

The complaint

Miss M has complained about the settlement AXA Insurance UK Plc has offered for a claim she made for flood damage to her home.

Any reference to AXA throughout also includes the actions or arguments of its agents and representatives.

What happened

Miss M's property suffered a major flood in July 2021. She made a claim under the block insurance policy which covered her home, and which is underwritten by AXA. Miss M has complained about AXA's handling of the claim, including delays and communication issues, as well as about the settlement it has offered.

AXA has offered around £164,000 to settle the claim. It says this amount includes some uninsured waterproofing works, which it has included as a gesture of goodwill. AXA has also paid out for alternative accommodation while the property has been uninhabitable and has paid some of the cost Miss M incurred in appointing a surveyor to represent her interests. It has also reimbursed various costs she has incurred as a result of the claim. AXA accepted responsibility for some service issues during the claim and offered Miss M £250 compensation.

Miss M is unhappy that AXA's settlement doesn't include the costs involved in completely stripping out and replacing all of her flooring. She's also unhappy that AXA has stopped paying her surveyor's fees, and that it says it will only continue to fund alternative accommodation until October 2024. She says this isn't enough time for the works to be completed and her property made habitable again. Miss M feels AXA is responsible for how long the claim has taken to progress and so doesn't feel it's fair for her alternative accommodation limit to be applied in these circumstances. She also feels further compensation is warranted for the poor service she's received.

An investigator at the Financial Ombudsman Service considered Miss M's complaint and felt it should be partially upheld. She addressed the complaint under various subheadings explaining which elements she felt should be upheld, and which she didn't. She also set out how she thought AXA should put things right. In summary, she said:

- AXA caused avoidable delays in the early part of the claim and its offer of £250 wasn't sufficient compensation. It should pay a total of £500 for this.
- AXA didn't need to include costs for a complete replacement of the flooring as the evidence suggested it was sufficiently dried out and wasn't submerged in water for long enough for its performance to be permanently affected.

- AXA agreed to fund uninsured works in the vault area as a gesture of goodwill. She didn't think it would need to fund the installation of a sump pump or a new damp proof course as the former would be a preventative measure, and betterment, and the latter didn't appear to be necessary.
- AXA agreed to fund Miss M's surveyor's costs and wasn't clear about any maximum limit. But some claim delays had been caused by Miss M seeking for uninsured works to be included in the claim settlement. As a compromise, AXA should contribute 50% toward any reasonable additional surveyor fees Miss M will incur between now and completion of the works.
- The service provided by AXA around sourcing and renewing alternative accommodation was poor. AXA should pay an additional £100 compensation to reflect this. But it is fair for AXA to refuse to extend alternative accommodation beyond October 2024, as that's already longer than Miss M is entitled to under her policy terms.
- Miss M has confirmed that AXA has now reimbursed all of her outstanding expenses. But the service Miss M received around this was also poor. AXA should pay an additional £150 compensation for this issue, bringing the total compensation due for all the service failings to £850.
- Miss M wanted AXA to allow her to participate in the Build Back Better scheme. But as the policy covering her property is a commercial policy covering the entire block, she wouldn't be eligible for the scheme.

Neither side accepted our investigator's findings. So, as no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision to give the parties the opportunity to respond before I reached my final decision. Here's what I said:

“What I've provisionally decided – and why

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

Having done so, I'm intending to reach a different outcome to our investigator. So, I'm issuing a provisional decision to give the parties the opportunity to respond, before I reach my final decision.

Like our investigator, I'll address the various complaint points under separate sub-headings, for ease of reference.

But first, I want to acknowledge that there have been many points of dispute made throughout the claim and complaint and lots of detailed submissions and reports provided by both sides. While I've carefully considered all of this information, I won't be specifically commenting on everything. Instead, I'll focus on what I consider to be key to reaching a fair and reasonable outcome to this complaint. This isn't meant as a discourtesy to either side, rather it reflects the informal nature of the Financial Ombudsman Service, and my role within it.

Flooring and waterproofing

Miss M's home was damaged by a flash flood overloading her external drainage and entering her home. Miss M says that the cost to replace the entirety of her flooring, including the screed and insulation boards should be included in the claim, based on recommendations of a waterproofing expert she employed. This is because she feels its integrity, sanitation and performance will have been affected by prolonged exposure to water.

AXA's own waterproofing expert disputed that this was necessary. They said the structural stability and performance of the materials would not have been affected as the area was properly dried out. AXA also says the area was swab tested for bacteria and none was present.

