

## Complaint

Mr and Mrs M are unhappy AXA Insurance UK Plc (AXA) has declined to pay for some work carried out to their property following a flood. They feel this work should be covered under their home insurance policy.

## Background

In December 2013 Mr and Mrs M's property was flooded, following exceptional rainfall. Water entered their home and caused extensive damage. So, they made a claim under their home insurance policy.

AXA appointed a loss adjuster to assist with the validation of the claim. The claim was accepted. When reporting on the damage the loss adjuster noted that water had entered the property from the surrounding fields. And muddy water from a bank of land to the rear and side of the property had also flooded into the house. As a result, the entire ground floor of the property was damaged, and the first floor was affected by damp. This had rendered the property uninhabitable. So, Mr and Mrs M needed to move out of the property, and into alternative accommodation. Which they then did.

Following the stripping out of the property, and the start of drying it out, it was noted there was still water entering the property. And problems were identified with the existing damp proofing to the walls. So, a damp-proof specialist, and a civil and structural engineer were appointed separately to inspect the property, comment on how water entered the property, and in the case of the damp-proof specialist, recommend a suitable replacement system following the flood damage.

The damp proofing specialist noted that there was '*cementitious tanking*' applied to the walls, and a visqueen type membrane at the wall and floor junction. It said this only really amounted to a water vapour barrier – rather than ensuring the property was fully protected from any water trying to enter the property.

So, it recommended a cavity drainage system was installed, and a drain in the floor to at least two sump and pumps. It also noted air vent pipes to the first floor of the property would need to be weathered/blocked up. And works carried out to the rear of the property too. A cost was given for installing the pipework, and cavity drainage, but not the other work suggested. The cost given was £17,980 + VAT.

The civil and structural engineer provided their report too. In terms of how the water entered the building – they noted the water had likely entered in a number of ways. For example, they noted there was land surrounding the property that sloped down towards the property (it was retained by the building), as well as cattle ventilation holes that had been left open during construction. This allowed water to flow freely into the building. In addition to this, the engineer said there were inadequate damp proofing measures at the property, inadequate drainage and water was able to flow under doorways where land sloped toward the property.

AXA and the appointed loss adjuster realised that because of the above problems, Mr and Mrs M's property was never going to be fully dried – unless extensive work was carried out. In its interim report, in June 2014, report, the loss adjuster said that the independent civil and structural engineer had said *“he did not consider that the pumping system suggested by the damp proofing specialist would resolve the water ingress problem. He suggested that the only permanent solution would be to remove the banks to the rear and side of the property and construct retaining walls.”*

But AXA and the loss adjuster considered that this work didn't fall within the scope of the policy. In the same report as above, the loss adjuster said *“the cost of constructing retaining walls does not fall within the scope of the policy and this has been explained to Mr M. The situation remains that reinstatement work cannot be undertaken as the property cannot be dried due to ongoing water ingress.”*

AXA and the loss adjuster said the work to build retaining walls would be classed as betterment. It said this was because it was work needed as a result of poor design and faulty workmanship – to prevent future flooding, as opposed to work needed to reinstate the property to pre-loss condition.

AXA therefore decided to provide Mr and Mrs M with a cash settlement for their loss. The contents insurance element of the claim was settled, and payment for alternative accommodation was provided, up until February 2015. A cash settlement was offered in respect of remedial works to the building. Mr and Mrs M accepted the settlement amounts provided – but they did raise concerns about the amount given for the building's reinstatement. This was because they didn't feel it would be enough to remedy the problems at their home.

Mr and Mrs M's contractor then carried out work to the property, without the involvement of AXA as the matter had been cash settled. But, in September 2016 Mr and Mrs M contacted AXA and explained they wanted to make a complaint. They said they were unhappy because they felt AXA didn't contribute to remedying all the flood damage at the property. So, AXA asked Mr and Mrs M for some further information about this.

Mr and Mrs M responded in April 2017. They said they had finished the work at the property, and had it valued. And they had found themselves in debt as a result of AXA not covering all the works at the property. Mr and Mrs M said they had to;

- Add new drainage to the property;
- Build some retaining walls;
- Excavate some land surrounding their property to build these walls;
- And purchase land behind the property to allow for the above to go ahead.

