

The complaint

Mrs B and Mr B complain about AXA Insurance UK Plc's handling of a claim made under their buildings insurance policy after their home was flooded.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here. I'll concentrate on the key issues that are still in dispute between Mrs B and Mr B and AXA.

Mrs B and Mr B have been represented by solicitors in making this complaint. For ease of reference, throughout this decision, I'll refer to the information and opinions provided as being from Mrs B and Mr B.

At the relevant times, Mrs B and Mr B had an insurance policy underwritten by AXA to cover their home. They made a claim in August 2022 after the property was flooded.

Mrs B and Mr B later identified cracking in the gable wall of the property and reported that to AXA in November 2022. AXA treated that as a separate (subsidence) claim, although Mrs B and Mr B believe the flood may have caused the subsidence.

The property suffered a further flood in May 2023. A garden wall was repaired under a separate claim. The second flood appeared not to have caused damage to any further parts of the house beyond those damaged by the first flood, although Mrs B and Mr B tell us that it did exacerbate the damage in those areas, particularly to the kitchen floors.

In short, Mrs B and Mr B appointed a surveyor to scope out and cost the repairs required as a result of the flooding. They then tendered for the repair work - and for some other non-claim-related work to improve their property. The total costs amounted to more than £250,000, of which over around 50% was for the claim-related repairs.

AXA said that some of the works included in the repair schedule weren't required and/or covered. They offered to settle the claim at just under £46,000 (with VAT to be added once Mrs B and Mr B produced an invoice to show that they'd paid VAT on the repair works).

Mrs B and Mr B say that AXA didn't specify which elements of the repair schedule they weren't intending to cover (and haven't yet done so to this day).

Mrs B and Mr B made a complaint to AXA in May 2023 (before the tenders were completed and the cash offer made by AXA). This related to delays, poor communication, lack of professionalism on the part of the loss adjuster and AXA's failure to reimburse Mrs B and Mr B the costs incurred for their surveyors up to that point. Mrs B and Mr B didn't bring that complaint to our service within the statutory time limits.

They made a further complaint after AXA's cash settlement offer had been made. AXA responded in January 2024. That response addressed a number of issues.

AXA said they weren't intending to replace the kitchen floor at the property – which they felt

could be cleaned / restored.

They said they weren't intending to cover repairs to the living room floor because the damage hadn't been caused by the flooding. There appeared to be long-standing issues with damp and the lack of a damp proof membrane, alongside evidence of historic patchwork repairs.

AXA said they would pay for the costs for the surveyor where these related to work carried out as a surveyor. But not where the surveyor had acted as, in effect, a loss assessor for Mrs B and Mr B.

They said alternative accommodation costs had been met until March 2024, but they'd make a further payment if the schedule of works hadn't been agreed by then.

And they admitted some delays in the claim – particularly when they'd been considering whether Mrs B and Mr B were underinsured (which, as it turned out, they were not) – and paid £150 in compensation for Mrs B and Mr B's trouble and upset.

Still unhappy with AXA's handling of their claim, Mrs B and Mr B brought their complaint to us, in July 2024.

Our investigator looked into it and thought it should be upheld in part.

He said AXA were entitled to refuse to pay the fees for the surveyor when they were acting as an advisor / loss assessor to Mrs B and Mr B.

He thought Mrs B and Mr B should now instruct an independent surveyor to assess the flooring at the property. And AXA should pay the costs for that if the surveyor's report changed their stance on the claim.

But he thought the £150 compensation AXA had awarded was insufficient and should be increased to £300.

Mrs B and Mr B disagreed and asked for a final decision from an ombudsman.

They said the view hadn't addressed the losses they'd incurred in respect of alternative accommodation costs – or the fact the alternative accommodation was unsuitable for their needs.

Their view was that AXA had more than two years to instruct their own expert to assess the flooring and hadn't done so. And that the surveyor Mrs B and Mr B had appointed was an expert, was independent, and had provided a detailed report on the damage at the property. So, appointing another expert now was unfair - and an unnecessary further delay.

They thought the compensation suggested by our investigator was too low to reflect their trouble and upset through an unnecessarily protracted claim.

And they pointed out that any further delay would likely lead to repair costs going up – and to further legal costs (which they felt AXA should cover).