I've considered all the available expert evidence around this point. This includes the statement from the manufacturer of the insulation used within the flooring, which broadly explains that it is possible for the material to be dried out and reused without its performance being affected, so long as it is only exposed to water for a very short time. This statement also says that given the insulation boards in this case were subjected to flood water for over 16 months prior to being dried out, their performance is likely to have been compromised.

AXA disagrees that the flooring was exposed to floodwater for this length of time. And the investigator agreed, based on the fact Ms M installed drying equipment very early in the claim. She said the performance of the boards would only be impacted if exposed to moisture for more than 30 days. So, as the drying was completed in less than 30 days, she felt it was unlikely that the performance would have been adversely affected.

Having considered all of the available evidence, I don't agree with the investigator's conclusions here. I say this because the dehumidifiers Ms M had installed in the early part of the claim were not intended as a complete drying regime. Instead, they were a temporary measure to allow the property to be sufficiently dry that Ms M wouldn't immediately have to move out. I'm not persuaded that eight days usage of some dehumidifiers would have completely dried the property. I don't think it's likely this will have fully dried out the floor screed or the insulation materials beneath. I say this because when the later drying regime was completed, the works were much more extensive, lasted a lot longer, and included drilling through the floor screed.

So, while the insulation boards and screed might not have been submerged in floodwater for 16 months, on balance, I'm persuaded they were exposed to moisture for that period. Based on this, and taking into account the expert evidence, I'm persuaded the insulation's thermal properties will most likely have been compromised during this time. It follows that I think AXA needs to include the cost of stripping back and replacing the floor screed and insulation, in line with the recommendations in Ms M's waterproofing report, as part of the overall claim settlement.

Because I'm minded to agree with Ms M that these works ought to have been included from the outset, I think it's reasonable to consider that AXA's refusal to include these works is the largest driver of delays to the progress and completion of the works required to properly repair Ms M's home. So, when amending the schedule of works to include the flooring replacement, I think AXA also needs to amend the rates for the remainder of the scope, so that they're based on the cost of carrying out the works now, in 2024, rather than the cost of the works when the initial, in my view, inadequate schedule of works was produced.

I've seen that AXA has agreed to include replacement of the waterproofing in the vault area as a gesture of goodwill. It says these works would not be covered under the claim as the waterproofing installation was faulty from the outset, as opposed to having been damaged by the insured event (the flood). I agree with AXA that this work would not strictly be covered under the claim, based on the various expert reports I've seen. So, by agreeing to include these works as a gesture of goodwill, I think AXA has treated Ms M fairly.

I've seen there has been some confusion as to whether Ms M was seeking the installation of a sump pump under her claim. Ms M says she has never requested this, but I've seen that some of the reports and a cash settlement request provided at different stages appear to have included it, so I can see where the confusion may have come from. However, as Ms M accepts that AXA does not need to cover the cost of the installation of a sump pump – because one wasn't present prior to the flood damage – I don't need to make any further finding on this.

Alternative accommodation

AXA has been covering the cost of Ms M being in alternative accommodation since April 2022. I've seen conflicting information as to what the limit of cover for alternative accommodation is under Ms M's policy. But AXA has said it's a maximum of 36 months from the date of loss, so I'll proceed on that basis.

AXA has agreed to cover the cost of the alternative accommodation until October 2024 – which is beyond the 36-month limit. But Ms M feels this is unfair because that isn't enough time for the property to be made habitable again. She also says it's unfair to apply the policy limit from the date of loss when AXA failed to engage with her claim for several months and failed to place her in alternative accommodation until eight months after the loss.

I've thought carefully about this issue. Having done so, I don't think I need to determine whether it's fair for AXA to apply the limit from the point of loss or later. This is because I don't think it's fair for it to apply the limit at all in the circumstances of this complaint. That is, where AXA is largely responsible for the significant delays which have led to this point – the delays in the early part of the claim and its refusal to accept the works required to the flooring which I think ought to have been included from the outset.

I do accept that Ms M has also contributed to the delays when seeking to include uninsured works (the waterproofing to the vault area). But even had this not happened, I think it's likely the claim would still have taken the same length of time, due to the flooring dispute. So, in my view, Ms M is only at the end of the alternative accommodation limit covered under her policy due to AXA's delays and its, in my view, unfair refusal to accept that flooring replacement works were required. In these circumstances, I consider it would be fair and reasonable for AXA to continue covering the cost of alternative accommodation until Ms M's property is habitable again.

Surveyor fees

AXA agreed to cover the costs incurred by Ms M in appointing a surveyor. AXA says costs were agreed at 11% of the repair costs, which equates to £20,740.96. It says it has already paid £20,400, which means it's full outstanding liability here is £340.96. The investigator said this cost agreement wasn't made clear until after Ms M was committed to paying her surveyor. She also said that due to delays in the claim, on both sides, a fair compromise was for AXA to continue to contribute toward the surveyor costs, by paying 50% of any further reasonable costs incurred until conclusion of the claim.