Mr and Mrs M also said they thought AXA should be providing payment for the additional months they had stayed in alternative accommodation, whilst they had carried out work at their property. They have explained they were able to return to living at the property in October 2015, when the reinstatement to their home was completed.

AXA didn't agree that it should provide a settlement for the above work. Or to extend the payment made to Mr and Mrs M for alternative accommodation. It said that the work carried out externally at the property wasn't to put the property back to a pre-flood condition. But, was instead extensive work to prevent future flooding occurring.

It also noted this work wasn't needed because of the flood. But because the property had been poorly designed and constructed. It felt it had provided a fair payment towards Mr and Mrs M for alternative accommodation. It had provided costs for alternative accommodation until February 2015, which was after it estimated the insured works should be complete. And it felt the rest of the time Mr and Mrs M remained out of their home, was to do with the uninsured work they needed to carry out.

Because Mr and Mrs M remained unhappy, they referred their complaint to this service, for an independent review.

Our investigator considered this complaint and didn't think it should be upheld. She said Mr and Mrs M's policy didn't provide cover for flood prevention measures, and that the additional works Mr and Mrs M carried out wasn't something the policy would respond to – as those works were instead as a result of faulty design, and poor workmanship – which were excluded under the policy.

Mr and Mrs M remained in disagreement. So, the complaint was referred to me to decide.

Since this complaint has been referred to me, there have been several developments. I don't intend on detailing these all here – only that relevant to the decision below.

But a key development was that AXA sought the opinion of its surveyor as to what would constitute an effective and lasting repair. Its surveyor submitted evidence, to say using a cavity drainage system, alongside blocking up the open cattle ventilation holes would have allowed for drying and reinstatement. Alternatively, the surveyor said Mr and Mrs M could have excavated and built retaining walls on the existing footprint of the property – rather than purchasing more land to do this. It said excavating the land on the existing footprint and building the walls would likely cost in the region of £40,000.

AXA therefore said it would now be willing to offer Mr and Mrs M £40,000, plus 8% interest, should they be provided with evidence of the work being completed. It said Mr and Mrs M's own contractor had a one point quoted £10,519 for excavating footings, building a retaining wall, digging and concreting for rain drainage in front of the wall, and supplying gravel for behind the wall. As well as creating a sloped pathway. And it provided the document from Mr and Mrs M's builder to show this. So, AXA considered it's offer now made, to be more than fair.

### ***My provisional decision***

Given the above further information provided I issued a provisional decision to Mr and Mrs M, and AXA, detailing my thoughts on this complaint. In this I said;

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so, I'm now intending on upholding this complaint. I have explained why this is now the case below.*

*As above, AXA has accepted this claim was covered under the policy. And it provided a*

*cash settlement to Mr and Mrs M, to reinstate the building itself property to pre-loss condition. Mr and Mrs M have said this settlement was insufficient – and that on finishing the repair work to their home they were unhappy they had been left with a significant shortfall in the costs they had spent, in order to put the property right.*

*Because Mr and Mrs M and AXA aren't in agreement in respect of the settlement for the buildings part of the claim, it is this I've needed to consider further. As part of this, I've also needed to decide whether AXA's now offer of £40,000, plus 8% interest, on receipt of evidence of costs, is reasonable.*

### **AXA's initial cash settlement**

*As detailed previously, AXA's obligation under Mr and Mrs M's property is to put the property back in the position it was in, before the damage occurred. And as AXA has agreed, the repair undertaken, or the cash settlement provided, should allow for the work carried out to be effective and lasting.*

*In this case, for the repair to be effective and lasting, AXA would need to make sure the damage from the flooding was fully remedied. So, this includes the fact the house would need to be returned to being dry, and free from the water ingress that occurred since the flood event. And the method proposed to fix the damage from the flood, should be something that will last for a reasonable period –being an assurance that water isn't inevitably going to still find its way in through the now damaged waterproofing.*