I agreed with our investigator that the complaint should be upheld. But I came to that conclusion for different reasons. And I took a different view about what AXA needed to do now to put things right for Mrs B and Mr B.

So, I issued a provisional decision. This allowed both AXA and Mrs B and Mr B a chance to

provide further information or evidence and/or to comment on my thinking before I made my final decision in this case.

My provisional decision

In my provisional decision, I said:

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

It’s important first of all to set out what I can and can’t deal with in making this decision.

What we do is governed by the Financial Conduct Authority’s dispute resolution (or DISP) rules. These are statutory rules – we have no discretion to operate outside of them or ignore them.

Those rules say that we can’t look into complaints which have received a final response from a financial business (saying the complainant has a right to refer the matter to us, if they aren’t happy with the business’s proposed outcome) unless that complaint is referred to us within six months (unless there are exceptional circumstances to explain why it could not have been referred to us in that time).

Mrs B and Mr B didn’t refer their first complaint to us within six months of receiving AXA’s final response (and there’s no exceptional reason why they couldn’t have done so). So, we can’t look into the matters raised in that complaint – including any delays, poor communication or poor service up to the point that AXA issued their final response.

The rules also say we can’t look into any matters that haven’t already been raised as a complaint with the business concerned – matters that, in other words, the business haven’t had a chance to consider and attempt to resolve with the customer themselves.

So, in this decision, I can only look at the time period between the date of the AXA final response which wasn’t referred to us (in May 2023) and the later second final response which was referred to us (that final response was dated 30 January 2024).

Anything before those dates wasn’t referred to us in time. Anything after, AXA haven’t yet had the chance to consider and try to resolve themselves.

This is particularly important when I come (later in this decision) to consider compensation for Mrs B and Mr B’s trouble and upset. I can only consider here the trouble and upset they suffered between May 2023 and January 2024.

Moving on to the substantive matters in this case, I understand that the remaining issues in dispute between the parties are:

- whether the floors in the kitchen (on two levels) are able to be cleaned / repaired or should be replaced;
- whether AXA should pay for the replacement of the living room floor;
- whether AXA should pay costs incurred by Mrs B and Mr B to hire experts and/or solicitors to assist them in their claim;

- for how long AXA should pay alternative accommodation costs for Mrs B and Mr B; and
- how much compensation should be paid for Mrs B and Mr B's trouble and upset (and whether this should include compensation for their living in unsuitable alternative accommodation).

I'll deal with these issues below – in the order I've set them out above. If either party thinks that there are other issues which I should consider in my final decision, they have the opportunity now to make their case in response to this provisional decision.

I'd ask both parties to bear in mind that I can only consider issues arising with the date range set out above – and which have already been raised in Mrs B and Mr B's most recent complaint to AXA.

The kitchen floors

There's an issue here around whether, as AXA have suggested, a further independent expert should be appointed to determine what has happened to the floors in the kitchen and the living room – and what repairs / replacements are necessary. I'll go into that in more detail in the section below.

As for the kitchen floors specifically, these are on two levels. The lower level appears to have been repaired at some point in the relatively recent past, with a damp proof membrane installed under tiles. The upper level appears to be made up of relatively old tiles with no damp proof protection beneath.

Both levels were affected by the flooding. Mrs B and Mr B think the kitchen flooring on both levels needs to be completely replaced. AXA think the tiles can be cleaned.

Having looked at the relevant photographic evidence, it appears to me that the tiles in the kitchen were of a certain age – either well worn, or if you want to put a positive spin on it, fashionably “distressed”. It's reasonably clear the tiles were in that state before the flooding.

Mrs B and Mr B want a new floor in their kitchen. But the evidence I've seen – including the results of a test clean - suggest that cleaning is possible and would restore the tiles to the state they were in before the flooding.

At present, I have no real evidence to contradict that view – although Mrs B and Mr B may wish to address this point specifically when they respond to this provisional decision and I will, of course, consider any representations they make.

I should stress that my view is based on the following assumptions. One – that, as Mrs B and Mr B attest, their kitchen floors were functional – and free from excessive damp – before the flooding.

And two – that, as might reasonably follow on from the first assumption above, those floors were and are capable of functioning in the same way again, despite their rather archaic construction, once the moisture from the flooding was / is dried out.

