

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 actions of its appointed agents

What happened

The details of this complaint are well known to both parties. So, what follows here 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 won't therefore include all of the events, details or points of dispute between the parties. I will here, and throughout my decision, only concentrate on the information I feel I need to include in order to explain my decision.

Ms G's property flooded in October 2019, and she made a claim to AXA for damage relating to that flood. The property had to be stripped out downstairs with contents removed to allow the property to be dried. Ms G opted to continue living in the upstairs of the property and be given disturbance allowance payment by AXA. Unfortunately, the property flooded again in February 2020 and further in January 2021.

Ms G made a further claim to AXA, and it is the claim for contents under the January 2021 flood claim that is the subject of this decision. Any references to the previous claims are for contextual purposes only and to help explain my decision.

Ms G reported that the flood water had been contaminated with oil and she'd taken advice on how to deal with this. Which included putting woodchip down, inside and outside of her property to help with absorption.

As the property had not been reinstated from the previous floods, Ms G's main claim was for damage to her personal possessions that were stored on the ground floor of her property.

AXA had concerns about the amount of items Ms G had claimed for in light of the fact there had been two recent flood claims which had both involved claims for damaged contents. It also had concerns about whether Ms G had provided a truthful account about the presence of oil within the flood waters.

Ms G was unhappy about this and complained to AXA.

Due to its wider concerns, AXA refused to make a payment towards the value of the contents Ms G had claimed for. Ms G complained to AXA, but it didn't change its position, so she brought her complaint to this service.

Further Developments

I sent my provisional findings to both parties setting out that I thought the complaint points Ms G had raised should be upheld.

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 about each flood claim. Other points are being dealt with under difference complaint references at this service.

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 she didn't require me to make a finding on. She specifically 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.

In considering both responses, I gave further thought to the matters Ms G has raised and how they relate 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 the issue, I decided to issue new provisional findings which I believed more accurately reflect the matters in dispute.

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 and award limits.

In this decision I will cover the contents claim relating to the 2021 flood.

I have also recorded in this decision that Ms G has asked me not to consider 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 under one of the other complaint references.

My provisional findings

I issued a provisional decision on 3 June 2024. In it I said I intended to uphold the complaint for the following reasons.

"AXA's wider fraud concerns have been addressed under a different case reference, so I won't be repeating them in detail here. Other than to say I have explained under the other case reference why I have decided 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. This decision will therefore concentrate on specific issues raised in relation to the 2021 flood.

For ease I will use subheadings.

The contents claim and oil contamination

AXA has provided a report from a specialist company which says on the date it did a test (six days after the flood), there was no residual oil contamination present. AXA has therefore used this to suggest that Ms G is being untruthful about the presence of oil in the flood waters. I asked AXA to explain what difference this would have made to the claim, as by all accounts the contents would have been impacted anyway. AXA has said it believes Ms G said this to influence the way the claim was handled and to increase the amount which would have to be replaced. It believes given the short timeframe between the floods Ms G has exaggerated her loss through buying lots of items and irresponsibly storing them where they could be impacted by flood waters.

Ms G however has explained that after each flood event she has had to replace items that had been damaged. She comments that she still has to live in the property, and it isn't possible to store everything upstairs or appropriate to store day to day items offsite.

In respect of the oil leak Ms G has said it is her honest recollection that there was the smell and visual presence of oil in the water. She has provided information about the presence of oil in local storm drains and of a leak of heating oil from a neighbouring property that was backed up in drains and had to be cleared. Accounts from neighbours about the presence of oil has also been provided, with one particular detailed account being given about the impact of the oil on their property and how it decreased each day due to heavy rain.

Based on all of the evidence that has been made available to me I'm satisfied the account Ms G gave was, more likely than not, a genuinely held belief based of what she believes she saw that night. I have seen no evidence which suggests Ms G intentionally invented the presence of oil in order to influence how the contents claim was dealt with. Thankfully, the tests showed the inside of the property and directly outside it had not been impacted by oil.

AXA has concentrated on a photo which is says shows the total of the items that were originally reported as damaged. As well as Ms G reporting some boxes of cat food. I therefore questioned how a small reported loss ended up being quite considerable in amount and, monetary terms.

AXA interviewed Ms G, and, in that interview, it was explained the area in the photo wasn't the only place that items were stored. They were removed from the property at each nearest door/exit. Having listened to that call, the parties can be heard moving around the property as this is explained. Ms G was also questioned about the content of her initial report and the number of items later claimed for. Ms G explained that at the time of the initial report she only mentioned items that she knew straight away were impacted. As she went through the property, which we have to remember is quite large, other items were found. The boxes of cat food for example actually held wicker baskets with makeup and toiletries in. I don't find this unusual, most losses take some time to quantify, as clean up action takes place more items are found.

