

## **The complaint**

Mr H and Mrs H complain AXA Insurance UK Plc (AXA) have added an endorsement to their home insurance policy and declined their claim.

Mr H and Mrs H are being represented in this complaint by a third party, but as Mr H is the first policyholder, and for ease, I've referred to him throughout.

## **What happened**

The circumstances of this complaint will be well known to both parties and so I've summarised events. In January 2024 Mr H's property was unfortunately damaged following a flood and so he logged a claim with AXA. During its investigation into Mr H's claim it spoke with Mr H who told it part of his garden had flooded in the past. AXA said had it been made aware of this previous flooding when Mr H purchased his policy, it would have added an endorsement excluding claims for flood damage. It told Mr H it would be adding this endorsement to his policy from the policy inception date and his claim would be declined. Mr H didn't think this was reasonable and so raised a complaint.

On 21 May 2024 AXA issued Mr H with a final response to his complaint. It said when Mr H purchased his insurance policy he was asked whether anywhere in the boundary of the property had flooded in the last ten years. It said had it been provided with the correct information it would have still offered Mr H a policy but it would have excluded cover for flood. It said it had amended the policy in line with the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Mr H referred his complaint to this Service.

Our investigator looked into things. She said she thought CIDRA applied and Mr H had failed to take reasonable care when he answered a question about whether the property had experienced previous flooding within the boundary of the property. She said she thought AXA had been able to show had it been made aware of the correct information it would have added a policy endorsement and therefore this was a qualifying misrepresentation. She said she thought it was fair for AXA to add the policy endorsement and decline Mr H's claim.

Mr H didn't agree. He said the question he was asked only asked about flooding to his property, not within the property boundary. He said he believed AXA had more recently changed the wording of the question and pointed to updates made to AXA's website.

As Mr H didn't agree with our investigator, the complaint has been passed to me to decide.

## **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 want to acknowledge I've summarised Mr H's complaint in less detail than he's presented it. I've not commented on every point he has raised. Instead, I've focussed on what I consider to be the key points I need to think about. I mean no discourtesy by this, but it simply reflects the informal nature of this Service. I assure Mr H and AXA I've read and

considered everything that's been provided.

The relevant law in this case is CIDRA. This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show that it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

AXA believes Mr H failed to take reasonable care not to make a misrepresentation when he failed to tell it about previous flooding within the boundary of his property.

I've looked at the question Mr H was asked when he purchased his insurance policy in November 2023.

AXA have said the question Mr H was asked was:

***'To the best of your knowledge, has anywhere within the boundary of the property been flooded by an outside water source in the last 10 years?'***

There was an opportunity to press a question mark to bring up further information. Had this been pressed the further information states:

*'An 'outside source' includes (but is not limited to) tidal waters, rivers, streams, lakes and other watercourses, rain or melting snow, and extreme weather conditions. We need to know about the property itself, its outbuildings and anywhere within its boundary.'*

*'When answering this question you do not need to include flooding caused by a source within the structure of the property, such as a burst pipe or a leaking water storage tank.'*

Mr H has said the question he was asked was different. He said he was only asked whether the property had been flooded, and not whether anywhere in the boundary had flooded. He said AXA's website has updated twice since he took out his policy, although he hasn't been able to evidence the question having changed. AXA have said the question hasn't changed since Mr H purchased his policy.

On balance, I think the question quoted above is the question Mr H was asked when he purchased his policy. I've not seen persuasive evidence Mr H was asked a different question or the question he was asked has changed since he purchased his policy.

So, I've considered whether Mr H took reasonable care when answering this question. During the validation of Mr H's claim, AXA spoke to Mr H on the phone. During this call the handler asked Mr H whether his property had flooded within the boundary. He said that it had. He explained there was a strip of land around 50 metres from the property, in the garden, which flooded roughly once a year. He said to the best of his knowledge this occurred in 2020, December 2022 and November 2023.

Based on the information Mr H provided during this telephone call I think he failed to take reasonable care when he failed to declare these incidents when purchasing his insurance policy. The question asked whether anywhere within the boundary of the property had flooded, and Mr H's garden had flooded on a number of occasions since he purchased the property. I think a reasonable consumer in these circumstances would have declared the previous flooding, particularly given the frequency it had occurred.

I've gone onto consider whether this misrepresentation is a qualifying misrepresentation.

AXA have provided underwriting evidence to show had it been made aware of the previous flooding within the boundary of Mr H's property, it would have added an endorsement to the policy excluding claims for flood. As AXA have been able to show it would have offered Mr H a policy, but on different terms, I'm satisfied this is a qualifying misrepresentation.

AXA have treated Mr H's misrepresentation as careless rather than deliberate or reckless. I think this is fair in the circumstances and so I've considered the actions AXA can take in accordance with CIDRA.

CIDRA explains if an insurer would have entered into the insurance contract, but on different terms, it is entitled to treat the contract as if it had been entered into on those terms. Therefore, in accordance with CIDRA, AXA is entitled to add the policy endorsement it would have added at inception and consider Mr H's claim under these terms. As the policy endorsement added excludes flood claims, and Mr H's claim is for damage caused by flood, it's reasonable for AXA to decline his claim.

I naturally empathise with Mr H given the damage to his property. However, CIDRA reflects this Service's long standing approach to misrepresentation and so I think allowing AXA to rely on it as it has done is reasonable in the circumstances of this complaint.

### **My final decision**

For the reasons I've outlined above I don't uphold Mr H and Mrs H's complaint about AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 22 May 2025.

Andrew Clarke  
**Ombudsman**