There is no expert opinion I can see at present which suggests that the flooding has affected the kitchen floors in any way that makes them incapable of functioning again now (in the way they did before the flooding).

It's my provisional view then that it's reasonable as things stand for AXA to progress the claim on the basis that the kitchen flooring (on both levels) can be cleaned / restored and need not be replaced.

The living room floor

The situation in the living room is rather more complex. I'll try to summarise – if I'm over- simplifying either party's view, they will no doubt let me know in response to this provisional decision.

The living room floor has been inspected by AXA's own surveyor and by the surveyor appointed by Mrs B and Mr B. They agree that the floor is made up of a relatively thin layer of concrete (somewhere around half an inch to an inch thick), laid direct onto earth / made ground and without any damp proofing.

It's not news to anyone that the floor would not comply with current building standards. However, according to Mrs B and Mr B, it had been entirely functional before the flooding and there was no noticeable damp in the property.

I have no reason to doubt their word on that. AXA however take the view that the property would (inevitably) have been suffering from damp, but the effects may have been at least in part mitigated by heating and the large stove in the fireplace in the living room.

AXA's surveyor felt that the solution might be to replace the floor and install a latex levelling compound beneath to act as a damp proof barrier. However, he thought this might not be covered under the policy terms and/or would constitute betterment.

AXA's surveyor also suggested the appointment of a flooring specialist to assess the floors (in the living room and kitchen). AXA say this was refused by Mrs B and Mr B's representatives.

It appears to me that it wasn't refused as such. Rather, the representatives insisted that the specialist produce (in effect) a sworn court report to reflect their assessment.

Unsurprisingly, AXA didn't think this was necessary in all the circumstances – and the two parties reached an impasse.

I'll come back to this issue when I consider compensation for any delays in the handling of the claim but in brief, I think both sides have some responsibility for the failure to progress the claim speedily from this point onwards.

However, contrary to our investigator's view, I don't think it's necessary to have another expert assessment of the living room (or kitchen – see above) flooring now. I bear in mind the time elapsed since the claim was made and the need for Mrs B and Mr B (and AXA) to have these matters resolved as soon as practically possible.

I also believe that the report provided by Mrs B and Mr B's surveyor is thorough, logical and persuasive (and provided by a qualified and suitable surveyor).

Their report, in essence, makes the following argument.

The floor is laid in sections of concrete (so, it isn't in one continuous piece across the whole floor). Where the sections meet, there are joints (obviously) and these show signs of previous repairs (presumably from before Mrs B and Mr B owned the

property).

That form of construction was likely a “contributing factor” to the damage which occurred after the flooding – because the joints allowed moisture to penetrate beneath the floor.

However, there were no problems before the flooding – the floor was fundamentally sound and didn’t allow significant damp to penetrate into the property. And so, it is the flooding – and the moisture brought into the property by the flooding – that has now caused the damage.

They note that the joints are reported to be widening and sections of the floor now becoming unstable. And they say this is down to the flood waters going into – and underneath – the floor, with the cycles of drying and flooding resulting in the now evident damage. They also say that the property was left with mud covering the floors for a considerable time after the second flood – which will have exacerbated the damage to the floors.

As I say, I think that’s a convincing account of what probably happened at the property. It’s also balanced and clearly not skewed entirely in favour of the surveyor’s clients (Mrs B and Mr B), in that it makes the point that the way the floor is constructed has contributed to the damage.

The fact that the surveyor’s account of events suggests that the issues at the property have at the very least been exacerbated because of the way the floor was constructed also might lead us then to consider the policy terms.

I note that where the flood peril (insured event) is set out in the policy, there is no specific exclusion for damage caused by poor design or workmanship in the construction of the property.

However, I can see that AXA might make an argument that the damage to the concrete floor in the living room wasn’t primarily caused by the flood, but by the defects in the construction of the floor.

For the sake of clarity, I think this would be a spurious argument. I’ll explain why I take that view.

For one thing, the heavy moisture in and under the floor is there because of the flood(s). Without the flood(s) the floor would have continued to function - as an even floor. It is now, according to Mrs B and Mr B, uneven and breaking up in places.

For another, it would be unfair on Mrs B and Mr B to decline a claim on the basis of poor construction - by current standards – when the house is old and has been standing and functioning for a very long time.

