DRN-5658938

The complaint

Miss H complains that AXA Insurance UK Plc has limited her claim settlement and refused to cover alternative accommodation following a claim she made for flood damage to her property.

Reference to Miss H and AXA throughout includes their respective agents and/or representatives.

What happened

Miss H raised a claim with AXA – her home insurance provider – after she suffered a flood in January 2024.

AXA carried out checks when validating Miss H's claim. As part of these checks AXA identified that the main home hadn't been damaged by the flood event. Instead, the damage had mainly been caused to two separate structures – an annexe, in which Miss H resided, and a porta cabin style building. AXA said these buildings would be considered outbuildings, which meant there was a limit of cover of £7,500.

Miss H disagreed that the policy limit should apply. She also wanted AXA to provide alternative accommodation cover because she was unable to stay in the flood damaged annexe. AXA declined this request on the basis the main home was undamaged. Subsequently, a dispute arose as to whether the main home had suffered from some ingress of flood water, and so was unsafe to be lived in.

AXA ultimately maintained its position that cover was limited to £7,500 for outbuildings, and that there was no basis for providing Miss H with alternative accommodation. AXA did however accept responsibility for some avoidable delays. It offered Miss H £100 compensation to resolve her complaint. Unhappy with this, Miss H referred her complaint to the Financial Ombudsman Service.

An investigator considered Miss H's complaint and didn't think it should be upheld. She agreed that it was reasonable for AXA to consider the damaged structures as outbuildings and so to apply the policy limit. She acknowledged there was conflicting expert opinion about whether the flood water had affected the main home, but said she was most persuaded by the evidence AXA provided. She agreed there had been service failings but felt AXA's compensation offer was sufficient to put things right.

Miss H didn't accept the investigator's findings. So, as no agreement has been reached, 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.

Having done so, while I understand this will be disappointing for Miss H, I agree with the findings of the investigator. I'll explain why.

But first, I should explain that I'll not be specifically commenting on every individual point or argument which has been raised during this claim or complaint. Instead, I'll focus my decision on the issues I consider are key to delivering a fair and reasonable outcome. This isn't meant as a discourtesy. Rather it reflects the informal nature of the Financial Ombudsman Service, and my role within it.

Outbuildings

This complaint point is about AXA's application of the outbuildings policy limit to Miss H's claim. This means I'm considering AXA's role as Miss H's insurer, and whether it has treated her unfairly or unreasonably. I can see that Miss H's policy was sold to her by an independent intermediary. This means the intermediary, not AXA, was responsible for the questions she was asked when setting up the policy, including around the outbuildings cover she selected. I'll not be making any findings on anything the intermediary was responsible for as part of my decision on this complaint.

Despite not being responsible for the questions asked, or the information provided by the intermediary during the sale, AXA is responsible for the clarity of the information within the policy documentation – some of which does form part of the sale. So, I've considered whether, in my view, this information was sufficiently clear.

Miss H's policy document contains specific definitions for "Home" and "Outbuilding(s)". It also contains an example diagram to illustrate the difference between them.

The policy definitions are as follows:

> *"Home*
>
> *The main building within the Boundary of the Insured Address. Home does not include Outbuildings, items kept in an Outbuilding or items left in the open.*
>
> *Outbuilding(s)*
>
> *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."*

Miss H has argued that all the examples of outbuildings relate to non-residential structures, which aren't comparable to her annexe, which was a residential building she considered part of the main home. Miss H says this means the policy documents are ambiguous and as such should be interpreted in her favour under the principle of contra proferentem.

Miss H has also argued that the buildings sum insured she selected was sufficient to cover the cost of rebuilding the main home and the annexe, and at no point did AXA question the fact she selected a sum insured of £1m despite the rebuild cost of the bungalow (main building) only being in the region of £650k. Miss H says it's clear from this that she understood part of the sum insured selected was to cover the cost of rebuilding the residential annexe. Miss H says the valuation discrepancy further supports the application of the contra proferentem rule because she had a reasonable expectation of full cover for her annexe.

I've thought carefully about Miss H's points. But having done so, I'm afraid I don't agree with her that the policy terms are not sufficiently clear, or that they are ambiguous. I'll explain why.

