DRN-4974086

The complaint

Mr and Mrs C have complained about the service provided by AXA Insurance UK Plc ('AXA') under their home insurance policy following a flooding event. For the avoidance of doubt, the term 'AXA' includes its agents, contractors, surveyors, and loss adjusters for the purposes of this final decision.

What happened

Mr and Mrs C unfortunately experienced significant flood damage to their home and contents in October 2023, caused by an overflowing watercourse during a storm event. They reported the matter to AXA, being their insurers at the relevant time. AXA processed the claim but proportionately reduced the amount it was willing to pay out. It said that there had been a misrepresentation regarding a previous claim and the distance of their home from water. AXA also said that Mr and Mrs C had underinsured their outbuildings.

AXA maintained its stance following complaint, so Mr and Mrs C referred their complaint to this service. The investigator asked AXA for records of the sales journey, underwriting guidelines, premium calculations, and evidence to support proportional deductions and its underinsurance decision. The investigator issued a 'limited information view' as AXA hadn't sent the information he'd requested. He concluded that AXA should disapply the proportionality deduction to the claim, remove any internal and external markers, and pay £200 for distress and inconvenience in addition to earlier sums offered, although he considered that AXA's response in relation to the underinsurance element was fair.

Finally, the investigator explained that he could only look at events up to February 2024 and that a fresh complaint would need to be made about any issues after this date.

AXA didn't agree with the investigator's view. In the circumstances, Mr and Mrs C's complaint has been passed to me to make a final decision in my role as Ombudsman.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I uphold Mr and Mrs C's complaint on the basis that I'm not satisfied that AXA has acted in a fair and reasonable manner in processing their claim by applying a proportionality deduction. I'll explain why.

Mr and Mrs C said that during storm 'Babet', their property including garden and land was flooded by about 9" of foul water. They had to abandon the home and seek alternative accommodation. Initially, AXA had informed Mr and Mrs C that they weren't covered for external flood events and that the claim was void, but after challenge eventually accepted that it was looking at the wrong documents and that cover was in place. AXA then said that there was a non-disclosure about a claim worth about £300 on a previous policy. Mr and Mrs C thought they had disclosed this, but the relevant AXA telephone recordings apparently

couldn't be found. On renewal they said they weren't asked about claims, only about any changes. They said there had been constant delays by AXA and showed this in a timeline.

Mr and Mrs C were told that there would be a proportional settlement and the premium was increased by around £50. If there was to be a deduction, they considered that a proportional penalty of 11% was incorrect as the difference was 8.2%. Mr and Mrs C then employed an insurance assessor to work on their behalf. Mr and Mrs C felt that there had been a general lack of communication by AXA causing huge amounts of frustration, *'with decisions such as removal of furniture to storage and removal of destroyed items such as floor coverings taking weeks'.* They said it had also taken weeks for recoverable costs to have been paid by AXA.

In December 2023, Mr and Mrs C said that they were contacted by AXA, listing items of under-insurance, even though AXA's loss adjuster had confirmed this wasn't the case. They said that the figures produced for various items appeared to be purely guesswork. These included a detached garage which was integral to the main house and converted to living accommodation, a bridge which they didn't own, paving way beyond what they had and a garden fence which AXA classed as an outbuilding. Mr C and Mrs C said that they'd acted in good faith in insuring what they reasonably considered to be outbuildings for £7,500. Mr and Mrs C then complained and AXA largely upheld their complaint and £250 compensation was offered but not paid.

At the end of December 2023, Mr and Mrs C issued several invoices for reimbursement, and these were eventually paid in February 2024. AXA then applied a further 1% penalty. It said that despite the property being inside AXA's stated distance to water, Mr and Mrs C's estimate of distance was incorrect. Mr and Mrs C said that using AXA's online quoting tool, this difference generated no change in premium. Then in January 2024, AXA appointed an external surveyor, having already authorised their assessor to carry out a full strip out and drying process. The surveyor struggled to find contractors and this meant further delays, so increasing the time away from home and the expense of renting.

In summary, Mr and Mrs C felt that AXA hadn't given any clear explanation as to how it calculated the percentage deduction. They said, *'the whole process has been beset by delays, misinformation and what appears to be a deliberate attempt to reduce their financial liability which has generated endless streams of e mail and communication.'* Mr C had asked AXA numerous times to clearly show how it had carried out the mathematical process to arrive at 11%. They thought that AXA had simply been finding any reason to try to reduce its liability to them.