I’m aware that AXA have made the argument that the property was damp prior to the flood – and so, the floor needed replacing flood or not. I’m not convinced by that. I know that the drying contractor was unable to issue a drying certificate, and that other inspections have shown persisting damp in the walls of the property. But that’s possibly unsurprising given the fact the property was heavily flooded – twice.

In summary, I don’t think we need another expert to inspect the flooring. We already have a convincing and persuasive assessment of what has happened to the floors in the property.

That assessment suggests the flooding has been the main and proximate cause of the damage in the living room which means the floor needs to be replaced. And that being the case, on the balance of probability, I'm minded to say that AXA should now proceed to settle the claim including replacement of the living room floor.

I very much understand AXA's surveyor's point that to repair the floor effectively will necessarily mean that Mrs B and Mr B will have a better floor than they had before the flooding occurred - a floor with a damp proof membrane or layer.

I can see how that might be considered betterment. But in cases like this, we take the view that normally, the insurer should carry out any replacement according to current building standards.

The logic essentially is this – Mrs B and Mr B had a floor that was built according to the standards of the time (and which appeared to function sufficiently well). And so, to indemnify them, the insurer needs to replace that floor with a functioning floor built to the standards of the time (which are now, of course, current building standards).

Expert fees

It goes without saying that there's no obligation, in any normal insurance contract, for the insurer to pay for the customer to be represented in making a claim by a third party (loss assessor, solicitor, or any other expert – or indeed non-expert).

In certain circumstances, insurers may agree to pay certain fees on the basis that, essentially, their work is being done for them (usually by prior agreement). It would also be expected, in terms of fairness and reasonableness, that an insurer should pay for expert fees if the expert's assessment or opinion contributes to the progression of the claim or, in fact, changes the insurer's mind about a claim.

In this case, I understand that the costs in question at the time of the complaint Mrs B and Mr B made to AXA (and that I'm considering now) were the fees paid to Mrs B and Mr B's surveyor. I also understand AXA agreed to pay for some elements of the work undertaken by the surveyor – but not for any fees incurred for work done by the surveyor to advise or represent Mrs B and Mr B in making their claim.

As our investigator concluded, I think that's a fair and reasonable approach. The survey itself certainly added to the useful evidence and information AXA had when considering the claim.

But I don't think AXA were under any contractual or moral obligation to pay for the advice and guidance - or representation in making the claim - the surveyor provided for Mrs B and Mr B.

So, I'm minded to agree with our investigator that AXA's contribution to those fees was fair and reasonable in all the circumstances, unless I'm given persuasive reasons to change my mind by the responses to this provisional decision.

Mrs B and Mr B have, more recently, suggested that they want AXA to pay other expert fees, including those incurred to engage legal advice and representation. I'm not going to comment on those matters because they're outside of the scope of the complaint I'm considering here.

So that all are clear though, I would expect AXA to consider any claim Mrs B and Mr B for those fees in future, in light of the principles set out above.

Alternative accommodation

The issue about the adequacy of the alternative accommodation for Mrs B and Mr B's needs hasn't, as far as I can see, been raised as a complaint point with AXA. That means I can't look into it here. It would have to be the subject of a new complaint to AXA.

AXA tell me, however, that Mrs B and Mr B chose the accommodation themselves. If that is the case, it might be difficult for Mrs B and Mr B to justify a complaint to AXA about this particular point. I've seen no clear evidence to date to suggest that the alternative accommodation was or is deficient in any significant way.

I am in a difficult position when it comes to the issue of payment for the alternative accommodation. In response to our investigator's view, Mrs B and Mr B's representative has insisted – with some force of feeling – that Mrs B and Mr B have had to fund the alternative accommodation themselves, out of their own pocket.

AXA, by contrast, tell us that they've paid for the alternative accommodation. And they've at the very least implied that they're continuing to do so – at least up to the upper limit set out in the policy.

Both parties might want to clarify their position in response to this provisional decision – and provide concrete evidence to substantiate their version of events.

However, given that the facts are proving elusive, I'm in any case minded to set out – in my final decision – the principles which ought to be applied here, rather than try to determine who owes what exact amount to whom.