*AXA did undertake investigations to decide how to reinstate the property in 2014, recognising it needed to be able to dry the building out before further repair works could be undertaken. It appointed experts to look at the property and offer suggestions on how to resolve the problem.*

*As above, the damp proof specialist recommended a cavity drainage system and blocking the open cattle holes. And the civil and structural engineer said excavating the property and building the retaining walls would be the only feasible way forward, to ensure a permanent solution, according to what AXA's loss adjuster has said. So, at this point I'm satisfied AXA did have information from specialists detailing what they thought needed to be done to ensure the property could be dried, and reinstated.*

*But then AXA stopped moving this element of the claim forward. It didn't explore the opinions of its appointed experts any further – to decide what would be the most reasonable repair here.*

*Instead, it declined to offer a settlement for any of the above suggested repairs to make the property water tight. So, the cash settlement provided no allowance within it for either of these suggestions. This was despite it being clear in mid-2014, following the response of both its experts, that it was not going to be possible to simply dry the property and reinstate the property, without at least one of these measures being taken.*

*Given this, I do remain satisfied that when AXA provided its settlement offer this was unfair. The cash settlement should have included costs for work to ensure the property fully dried. So, I do still intend to require AXA to increase the settlement provided to Mr and Mrs M.*

*But I need to consider what additional funds it would have been reasonable for AXA to provide, to allow for this to happen. So, this means considering what a fair and reasonable*

*repair method would have been, and the likely cost of this, based on the evidence provided to me.*

### **Repair method**

*As mentioned previously, there were two options suggested during the life of the claim. A cavity wall drainage system, and the building of a retaining wall.*

*AXA has recently provided a further report from its civil and structural engineer – and noted that this evidences that a cavity wall drainage system, in addition to sealing the cattle ventilation holes would have stopped water entering the property and allowed it to be dried.*

*Looking at the report I can see the engineer does note that filling the cattle holes and improving the cut-off drain alone wouldn't allow the property to dry in a reasonable amount of time, if at all. But that the installation of a cavity drainage system, alongside filling the holes in the building would do so.*

*This is contrary to information I have been provided with previously – where the report by a damp specialist, that suggested this method of repair, was discounted from the possible solutions. In an interim report provided by the loss adjuster it was noted that the civil and structural engineer didn't consider the cavity drainage system would resolve the problem of water ingress. And I've also seen an email, in March 2014, from the loss adjuster's surveyor, noting that internal drainage would not be an option, because 'this will have implications on stair and corridor widths.'*

*Given that the suggested cavity drainage system was not considered a feasible option, reducing the size of the stairs and corridors, and that I haven't seen any further evidence that overcomes these concerns, I don't think it would be fair for AXA to settle this element of the claim, based on a cavity drainage system. It wouldn't put the property back in the position it was in before the loss.*

*So, I've thought about the second repair option. The building of a retaining wall. And the structural and civil engineer mentions this in their most recent report too. They detail;*

*'Even if the Ombudsman disagrees with me on the limited scope of betterment I recommend and still consider that the rear wall should be separated from the land it retained.' This is in line with the reports I've seen from the loss adjuster nearer the time of the loss. And the engineer in its report in 2014 also discusses the building of a retaining wall, and closing the cattle ventilation holes, to stop flooding. So, I do think costs for building a retaining wall and closing the cattle ventilation holes would be reasonable for AXA to do in this case.*

*In terms of how to build an effective retaining wall, the civil and structural engineer in their most recent report notes it would not have been necessary to purchase more land. Instead they said the wall could have been completed on the existing footprint of the property.*

*The engineer noted that completing a single retaining wall on the existing footprint of the building doesn't seem to be what Mr and Mrs M have done. And the engineer said that having looked on an online satellite system they felt the works undertaken had been too extensive. Mr and Mrs M have provided me with photos of the work completed as well. And I've also carefully considered these. The photos show work to add drainage to the property, and to construct a large paved retaining structure, which is terraced, rather than a single*

wall.