As to the financial and other impacts upon them, Mr and Mrs C said they'd been forced to 'bank roll' AXA by having paid out for several items which were covered by insurance, but not being reimbursed for several weeks. They therefore incurred interest costs. They also felt that the delays being caused meant that costs of items and materials would increase. In addition, the total cost of reinstatement of their home was very high and they felt they were unreasonably being expected to contribute a significant proportion of this cost, based on the alleged non-disclosure and alleged underinsurance. Mr and Mrs C considered this to be totally disproportionate.

In conclusion, Mr and Mrs C said that communication by AXA had been extremely poor and that it took five weeks before they received any real confirmation about their claim which they found staggering. They said that delays were ongoing, there'd been non-response to questions or requests for clarity, lack of decisions and they'd been left not really knowing what was happening or when. They said that being flooded *'is a wholly catastrophic and exhausting experience both physically and emotionally so to add the additional stresses that you and your appointed agents have has been inexcusable'*. They said that they'd believed that they would be put back into the position they were in before they'd been flooded and

described the process as a nightmare. Mr C disclosed health issues and circumstances around the family's income. They said, *'the mental anguish and stress that this issue has caused is beyond explanation'*. Mr C felt that AXA's approach to the claim had caused a significant deterioration to his health.

I now turn to AXA's submissions regarding this matter. It had issued two final response letters which are relevant to this complaint. The first was issued in December 2023 and upheld certain aspects of previous complaints. It accepted that Mr and Mrs C's representative had to chase the matter multiple times. AXA acknowledged; '*It is evident that you have experienced delays and poor communication since submitting your claim…'* It said that this wasn't the level of service it would hope for. It sincerely apologised and agreed that the claims handling hadn't been proactive and could have been handled more efficiently, so upheld this aspect of Mr and Mrs C's complaint. AXA also upheld Mr and Mrs C's complaint about delays in arranging alternative accommodation and storage and accepted that this did take longer than it should have done and must have caused additional stress. It therefore partly upheld the complaint and offered £250 in compensation.

As to the issue of non-disclosure, it stated that the claim was referred to underwriting as there was an undisclosed claim. A loss adjustor was appointed to visit and identified potential underinsurance. AXA also stated that at the relevant time Mr and Mrs C; *'would have been asked about previous claims.'* In this respect, it said that it relied upon its rights under the Consumer Insurance Disclosure and Representations Act 2012 ('CIDRA'). In the circumstances, AXA re-assessed the risk and re-rated the policy which resulted in changes to compulsory excesses and a proportionate settlement of 89% applying.

The second final response letter was dated February 2024. This referred to an additional proportional deduction of 1% applied in relation to the proximity of the property to water. It said that the question hadn't asked for an estimate and that the onus was on the customer to provide an accurate distance to enable it; *'to calculate the risks of the property flooding'.*

As to the question of underinsurance, AXA referred to the definition of 'outbuildings' in the policy documents. It said the loss adjustor was asked to amend his report, as the values for fencing and driveway costs were incorrect. The report also stated the garage was attached; however, it said that this wasn't the case, and the calculations were then changed. It said that the total area of the property including the converted garage, was measured and resulted in the property being underinsured by £7000. As to the bridge, AXA said that Mr and Mrs C would need to provide the deeds to confirm the bridge didn't belong to them and that the valuation could then be reviewed. AXA apologised for confusion surrounding an item of correspondence sent by e-mail in December 2023. It said that until the new terms were accepted, the claim was unable to progress further.

AXA referred to Mr and Mrs C's complaint about AXA's decision to appoint surveyors and obtain tenders. They'd said that this could have been completed during the drying out process when the property stood dormant for three months. AXA agreed there was a delay of one month. It apologised for the additional inconvenience caused. It also offered a further £200 in compensation for these delays.

Finally, as to reimbursement of expenses incurred by Mr and Mrs C, it agreed that there had been a delay in payments being raised. With regards to the overall handling of the claim, it agreed there has been some delays which it said were outside its control, however it said that the delay was; *'mainly due to the fact of the dispute surrounding the underinsurance percentage.'*

Within the copious documentation supplied by AXA from its files, it included the following relevant information. Its agent's report in November 23, stated that, based upon the

measurements and calculations undertaken at the time of the initial visit, the sum insured of £350,000 appeared to be adequate. AXA said it had asked the loss adjustor to amend his report, as it was considered that the values for fencing and driveway costs were incorrect. It had then referred variously to figures of £113,000 and £87,000 under-insurance and of sums of nearly £38,000 and £26,000 as being the correct insured sum for outbuildings, whereas Mr and Mrs C had used the figure of £7,500.