So, the policy allows for up to £50,000 of alternative accommodation costs when the policyholder's home can't be lived in (which is clearly the case here). Assuming Mrs B and Mr B moved into the accommodation after the first flood, and are paying £1,700 per month, that limit would have been reached around January or February of this year. If either party disagrees with those assumptions, they should tell me why in response to this provisional decision.

It's our view that, where such a limit is reached, the insurer may still be obliged to pay further alternative accommodation costs if their actions or omissions have led to a delay in the home being repaired so that it's habitable again.

AXA have certainly contributed to delays in this claim being resolved. They spent much time and energy at first investigating the possibility that Mrs B and Mr B were underinsured (which they were not, as it turned out).

And, given my comments above about the living room floor in particular, I think on balance it's reasonable to say they have been less than fully proactive when it came to progressing the claim.

They might, for example, have accepted the assessment of the living room floor carried out by Mrs B and Mr B's surveyor (some considerable time ago now). But even failing that, they ought to have sought a means to progress the claim immediately after receiving that assessment. They might have, for example, appointed a further expert themselves, whether or not that expert was to the liking of Mrs B and Mr B's representatives.

I am aware, in all of this, that both sides have contributed to the claim not

progressing. In my view, there has been some intransigence on the part of Mrs B and Mr B's representatives.

In particular, the insistence that any further expert (in effect) provide a sworn court report meant that things were unlikely to proceed, at least not with any speed. In short, they were asking for something way outside the normal process and procedure in such claims – and without, in my view, reasonable justification.

That said, we are now almost three years in from the date of the claim and still no resolution. Whilst AXA are entitled to argue their case – particularly where a cash settlement is at issue – it's difficult to see how that amount of time could be justified.

In summary, I don't think AXA could fairly and reasonably restrict payment of the alternative accommodation costs to the policy limit. They should in principle, pay for an additional period of time equal to the amount of time the claim has been delayed by their errors or omissions.

I'm minded to say that would amount to a further 18 months, as a minimum, on top of the policy limit. And I'd suggest AXA now agree to pay for alternative accommodation up to around the end of June 2026 (18 months after January this year) – and review the position at that point.

If things are still not resolved by then (and the house habitable), the time should likely be extended again unless AXA can demonstrate that any delays from here on in are solely the fault of Mrs B and Mr B.

Compensation

As noted above, the period I can look at in determining this complaint is a relatively short one – May 2023 to January 2024.

And I'm only looking at additional trouble and upset caused for Mrs B and Mr B by AXA's errors or omissions. Having two flood events in such a short space of time – alongside possible subsidence - would have been traumatic for Mrs B and Mr B anyway.

I think both sides contributed to the delays during the period in question. AXA were slow to act at times - and slow to make their position clear. Communication from AXA's side could have been clearer and more effective.

That said, and as I've mentioned above, I don't think Mrs B and Mr B and/or their representatives were as flexible as they might have been either. There appears to have been a degree of mistrust and entrenchment rather than a focus on finding a solution to the impasse that was reached.

I bear in mind that Mrs B and Mr B suffered additional stress and worry during the period I can consider, due to delays and/or errors or omissions on AXA's part. But I also bear in mind that Mrs B and Mr B were living in alternative accommodation (which I am told they chose) – so, their day to day lives weren't impacted by living at the damaged property.

Taking all of that into account, I'm minded to say that the £300 suggested by our investigator is fair and reasonable compensation for Mrs B and Mr B's trouble and upset during the relatively short period that I can consider in this decision. To be clear, that's £300 in total not £300 in addition to the £150 AXA awarded.

Summary

So, as things stand, and unless I'm given further information or evidence in response to this provisional decision to persuade me to change my current view, I'm minded to uphold Mrs B and Mr B's complaint in part. And I'm minded to require AXA to:

- deal with the claim on the assumption that the kitchen floors can be cleaned / restored;
- deal with the claim on the basis that the living room floor must be replaced;
- consider any further request for payment of experts' and/or legal fees, in line with the principles set out above;
- pay Mrs B and Mr B's alternative accommodation costs up to the end of June 2026 (if required for that long) and consider any request for an extension of alternative accommodation payments after that point, in line with the principles set out above; and
- pay Mrs B and Mr B £300 (in total) in compensation for their trouble and upset.

