA alleging Ms G has exaggerated claimed losses (another aspect in the fraud condition) has been addressed in detail under another complaint reference here with the findings being that it was the actions of AXA agents which led to the claimed amount being so high, rather than any wrongdoing on Ms G's part.

AXA has specifically reiterated in its response to my provisional decision that it believes Ms G has provided contradictory statements regarding who completed the reinstatement of the garden landscaping after the 2012 flood. It asserts that one of those must be 'knowingly' false. It therefore believes, along with other matters, it is entitled to rely on the fraud condition within the policy.

While it is natural for a party to concentrate only on the evidence which supports its argument. As an independent party I have considered everything in order to decide on balance what I think is fair and reasonable in the circumstances of the complaint. That is to say, what I think is more likely than not to have happened.

In AXA's file it has an explanation from Ms G about what happened at that time and that is supported by information from other parties. As is normal when a claim is being cash settled, she provided a quote from a contractor ("J") for AXA to consider regarding the cost of reinstatement of the garden after the 2012 flood. AXA then, as it was entitled to, offered to settle at a lower amount. Ms G then explained because of the lower amount paid, she couldn't go ahead with the original reinstatement in an identical way. So, J was only instructed to 'oversee', [my paraphrasing] the reinstatement of the garden rather than undertake all of the work. With the work being undertaken by others.

AXA has made a point that Ms G originally provided a statement from J which confirmed that having reviewed photos, the landscaping was carried out by it. So, it believes different accounts have been provided about how the garden was reinstated.

However, the sentence AXA has relied upon, has been read in isolation. When read in context with the rest of the information which refers a couple of times to the 'layout' and general design', reference to 'landscaping' in that context can refer to design and layout of the garden rather than being confirmation that J undertook all of the work involved.

Also on AXA's file is evidence from the director of J which confirms the involvement J had in the reinstatement of the garden, reasons why it was limited (including some personal to that individual) and they provide recollections on how materials and labour were sourced at the time.

As mentioned in the summary of the complaint, AXA subjected Ms G to two investigatory interviews lasting around eight hours in total. Throughout those interviews it is my opinion that Ms G's account remained consistent about what happened post the 2012 flood.

It must be remembered that when an insurer chooses to cash settle a claim it loses any control over how matters then progress. And where funds are limited, it is natural for an individual to try and get work done in cost effective way. This isn't unusual and will sometimes mean plans change. However, that doesn't automatically mean an individual has been dishonest.

With regard to how the funds for the reinstatement of the garden were spent in 2012, while I appreciate AXA disagrees with my position, having reviewed everything, I remain of the same opinion set out in my provisional decision, and for the same reasons. The passage of time has made it difficult for Ms G to be held to a strict burden of proof, not that I think that is necessary in any event.

I'm satisfied that Ms G has provided AXA with information about how the funds were spent, including providing bank statements and confirmation from one of the banks that nothing more can be provided due to the passage of time. There is additionally the issue of AXA's agents disposing of computer equipment that may have contained relevant information. AXA has not been able to point to anything it thinks was not repaired or reinstated and as such I remain of the opinion that it has now exhausted reasonable avenues of enquiries about this matter and should therefore now progress to settle this aspect of the claim.

I'm not persuaded that Ms G or anyone on her behalf, has provided knowingly false information. And if there has been inconsistent information, I'm persuaded this has not been provided knowingly. For clarity, under a separate reference here, I have also concluded that Ms G did not exaggerate claimed losses in the 2021 contents claim (another strand of the fraud condition), rather it was the actions of AXA's agents which caused the claimed amount to be as high as it was.

Overall, and for the same reasons set out in my provisional decision, I am not satisfied AXA has fair or reasonable grounds to rely on the fraud condition in the policy.

AXA has asked for clarity on how long it should pay disturbance allowance for the 2019 flood. As I set out in my provisional findings and decision. It is my opinion the need for disturbance allowance runs from the time of the 2019 flood until AXA has fully settled its liability for the reinstatement of the property.