AXA said that if it had known about the underinsurance, an increased premium would have been charged due to increased risk, and an additional excess of £50 would have applied. It said that as Mr and Mrs C only paid a portion of the required risk premium, it would then consider all claims on a proportional basis. It calculated that Mr and Mrs C had paid 88% of the required risk premium, and that AXA would therefore only be liable for 88% of the value of any valid claim, with the remaining 12% of any valid claim being for Mr and Mrs C to meet. Finally, in January 2024, AXA confirmed that its settlements were determined on risk and other factors. It confirmed that 88% accurately aligned with the shortfall of payment in this case and the additional premium that would have been charged if the relevant information had been correctly declared.

I now provide the reasoning for this final decision regarding complaints about the events up until 7 February 2024. The starting point for the decision is the wording of the policy which forms the contractual basis of the relationship between customer and insurer. The policy includes cover for flooding events, and after providing an initial view that Mr and Mrs C weren't covered for the event, AXA accepted that cover was in place and validated and progressed the claim.

There are other parts of the policy which have been referred to in the claim. The first is the definition of *'Outbuilding(s)',* which are defined as follows; *'Fixed structures or buildings detached from the home located within the boundary that you are legally responsible for. Outbuildings include but are not limited to detached garages, sheds, boundary or garden walls, fences, tennis courts, swimming pools, external car ports, driveways, patios, artificial lawns, septic tanks, soakaways or sewage treatment centres'*.

The policy also states that it expects policyholders to check the cover limits and to make sure that adequate levels of cover had been requested. It made it clear that if the insured sum wasn't enough, the policyholder would be *'underinsured'*. It explained that any claim that is settled; *'will be reduced in proportion depending on how underinsured you are, regardless of the amount of the claim'.*

Underinsurance

I deal firstly with AXA's argument that Mr and Mrs C were underinsured. I note that Mr and Mrs C had insured their buildings for £321,000 and their outbuildings for £7,500. On the balance of probabilities, I consider it likely that AXA's agent had originally informed Mr and Mrs M that there was adequate buildings insurance in place for their property. This is supported by his report dated November 2023. The agent had also provided various figures for reinstatement calculation purposes which showed that, whilst cover for the main building was adequate, it was inadequate for the outbuildings.

I note Mr and Mrs C say that the definition of *'outbuildings'* hadn't been available when they purchased their policy. However, I do consider that the definition in the policy document is a wide but clear definition. There's an obligation for policyholders to carefully read insurance documents, however in these circumstances, it's likely that Mr and Mrs C hadn't appreciated that all of these items could well have exceeded £7,500 for insurance purposes.

Having said this, AXA's figures differ widely in relation to the outbuildings. I note that the agent's figure for *'paving'* was increased from nearly £5,300 to nearly £15,700 following AXA's intervention. It also included an item of nearly £2,700 for *'garden walls'* which it seems to relate to the access bridge. It's clear that AXA had access to the register of title for Mr and Mrs C's property which shows that they merely have a right of way over this bridge and, whilst they were required to contribute to repairs, they didn't own the bridge. In the circumstances, I don't consider that Mr and Mrs C had an insurable interest in it.

In conclusion, I consider that the above factors make it likely that the agent's initial observation that the property was adequately insured was correct all along. Having seen the various figures and calculations referring to the figure or percentage of underinsurance, there isn't one definitive or robust calculation and, in the absence of clear evidence from AXA, I can't say that the reduction was fairly applied. The figures are insufficiently reliable and robust for AXA to rely on these calculations to say that, on the balance of probabilities, the property was underinsured at the relevant time. The figures also appear to have changed following a subsequent intervention without adequate justification or reasoning for this intervention.

The question of whether the garage (which has since been integrated into the property as a self-contained living unit) is, or is not, an outbuilding is no longer relevant. The agent consistently included this within the square meterage and calculations for the main building, and having viewed AXA's photographic evidence, I consider that he took a reasonable approach in this respect. For the avoidance of doubt however, I don't consider it to be an 'outbuilding' under the policy definition.

Non-disclosure

Secondly, I deal with AXA's argument that Mr and Mrs C had failed to disclose certain matters when they purchased their insurance policy. This relates to a historical claim with an approximate value of £300, and the response given by Mr and Mrs C when asked about the distance of the property from water.