Ms G says given previous issues with contents going missing and incorrectly recorded after the most recent flood claims. She was aware of the process that would be undertaken and chose to list the items herself. She also said this was suggested to her by one of AXA's agents in the immediate aftermath of the flood. While I can appreciate this does seem unusual for a homeowner to list damaged items, given what has previously happened at the

property, Ms G's experience with AXA's previous agents and her understandable lack of confidence the matter would be straight forward, I can understand why she did so in this instance.

AXA instructed an agent to assess these items and it seems that it may have suggested to Ms G at the time some would be salvageable and therefore unlikely to be paid for by AXA – such as unopened bottles of shampoo for example. However, it went on to dispose of these items and list them to AXA as beyond economical repair (BER). The agent has said that it disposed of the items as Ms G said she wouldn't use them in any event. However, this was her personal preference. It does not mean she was attempting to exaggerate the loss.

It was AXA's agent that ultimately decided to include those items on the BER list, instead of properly deeming them to be salvable. The agent also comments in the notes that it crossed referenced the items to the list which Ms G provided to "save time and money". I don't therefore think it is reasonable to suggest that Ms G has exaggerated her claim when it is clear it hasn't been dealt with correctly by the agents concerned.

With regard to the amount of contents claimed for, I don't share AXA's concern. There are multiple low value items such as make up and toiletries. And there is also evidence of bulk purchasing of the same items. Small items although individually low in value can add up to a considerable sum relatively quickly. I can see that AXA initially asked for strict proof of purchase for each item, to be clear, I don't think it is reasonable to put a consumer to strict evidence of purchase on such small value items which can be picked up in weekly shops or incidentally and, generally where receipts are not obtained or retained.

It is normal to replace items that have been damaged and a lot of the items here appear to be relatively normal day to day items that would be kept at home. AXA has suggested that Ms G should have stored things off the floor, given the previous flood events and was therefore negligent in not doing so. While technically logical, it has to be remembered that Ms G was solely trying to live in the upstairs of her property where space was at a premium, with the exception of laundry facilities which were downstairs.

There is evidence that she was using racking downstairs to try and elevate some items and that which were damaged (contents in the cat food boxes for example) where those which were at low level. I don't think it is reasonable to suggest that a homeowner that has previously suffered flooding is never to put anything at low level again just 'in case' another flooding event happens.

Having considered all of the evidence made available to me. I don't think AXA has acted fairly or reasonably in refusing to meet the 2021 contents claim. I therefore intend to direct that it deals with it in line with the remaining terms and conditions of the policy.

Overall Service

I haven't included arguments or any determination about the delay in settling Ms G's claim or the customer service AXA provided, 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 the issue.

My provisional decision

I intend to uphold Ms G's complaint against AXA Insurance UK Plc and direct it to do the following:

- Deal with the contents claim from the 2021 flood event in line with the remaining*

terms and conditions of the policy”.

Responses to my provisional findings

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

AXA responded reiterating its thoughts on why it thought it should be able to rely on the fraud condition in respect of all three complaints this service is considering.

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.

As I mentioned in my provisional decision. AXA's general reliance on the fraud condition in the policy has been considered in detail under a separate complaint at this service. It has been decided that AXA can't rely on the fraud condition to decline the claims under the policy in respect of each of the floods in 2019, 2020, and 2021. It must continue to deal with them in line with the remaining terms and conditions of the policy.

The fraud condition in the policy states that:

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

...

- knowingly makes a fraudulent or exaggerated claim under the policy or*
- 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...”*

In respect of the contents claim from the 2021 flood, AXA has specifically suggested that Ms G has made a knowingly false statement in respect of oil being present in the flood waters and that she has exaggerated the losses incurred. So, it believes it is entitled to rely on the fraud condition to decline this claim.

I set out in my provisional decision the reasons why I was persuaded that Ms G had not made any false statements and, if she has provided inconsistent information, she has not done so knowingly. I said that I thought she had, more likely than not, given her honest recollection of the events that happened. I also found that AXA's agent had determined the extent of the loss and any error on its part was for AXA to take responsibility for. I didn't find that Ms G had exaggerated the claimed losses.

Having reviewed everything again, for the same reasons as set out in my provisional decision, my decision is that I don't think AXA has acted fairly or reasonably in refusing to meet the 2021 contents claim. I therefore will direct that it cannot rely on the fraud condition and must deal with the claim in line with the remaining terms and conditions of the policy.

I've also considered that should AXA go on to make payment to Ms G it would be fair and reasonable that it adds interest on the amounts it pays to her (as identified in the BER report) as she has been deprived of this money in the meantime.

My final decision

My final decision is that Ms G's complaint against AXA Insurance UK Plc should be upheld. I direct that it cannot rely on the fraud condition to refuse the 2021 contents claim and it must deal with it in line with the remaining terms and conditions of the policy.

It should add interest at 8% simple per annum on any payment it makes to Ms G in respect of this, calculated from the date of its agents initial BER report to the date it makes payment to Ms G.

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