I appreciate AXA's concern that Ms G may make further complaints about the flood claims however she is free to make and bring any further complaint to the service as she sees fit. It will be for this service to assess, at the relevant time, whether the complaint is one that can be considered and to what extent.

Having reviewed everything including the additional information provided since my provisional decision was issued, I'm not minded to change the outcome I reached. So, for the same reasons as set out in my provisional findings it is my decision that AXA has not acted fairly or reasonably in dealing with Ms G's claims and therefore this complaint should be upheld.

In considering further how the complaint should be put right and in order to avoid any confusion about how the award limits of the three complaints this service has reviewed should apply, I have made it clear where AXA should deduct any amounts from the calculation.

My final decision

My final decision is that I uphold Ms G's complaint against AXA Insurance UK Plc.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £355,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £355,000, I may recommend that the business pays the balance. In my provisional findings I set out the impact of the award limit would have on Ms G's complaint.

Decision and award: I uphold this complaint. I think that fair compensation should be calculated as below. My decision is that AXA Insurance UK Plc should pay Ms G the amount produced by this calculation – up to a maximum of £355,000. Plus, the amounts produced by the awards of 8% simple interest per annum that I have set out below.

Part 1

- A. Deal with the claim in line with the remaining terms and conditions of the policy. It is not able to rely on the fraud condition to decline the claim further or seek to recover any sums already paid or incurred.
- B. Remove any references to fraud in relation to Ms G's three flood claims from internal and external databases.
- C. Move the claim for landscaping forward based on the information known to it about what was in place in 2019 prior to the flood event. If it requires further information from Ms G about this, it will need to take this at face value.
- D. Arrange for the subfloor to be tested and the result made known to Ms G and her appointed surveyor. AXA would be entitled to undertake whatever type testing it feels would be adequate to achieve this aim. If Ms G thinks an alternative, more expensive, test should be performed then she would need to contribute the difference that it would cost for that testing to be performed.
- E. Once the results of the floor tests are known. AXA should give thought to the information Ms G has provided and whether it would be prudent to replace the insulation in the sub floor. If it believes another technical solution would be sufficient to enable a lasting and effective repair to be completed it should explain this to Ms G and her appointed surveyor.
- F. Make payments for storage at the initial rate. This should be calculated from the date AXA stopped making payments to Ms G up to the date Ms G gave up the offsite storage.
- G. Subject to Ms G providing evidence of payment, AXA should pay an equivalent amount to Ms G of what it cost her to arrange for her contents to be moved back to her property.
- H. AXA should pay Ms G any outstanding disturbance allowance payments from the date it stopped making payments to the date it makes payment to Ms G in respect of this.

Part 2

- I. Continue considering the building part of the claims in line with the remaining terms and conditions, in order to calculate this part of the claim settlement. (less the costs of any items considered under a separate reference here in respect of the 2020 flood which AXA may later decide to categorise as 'buildings')
- J. Continue considering the contents claim for the October 2019 flood in line with the remaining terms and conditions, in order to calculate this part of the claim settlement.
- K. Pay Ms G fair compensation, up to a maximum of £355,000, to be calculated using the following formula: previous interim claim payments (made to Ms G and expenses incurred directly by AXA) + F + G + H + I + J

Part 3

- L. Pay Ms G 8% simple interest per annum on F, from the date each payment was due to the date payment for F is made to her.
- M. Pay Ms G 8% simple interest on G from the date Ms G paid the invoice to the date payment for G is made to her.
- N. Pay Ms G 8% simple per annum on H from the date it previously stopped payments to the date AXA makes payment to Ms G of any outstanding amounts.

Income tax: if AXA Insurance UK Plc consider it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Ms G how much it's taken off. If requested, it should also provide her a certificate showing the amount deducted, so she can reclaim it from HM Revenue & Customs if appropriate.

Recommendation: If the amount produced by the calculation of fair compensation is more than £355,000, I recommend that AXA Insurance UK Plc pays Ms G the balance.

This recommendation is not part of my determination or award. AXA Insurance UK Plc doesn't have to do what I recommend. It's unlikely that Ms G can accept my decision and go to court to ask for the balance. Ms G may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 15 August 2024.

Alison Gore
Ombudsman