The starting point in this respect is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'), as AXA maintains that Mr and Mrs C made misrepresentations regarding these matters. The Act states that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer when purchasing a policy. If a deliberate or reckless misrepresentation has been made, an insurer can avoid the insurance contract, refuse claims, and retain premiums. If a consumer fails to take care, the insurer still has remedies, provided there's been a 'qualifying misrepresentation.' That is, where the insurer wouldn't have offered the policy or wouldn't have offered it on the same terms (including premiums and excess amounts), if the consumer hadn't made the misrepresentation.

In this case, I can't say that Mr and Mrs C failed to take reasonable care in providing the responses they did. The investigator provided opportunities to supply relevant evidence including its underwriting criteria. Whilst AXA has provided a very large amount of case information, it didn't supply the information that went to the heart of the matter. AXA said that Mr and Mrs C would have been asked about previous claims, however it doesn't confirm and hasn't provided evidence to support what was actually asked, or to support what answers if any Mr and Mrs C provided as regards the previous claim. Without evidence of the sales journey when the policy was purchased in April 2022, I'm unable to say whether or not Mr and Mrs C failed to disclose the fact that they'd made a historical claim worth about £300.

Mr and Mrs C stated that they couldn't recall what had been asked of them and had requested information from AXA to establish this. I've found Mr and Mrs C's evidence to be

candid and straight-forward throughout their submissions. On a provisional basis, I consider that if they'd failed to provide salient information, then this had been due to an innocent mistake. I take a similar view in relation to their response about the distance their property was from water during the policy renewal process. I note that Mr and Mrs C had checked on the relevant system as to whether their answer would have made a difference in terms of the premium and it did not. On the balance of probabilities, and as AXA's documentation specifically refers to 200 meters distance as being the key criteria, I'm satisfied that Mr and Mrs C's mistake was an innocent and non-material mistake.

In conclusion, AXA has provided some evidence to show the percentage of the claim for which it considered it was liable being variously 88%, 89% and 90%. However, it has provided no detailed calculations or evidence to justify and support these percentage figures. Without these figures, I agree with the service's investigator that inevitably it's only possible to provide a final decision based on the limited salient evidence supplied by AXA.

The service provided

Mr and Mrs C said that they were not unsympathetic to delays by AXA based on workload, as they fully appreciated that recent events had placed huge pressure on the insurance industry. Unfortunately, the flooding event itself and the inevitable disruption in its wake would have caused a huge amount of distress and inconvenience to Mr and Mrs C. They'd explained their health issues, and this would no doubt have increased the strain upon them. The need to move into temporary accommodation, the inevitable lengthy discussions with insurers and a number of different agents will have added to that stress.

The issue for me to consider however is whether the way that AXA handled this claim between October 2023 and February 2024 caused additional stress and inconvenience to Mr and Mrs C for which they should be compensated. AXA accepted that they had been responsible for some unreasonable delays and communication issues. I agree that its communication has been poor and has been confused and disjointed on occasions. Being initially told that there was no cover for this very significant incident would also have caused shock and distress. AXA said that it offered Mr and Mrs C £450 in total for delays and communication issues, however it's not clear whether this amount has yet been paid and received by Mr and Mrs C

I'm satisfied that AXA did cause considerable unnecessary delay, distress and confusion to Mr and Mrs C in this case. This is particularly in the light of my findings above that AXA didn't act in a fair and reasonable manner, and in the light of their known health conditions. Mr and Mrs C had made repeated requests for information about the proportionality deduction calculations which weren't provided. I don't consider that £450 sufficiently recognises the significant additional distress and delay which has been caused to Mr and Mrs C by AXA's approach to this claim over a significant period. In view of Mr and Mrs C's health and financial concerns, I consider that AXA should have taken much more care over its communications with them. I consider that AXA should pay an additional £200 in this respect as well as the £450 previously offered if this hasn't already been paid.

Finally, it's recommended that AXA liaises closely with Mr and Mrs C regarding their previous contact with the Environment Agency, to ensure that relevant information is shared, with view to deciding what if any further action should be considered in the interests of all parties including AXA.

My final decision

For the reasons given above, I uphold Mr and Mrs C's complaint and I require AXA Insurance UK Plc to do the following in response to their complaint: -

- Disapply the proportionality deduction to this claim
- Remove any internal and external markers and any additional excess in this regard
- Refund the additional premium levied for the year 2023/24 within 21 days of this decision letter
- Pay additional compensation of £200 (as well as the previously offered £450 if not already paid) again within 21 days of this decision letter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 24 September 2024.

Claire Jones
Ombudsman