I haven't commented on the subsidence claim Mrs B and Mr B have made which is running parallel to the flood damage claim. There's been no complaint as yet to AXA about that specifically, nor did Mrs B and Mr B raise any complaint points with us about that claim in itself. Suffice to say, it would be in everyone's interests for AXA to ensure that the claims are dealt with in a coherent and joined up way.

Mrs B and Mr B's representatives raised issues about AXA not including VAT in any cash settlement unless and until they received invoices (or other proof) to demonstrate that Mrs B and Mr B had incurred VAT on the repair works.

Just so that everyone is clear on this issue, AXA's actions in this respect are exactly in line with what we'd expect. Insurers are entitled in these circumstances to pay the VAT element of a cash settlement only when it's proven that VAT was incurred.

I should also add that, assuming this claim is cash settled, AXA should of course consider the costs of the various repairs currently, not at the rates which might have applied when they first made a cash settlement offer to Mrs B and Mr B.

Finally, I'd like to add that this case has been difficult to investigate and to decide. That's partly due to the complexity of the matters in hand, but it's also partly due to the way in which the parties have provided (or not provided) information.

As I've mentioned above in connection with the debate about alternative accommodation, it will not be helpful in bringing this case to a timely conclusion if either party is not clear in their response to this provisional decision, does not provide complete information or fails to evidence what they are saying about the facts of the case. I'd ask both parties to bear this in mind when providing any further information, evidence or arguments for my consideration."

The responses to my provisional decision

AXA responded to say they agreed to the outcome suggested in my provisional decision.

Mrs B and Mr B also responded, through their solicitors.

They clarified a number of factual points which had been set out in my summary of the background to my provisional decision. I'm grateful for those clarifications. The background section above has been amended to reflect Mrs B and Mr B's comments.

They also made a number of other points, which I'll summarise out below. I'm sure Mrs B and Mr B will understand that I'm not setting out all of their arguments in full or in the same detail they have.

Costs relating to experts

Mrs B and Mr B say the surveyor they engaged never acted as a "loss assessor" for them. The original dispute was about the surveyor's work to draft schedules of work relating to the claim. And my provisional decision relied on the surveyor's opinion, demonstrating that it was crucial to the progress of the claim.

They say AXA haven't paid for a structural engineer's report provided to them in April 2023.

And AXA's position that they will only pay for fee costs up to a certain percentage of the claim value isn't supported by the policy terms.

In essence, they believe AXA should pay for all the expert costs they've incurred in making the claim.

What I can consider

Mrs B and Mr B say the first complaint they made to AXA was only about the loss adjuster's conduct and the claim delays.

The second complaint (this complaint) "*set out in detail the basis of the claim*" (I assume they meant complaint), including alleged breaches of contract and what they wanted to settle the claim satisfactorily. And therefore, that was the "*substantive complaint*" they wanted me to consider.

They say AXA have had 18 months to answer that complaint and resolve matters but haven't done so.

The amount required to settle the claim

Mrs B and Mr B say my provisional decision fails to address the fundamental issue in the complaint, which is the amount required to settle the claim, including interest and professional fees.

They've provided documents setting out the numbers, as they see them – the total comes to £306,280.94. That appears to include interest on the settlement payment relating to the required repair work, VAT, a contingency, and compensation.

The kitchen floors

Mrs B and Mr B say the only expert opinion on the kitchen floors (from the company that carried out the test clean) suggests that cleaning / restoring the tiles is uneconomical. But they are happy for AXA to include the cost of that cleaning / restoring in the settlement.

The hiatus when the parties couldn't agree an expert to inspect the floors

Mrs B and Mr B say that no-one blocked AXA's proposal to appoint an expert. And they disagree that there was any inflexibility on their side when it came to progressing the claim.

Alternative accommodation

Mrs B and Mr B point out that they didn't move into the accommodation until July 2023. So, the limit will effectively only be reached in November / December 2025. But they say they agree with my provisional decision that AXA should pay for the accommodation until the claim is properly settled.

They say they agreed to move only after AXA had refused a number of other properties. And they thought it would be for no more than six months (not several years). And the accommodation is unsuitable because: it's unfurnished; it's damp and relies on gas (both exacerbating their asthma); and it gives them no space to pursue their hobbies.

As for the payments from AXA, they say these were sporadic and sometimes late.