Firstly, I do accept that the examples of outbuildings provided in the policy document are for non-residential structures. But I don't think this is the key part of the definition which can, or should, be reasonably relied upon. Instead, there are two separate parts of the definition I think are more important. I've underlined these parts of the definition below:

> *"Outbuilding(s)*
>
> *Fixed structures or buildings <u>detached from the Home</u> located within the Boundary that You are legally responsible for.*
>
> *Outbuildings include <u>but are not limited to</u>…."*

In my view, these parts of the definition make it sufficiently clear that any building detached from the main home would be considered an outbuilding, regardless of its function, and that the examples listed should not be relied on as a definitive list of what an outbuilding might be. Particularly when combined with the definition of "Home", which I think makes it sufficiently clear that only the main, singular, building on the site can be considered the home:

> *"Home*
>
> *<u>The main building</u> within the Boundary of the Insured Address. Home <u>does not include Outbuildings</u>…."*

To be clear, I am not suggesting that the policy documents couldn't be clearer, such as by including an example of an outbuilding used for residential purposes within the definition. But I don't agree that the absence of this renders the policy unclear, or ambiguous. So, as I don't consider the terms are either, I'll not be interpreting Miss H's perceived ambiguity in her favour. Rather, I'm, satisfied that AXA can fairly apply the policy limits for outbuildings and possessions stored in outbuildings, when settling Miss H's claim.

In terms of Miss H's concerns with the discrepancy between her overall sum insured and the cost to rebuild the various buildings on her property, as explained, AXA was not responsible for the sale of the policy. And from the documents I've seen, it seems that responsibility for selecting the overall sum insured for buildings rests with Miss H. So, I wouldn't expect AXA to challenge Miss H for selecting an amount of cover she deemed adequate, based purely on its knowledge about the outbuildings limit.

Damage to the main building and alternative accommodation

Miss H initially sought cover for alternative accommodation on the basis she was unable to live in her residential annexe due to the flood.

The policy booklet explains what the alternative accommodation cover is for:

> *"If You can't live in the Home due to an Insured Loss (or because you have been formally advised by central or local authority to evacuate Your Home due to the risk of an Insured Loss, such as Storm, occurring), We will pay alternative accommodation costs for You and Your Pets up to a maximum of £75,000 per claim"*

Based on the above, I think it's clear that Miss H would only be covered for alternative accommodation if her "Home" (as defined), was rendered uninhabitable by an insured event. And having decided above that I think it was reasonable for AXA to consider Miss H's annexe as an outbuilding, rather than the "Home", I agree that Miss H was not entitled to alternative accommodation on this basis.

However, in addition to the above complaint issue, there is also a dispute as to whether the main building has been rendered uninhabitable by the flood.

Miss H has highlighted areas of damp and mould within the main building, and has provided expert evidence which suggests that the flood water has been able to enter the property through the floor slab by capillary action. Her evidence suggests that areas of the floor and walls are wet, and that the property would require stripping, sanitising and drying to ensure it is safe to live in.

AXA disputes these findings and has provided its own expert evidence in support of its position. AXA's evidence suggests that the property is effectively dry, based on accepted tolerance levels within established tests it carried out. AXA argues the alleged mould growth doesn't relate to the flood event. Instead, it says this is likely condensation which has dried, leaving a stain. AXA says this type of colouration is common on many homes, and dealing with it should be considered routine maintenance.

In situations like this, where the expert evidence is incomplete or contradictory, I'll reach my decision on the balance of probabilities. That is, what do I consider to be more likely than not, based on the evidence which is available. To be clear, this doesn't mean I'll be discounting or ignoring the evidence or arguments from one side. Rather, I'll be deciding which evidence I find to be most persuasive.

Based on everything I've seen, I'm not persuaded that Miss H's main building has most likely been rendered uninhabitable by the flood. I'll explain why.

Firstly, while I appreciate Miss H has concerns about the qualifications and expertise of AXA's experts in comparison to her own, I'm satisfied that both are suitably qualified to be considered as experts. And so, I've placed significant weight on all their findings. In deciding which I'm most persuaded by, I've focused on more than just their qualifications, for example the methods of testing employed and how logical and persuasive their conclusions are.

Secondly, I think it's worth highlighting that all the experts have reached a consensus that the flood water did not rise above the level of the damp proof course for the main building.