AXA subsequently provided evidence of the 11% figure being agreed with Ms M's surveyor. Based on this, I don't agree with the investigator that this arrangement wasn't made clear. And because it was made clear, I think it's fair and reasonable for AXA to limit its contribution toward the surveyor costs to 11% of the repair costs, as was agreed.

That said, as explained in the above sub-section, I think AXA needs to recalculate the schedule of works based on 2024 rates, and that it needs to include the works required to replace the flooring. So, the costs of this amended scope of works will likely be higher, meaning there will be extra funds available to pay the surveyor, within the 11% limit.

Expenses

Ms M made various claims for expenses she incurred as a result of the claim and being away from her home. She has now been fully reimbursed for all of this. But she has complained about the delays she experienced when claiming these expenses back.

AXA accepts that there was a delay in reimbursing one set of expenses. But it has shown that the remaining requests were processed and reimbursed within one month of them being made. To compensate Ms M for the impact of the one delayed expenses claim being reimbursed, AXA has agreed to pay Ms M £150 compensation. I think this is fair and reasonable in the circumstances and have factored this amount into the overall compensation award set out below in the final sub-section.

Build Back Better

Ms M has asked AXA to allow her to participate in its Build Back Better scheme. But AXA has explained that it only offers Build Back better on individual, retail or household policies. Ms M's property is insured by the property management company for her building as part of a wider portfolio of properties. This means it is a commercial policy and so is not eligible for the Build Back Better scheme. I don't think this is unfair or unreasonable.

Service issues and compensation

AXA accepted it delayed the progress of the claim by several months at the outset and offered £250 compensation for this. In response to the investigator's assessment, it agreed to increase the compensation for all service issues by a further £600, taking the total compensation for avoidable distress and inconvenience to £850. This included the initial delays, issues with supporting Ms M to locate alternative accommodation and the delay in paying out one of the expenses claims.

I've thought carefully about the everything that's happened in this claim and complaint, and in particular about the issues I think are solely the responsibility of AXA, such as those highlighted above and AXA's refusal to accept the inclusion of the flooring works – which I've explained I think was unfair. But I'm also mindful that AXA has also tried to support Ms M through her claim, such as by paying beyond the policy limit for alternative accommodation, agreeing to allow Ms M to move to a smaller accommodation and be paid the difference to contribute to some of the uninsured works, and by including the uninsured waterproofing works to the vault area in the claim settlement. I think these actions will have gone some way to mitigate the impact of AXA's failings in other areas.

Taking all of the above into account, I think the total level of compensation currently on offer, £850, is enough to fairly put things right. This amount is in line with what I would have recommended had the offer not already been available.”

I asked both sides to provide any further comments or evidence they wanted me to consider within two weeks.

Miss M responded to confirm she accepted my provisional conclusions.

AXA provided a more detailed response, setting out the reasons it disagreed with my provisional findings. In summary it said:

- In reference to my finding about the insulation boards being subjected to 16 months of exposure to water, one of its drying specialist reports from nine months after the event confirms there was no major pooling of water.
- The insulation manufacturer comments explain that where boards are allowed to dry there should be no issue with rotting.
- The loss adjuster attended with the drying specialist around nine months after the loss and confirmed the insulation was dry with no visible damage.
- Several reports also referred to an area of damp ingress from a raised planter in the rear courtyard which had contributed to moisture in the floor.

- The report completed 9 months after the loss was the first time its drying specialists were granted access to the property because Miss M refused access for drilling investigation or drying purposes until she had moved out. It says it took this long, in part, due to Miss M refusing alternative accommodation properties offered to her.

Based on all the above, AXA requested I reconsider my findings.

What I've decided – and why

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

I've also carefully considered the response to my provisional decision. But having done so, my conclusions remain the same. I'll explain why.

AXA's points in response to my provisional decision focus on the flooring and insulation issue. I explained in my provisional decision that I'd considered all the available expert evidence surrounding this point before reaching my provisional conclusions. So, I'd already thought about the specific reports, loss adjuster statements and insulation manufacturer's comments which AXA has referred to.

In my provisional decision I did not conclude that the insulation and subfloor had been in standing water for 16 months. Rather, I said I was persuaded it was exposed to prolonged moisture for that period. The drying report AXA has referred to, completed nine months after the loss, supports this as it states:

“ERH readings confirm the floor to be saturated but standing water is present.”