Compensation

Mrs B and Mr B believe the courts award compensation for breaches of contract at £3,000 per annum per person. They calculate that, on that basis, they should be due £18,000 from AXA in compensation for their trouble and upset.

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'll address the points Mrs B and Mr B have made in the same order they're set out above.

Costs relating to experts

I agree that Mrs B and Mr B's surveyor's opinions have been fundamental to any understanding of what happened to the property after the flooding - and why.

That's why I said in my provisional decision it was appropriate for AXA to cover those costs (and I certainly didn't suggest that AXA could limit the payments because they exceeded a certain percentage of the claim value).

I don't agree though with Mrs B and Mr B's view that their surveyor was only paid for activities directly related to the understanding of the causes of the claim and the damage caused by the flooding (and what should be done to put it right).

They certainly appear to have acted at times as advocates for Mrs B and Mr B. They didn't simply carry out an inspection, write a report and a schedule of works, and then provide clarification on their findings if required.

So, whilst the policy does allow for AXA to cover certain fees, that ought not to be taken by a policyholder as carte blanche to engage whatever expert and legal support they wish – at whatever cost.

I remain of the view then that AXA's approach to these costs is fair and reasonable. I would expect that if Mrs B and Mr B forward on to AXA further costs which fall for AXA to cover, according to the principle I've set out – and which have not yet been covered – then AXA will consider that additional claim. But I'm not going to ask AXA to cover all expert costs incurred

by Mrs B and Mr B in pursuit of the claim.

I'm sure Mrs B and Mr B will understand what the unfortunate consequences might be if our service did take that approach. We might in that case be accused of handing a blank cheque (from the insurer) to the policyholder.

What I can consider

Mrs B and Mr B received the first final response from AXA in May 2023. That was not brought to our service within six months. That complaint did cover delays in the claim up to that point, and the actions or omissions of AXA and/or their agents up to that point.

As I said in my provisional decision - and I won't repeat the reasons (which are set out above) - I cannot consider the issues raised in that first complaint. And, as I said in my provisional decision, I cannot consider any new issues which arose after the date of the second final response to Mrs B and Mr B, in January 2024.

I understand why Mrs B and Mr B might regard their second complaint as their (only) "*substantive complaint*", but that doesn't alter the position at all, much less override the DISP rules.

The amount required to settle the claim

I have to ask Mrs B and Mr B to understand that it isn't for me to make any assessment about the final settlement figure in relation to their claim. It's not our role to stand in as surrogate claims handlers or loss adjusters for AXA.

The position as I see it now is that I've set out the principles which ought to apply in the settlement of the claim – and I've said whether, and if so how, certain items might be covered.

And I would expect AXA – as soon as practically possible – to make their position on the settlement clear to Mrs B and Mr B (including a full and clear indication of which elements of the claim are being settled and which are not covered, as they see it).

Mrs B and Mr B should provide their claim breakdown (as sent to us) to AXA, if they haven't done so already. AXA are then entitled to assess the various costs included and decide whether they will be covered (in line, of course, with my findings here).

Just for the sake of clarity though, I should say that the list provided by Mrs B and Mr B includes some items that we may not normally expect an insurer to cover.

For example, I can see that Mrs B and Mr B have added interest to the repair costs – seemingly calculated from the date the claim was made.

It's our approach to say that interest is payable where agreed payments are made to a customer later than they ought to have been, meaning that the customer has been out of pocket for a period of time, having incurred the relevant costs.

On the face of it, given that Mrs B and Mr B haven't yet paid for the required repairs at the property, I wouldn't usually expect interest to be paid on those payments. Rather, the payment would cover the *current* cost of the repairs at the time the payment was made – inflation being the key driver here, rather than interest.

The list also includes costs that I've commented on above (expert costs, for example) - or

will comment on below (compensation, for instance).

I'd also ask Mrs B and Mr B to note my comments above about VAT payments. And I'd add that AXA may be justified in paying any contingency fees only as and when the contingency has actually occurred and caused additional cost.

In short, AXA should consider the claim for settlement as presented by Mrs B and Mr B. And they should provide their response – and their settlement offer – as soon as practically possible. But I'm not going to approve Mrs B and Mr B's stated - and detailed - claim costs as part of this decision.

The kitchen floors

I'm glad that we are all now agreed on the kitchen floors. AXA should include in any claim settlement the cost of satisfactorily cleaning and restoring the two levels of the kitchen floor.