That said, Miss H's experts have suggested that it's unlikely the floor slab would include a physical damp proof membrane joined up to the damp proof course, given the property's age. Without this, they say water is able to rise from the subfloor base into the floor and walls by capillary action. They've also highlighted the likelihood of construction joints where extensions have been added at various points, which is where damp proof courses can fail to connect, and that the external steps would have no form of damp proof membrane, which could allow water to soak up into the property. Miss H's experts have also provided various images of moisture meter testing carried out, to support their view that areas of the floors and walls are higher than acceptable.

As explained, I accept that Miss H's expert is suitably qualified and that he has provided technical reasoning to support his conclusions. But I'm mindful that the majority of his conclusions are that water "can" enter by this method, that damp proof courses "can" fail to connect in various places or that it's "unlikely" the floor slab has a damp proof membrane. While these findings suggest what could have happened, or what might be typical to expect, I'm not persuaded they sufficiently demonstrate what has actually happened at Miss H's property.

In terms of the moisture readings, I acknowledge that these suggest elevated moisture levels in various places. But I note that AXA's expert report explains that elevated readings detected by moisture meters cannot be relied upon alone, as they can be influenced by conductive materials within the substrate being measured, such as hygroscopic salts. The report suggests these can give artificially high results. I've also considered that AXA's report included similar moisture testing in 98 locations throughout the property, 92 of which were within acceptable tolerances. The remaining six went through more detailed, gravimetric, testing and were also later confirmed to be within acceptable tolerances.

I note Miss H has raised concerns that the gravimetric testing wasn't conducted in a laboratory, and with the general methods of AXA's expert. But I can see each of the concerns have been specifically responded to by AXA's expert. Based on these responses, I'm satisfied that the results of the gravimetric analysis can be reasonably relied upon. Particularly when balanced against everything I've said above, about the persuasiveness of Miss H's expert's conclusions.

Taking everything into account, I'm ultimately not persuaded that it has been sufficiently evidenced that Miss H's "Home" (as defined) was damaged by, or rendered uninhabitable by, the flood event.

I understand that Miss H would like AXA to pay for more extensive technical investigations, to establish definitively whether the flood has affected the main building or not. While I can understand her desire for this to happen, I don't think it would be fair to expect AXA to do this, based on the evidence which is currently available. This is because, on balance, I think AXA has currently done enough to show that the main building has most likely not been damaged, or rendered uninhabitable, by the flood.

That said, should Miss H decide to instruct more detailed investigations, at her own cost, I'd expect AXA to consider any resulting evidence or report(s). And should this hypothetical evidence lead to AXA accepting the main building was damaged, and/or rendered uninhabitable, by the flood I'd expect AXA to cover the reasonable costs Miss H incurred in obtaining the evidence, in addition to any claim settlement it might offer in response. Should any of this happen, and end up resulting in a further dispute, Miss H will be free to raise a new complaint with AXA. And should this not be resolved to her satisfaction, she'll be able to refer that hypothetical new complaint to the Financial Ombudsman Service, subject to our normal rules and timescales.

Customer service

It isn't in dispute that the level of service Miss H received from AXA during her claim and complaint has fallen short. Although most of the time taken has been unavoidable due to the technicalities of the dispute and the need for expert investigation and analysis, AXA accepts there were occasions where it took too long to obtain, review or share reports. AXA has apologised for the frustration and distress this caused Miss H and has paid her £100 compensation to reflect the accepted service issues.

Miss H has also suggested there has been a lack of empathy and professionalism from AXA's agents when dealing with the claim. AXA acknowledged Miss H's feeling here and committed to feeding back to its supplier. But it didn't directly accept that its agent had been unprofessional. And from the records of communications on file, I haven't seen anything which would lead me to conclude AXA (or its agents) have been unprofessional. I fully appreciate the circumstances of the claim have been incredibly stressful and challenging for Miss H, and that it would have been very disappointing and upsetting not to receive the cover Miss H expected to when she needed it. But as explained above, I think AXA's position on the claim to date is fair, and so I don't think the majority of the distress and inconvenience Miss H has suffered has resulted from something AXA did wrong.

Considering the accepted failings and the impact those delays, in isolation, had on Miss H, I think the £100 paid is sufficient to fairly put things right. This amount is in line with what I would have awarded had AXA not already made an offer.

My final decision

For the reasons I've explained above, I don't uphold Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 24 September 2025.

Adam Golding
Ombudsman