Whether or not this is intended to read as *“but no standing water is present”*, it still confirms the floor was saturated some nine months after the loss and that further drying was needed. And I'm also mindful that further drying wasn't completed until six/seven months from the date of this report.

AXA has referred to the following quote from a technical manager of the insulation manufacturer:

“Should the boards have been submerged (fully or partially) then (redacted) would suggest that these boards will take additional time to dry, the facings will be further compromised, and consideration should be given to replacing these boards. However, if they are allowed to dry out then there should be no issue with rotting.”

Again, I took this into account when reaching my provisional decision. But my finding that the boards had likely been compromised based on the length of time exposed to water wasn't based on the fact I thought there was an issue with rotting. Rather it was based on the fact that I was persuaded the performance of the boards would most likely have been compromised. And this finding was based, in part, on the opinion of a more senior member of technical staff at the insulation manufacturer who said:

“In relation to the first question asked around the structural integrity and performance specifications of (redacted) insulation after being subjected to all of the items you described, we have some very limited instances where PIR insulation boards have become wet for a very short period of time and then allowed to dry out sufficiently. In those limited cases, the PIR insulation boards may perform well in terms of dimensional stability being relatively unchanged and there may be a low/minor impact on thermal performance.

With regard to the details of this specific project and noting in particular, the extreme long-term exposure of the PIR insulation boards to floodwater over 16 months in addition to being subjected to germicide treatment, we feel the performance of the PIR insulation boards are most likely to have been adversely impacted by these conditions.”

Again, I appreciate that AXA maintains the insulation was sufficiently dried out. But I'm not persuaded this was the case until the conclusion of its drying regime some 16 months after the loss. Taking all of that into account, I remain of the view that the performance of the insulation boards is most likely to have been adversely impacted.

Miss M's policy is designed to put her back (as closely as possible) into the position she was in prior to the insured event having happened. And I don't consider that being left with poorer performing insulation boards, as a result of the insured event and subsequent drying delays, amounts to putting her back into that position. So, I remain of the view that AXA needs to include the cost of stripping back and replacing the floor screed and insulation, in line with the recommendations in Ms M's waterproofing report, as part of the overall claim settlement.

AXA has argued that Miss M is part of the reason it took so long for the property to be dried out. It says she refused numerous alternative properties and refused to allow drilling or drying works until she had moved out.

I've considered the timeline referred to by AXA in support of this argument. But this doesn't lead me to conclude that Miss M is solely, or unreasonably, at fault for the length of time the drying took to take place. I say this because the timeline suggests that while Miss M may not have accepted every property offered to her, she did accept several properties offered at earlier stages which fell through for reasons not attributable to her. And this happened prior to her refusing a request for drilling investigation holes while she was living in her property. I also note from the timeline that the request for drilling only appears to have been made in March 2022, which was already eight months after the flood event and only one month before Miss M moved into alternative accommodation. This was also still around eight months before the full drying regime took place. So, I don't think it would be reasonable to conclude that Miss M is responsible for the length of time the flooring materials were left exposed to water, and so this point doesn't change my opinion on what's fair either.

I've also thought about the point AXA has made about the moisture ingress from the planter. I accept the planter issue isn't covered under the claim and that it may have contributed to the level of dampness in that specific area of Miss M's property. However, even notwithstanding that issue, I'm persuaded on balance that the flood would most likely have resulted in prolonged water exposure to the flooring in that area. So, this point doesn't change my thoughts on what AXA needs to do to fairly resolve the claim. That is, that AXA needs to include the cost of replacing the screed and insulation to the lower ground floor into the schedule of works the cash settlement is based on, and to update the schedule and cash settlement offer to reflect repair costs in 2024.

There were no specific comments, evidence or arguments raised in response to my other provisional findings. And many of those other findings flowed, at least in part, from the fact I thought AXA was responsible for replacing the flooring materials. I've explained above that my final decision on the flooring element remains the same. So given this, and taking into account the lack of further specific evidence or arguments in response to my other provisional findings, my final decision on those points remains the same as outlined in my provisional decision – and for the same reasons.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Miss M's complaint in part.

AXA Insurance UK Plc must:

- Include the cost of replacing the screed and insulation to the lower ground floor into the schedule of works the cash settlement is based on, and to update the schedule and cash settlement offer to reflect repair costs in 2024
- Continue to cover the cost of Ms M's alternative accommodation until her property is habitable again.
- Fund any additional surveyor's costs Ms M incurs – which would be covered under the policy – up to the agreed limit of 11% of the total repair costs.
- Pay Ms M a total of £850 compensation for the avoidable distress and inconvenience it has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 21 October 2024.

Adam Golding
Ombudsman