The hiatus when the parties couldn't agree an expert to inspect the floors

I understand Mrs B and Mr B's point about this issue. And, as I said in my provisional decision, AXA might well have instructed an expert with or without Mrs B and Mr B's agreement. However, I remain of the view that both parties contributed to the delays in the progress of the claim, for the reasons I've already set out above.

Alternative accommodation

I can understand (now) why Mrs B and Mr B aren't happy with the accommodation they're currently in.

The fact remains that they did agree to the alternative accommodation at the outset. I'm not aware of any evidence to suggest that they've asked AXA to move them to other accommodation.

And, as I said in my provisional decision, this issue appears not to have been raised (at least directly) in any of the complaints to AXA. Which means I can't consider it here.

I hope it goes without saying that if Mrs B and Mr B do now ask AXA to allow them to move to other accommodation, then AXA should of course properly consider that request.

I'm grateful for Mrs B and Mr B's clarification on the payments - and when they began. Assuming the limit will be reached in November or December this year, that won't impact on my view that AXA will need to cover it beyond that point, if the claim isn't resolved by then.

I would point out that I didn't say in my provisional decision that AXA should meet alternative accommodation costs until the claim is settled to everyone's satisfaction (as Mrs B and Mr B imply in their response to my provisional decision).

I said they should cover those costs for around 18 months (equal to the avoidable delays in the progress of the claim so far, which are attributable to AXA or their agents) after the limit is reached – and then consider things again if and when that 18 months passes without final resolution of the claim.

I see no reason to change my view on that. Mrs B and Mr B will understand that I can't legitimately ask AXA to cover alternative accommodation indefinitely, particularly given that any future delays *might* conceivably be down to them rather than AXA.

As regards the late accommodation payments, again I can't see that this was raised as a specific complaint point with AXA. So, I can't consider it formally as part of this decision.

However, I would expect that if Mrs B and Mr B can evidence accommodation payments made by them which were only *later* covered by AXA, then AXA should pay interest on those late payments at 8% simple per annum, calculated from the date Mrs B and Mr B paid out to the date they received the reimbursement from AXA.

Compensation

Mrs B and Mr B have asked for £18,000 in compensation for their trouble and upset. That appears to equate to the above-mentioned £3,000 per annum per person for three years.

As I've said above, I can consider here the period between May 2023 and January 2024. That's eight months, not three years.

We are not a court. We are an alternative to the courts which is free to the user – and hopefully less formal and speedier than the courts. Our approach on compensation for distress and inconvenience is set out on our website.

The period I can consider is not wholly made up of avoidable delays. And not all of the delays are wholly the responsibility of AXA and/or their agents.

Given the relative brevity of that period – and the degree of trouble and upset experienced by Mrs B and Mr B - I remain of the view that £300 is appropriate and fair compensation, for the reasons set out above.

Summary

For the reasons I've set out immediately above, I've been given no persuasive reason to change my opinion about the right outcome of this complaint.

Mrs B and Mr B have my sympathy. They've had an awful experience, through no fault of their own, as a consequence of the flooding to their home.

AXA and/or their agents' errors or omissions haven't helped at times. That's why I'm upholding this complaint. But I remain satisfied that the outcome suggested in my provisional decision is fair and reasonable.

Putting things right

I set out in my provisional decision what I thought AXA ought to do to put things right for Mrs B and Mr B. And I'll repeat that in the section below.

I've changed the dates regarding the alternative accommodation payments, in line with the information I've now received from Mrs B and Mr B. The principles I set out in my provisional decision about this issue remain the same.

My final decision

For the reasons set out above, I uphold Mrs B and Mr B's complaint.

AXA Insurance UK Plc must now:

- deal with the claim on the assumption that the kitchen floors can be cleaned / restored;

- deal with the claim on the basis that the living room floor must be replaced;
- consider any further request for payment of experts' and/or legal fees, in line with the principles set out above;
- pay Mrs B and Mr B's alternative accommodation costs for up to 18 months after the policy limit is reached (if required for that long) - and consider any request for an extension of alternative accommodation payments after that point, in line with the principles set out above; and
- pay Mrs B and Mr B £300 (in total) in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 1 October 2025.

Neil Marshall
Ombudsman