*Mr and Mrs M have said they did this level of work. and needed to buy additional land, in order to have room behind the property to excavate the soil the building retained. As well as to install new drainage. They said they trusted their builder that the best way to move forward would be to build a structure of staggered retaining walls, so that the back of the property was terraced.*

*Given AXA and Mr and Mrs M don't agree about the way to build the retaining wall, I've thought about what looks to be fair here. It's important to note I'm not an expert in building retaining walls. Instead, I need to look at the evidence provided to me and decide what I think is most likely fair and reasonable in the circumstances. Having look at the evidence at this stage, I think AXA's engineer's description of how to carry out the work seems fair.*

*I think the evidence shows the engineer has given detailed consideration to what works are necessary, based on their previous site visit, as well as a review of the soil type of the property noted by the British Geological survey.*

*They have provided a reasoned explanation to say that it might be possible the sort of soil present at Mr and Mrs M's property could have been self-supporting if battered down correctly. But that instead of going with this suggestion, they considered the different ways to build a retaining wall and considered a reinforced retaining wall would be most appropriate, and this was in line with the experience of most contactors. Given that the engineer considered the conditions at the property, as well as the ability for contractors to perform the task (as well as it being enough to hold the land back), I'm persuaded this would have been a fair way to build the wall, to ensure the property could be dry, as opposed to the way the work has been carried out by Mr and Mrs M.*

*I appreciate why Mr and Mrs M would have been careful to consider the recommendations of their builder. Although AXA said it provided guidance to Mr and Mrs M in how to go about the works, I can't be sure it really did do this. And I think it should have provided this guidance, given this element of the claim would be covered by the policy.*

*AXA has said it spoke to Mr and Mrs M in July 2014 and told them a retaining wall would cost £40,000. And AXA have submitted a timeline to show this is what happened. But I can't see a note of this call, to confirm that was what was said at the time. And I haven't been provided with any documents to show information was provided to Mr and Mrs M, over and above noting the suggestion to close the cattle ventilation holes and build a retaining wall. I can't see any explanation was provided as to how to go about doing this. So, I can understand why Mr and Mrs M went with the overall works their builder suggested. And I will be considering this below, in the section titled 'compensation.'*

*But having said that, it's my understanding Mr and Mrs M's builder's suggested repair works, was not just to ensure the building was no longer retaining the land, and closing the cattle holes, to allow the property to dry. There were several other repairs the builder needed to facilitate at the same time, such as adding in drainage systems that were missing from the property and were not linked to the flood event.*

*AXA aren't responsible under the policy to repair all the structural problems at the house. It is only responsible to do what is necessary to dry the property and then reinstate the inside of the property to the way it was before. So, any work to make improvements, prevent future potential, unrelated flooding issues, and remedy issues with drains that should have been*

*there are not covered by the policy. It only covers damage caused by the one-off event of flood.*

*I haven't seen any firm evidence that completing the works as Mr and Mrs M did, such as terracing the walls being built (there is now a patio type area there), was necessary to complete solely insured works to enable drying. And for the repair to be effective and lasting. Given what Mr and Mrs M have said, I think it's likely the work was to carry out recommendations to build a retaining wall and dry the home. But also, to deal with other structural issues that needed addressing. And whilst I don't think AXA provided enough guidance on how to build the right retaining wall, I am satisfied that throughout it's correspondence with Mr and Mrs M it was clear that problems with the way the property was built were not covered.*

*Given the above, I think it is reasonable for AXA to provide a cash settlement for the cost of building a single, retaining wall, and filling the cattle ventilation holes.*

### ***Increase in settlement***

*AXA's surveyor has submitted information in the form of a table, to show what the cost of the retaining wall would be. This table shows the work needed in relation to the wall came to a figure of £35,343 + VAT, as was based on the BCIS alterations & refurbishment price book – noting this is usually in line with the prices used by small contractors.*

*AXA has offered now offered a cash settlement of £40,000 to Mr and Mrs M. Which based on this costed estimate I think is fair to reimburse Mr and Mrs M for the costs AXA should have paid, in relation to the wall. The estimate included considerations for excavation, building the wall, and allowing for drainage of the wall too. So, I think this fairly allows for the work noted above to be completed.*

*The settlement inclusive of VAT would come to an amount of £42,412. But the invoices I've seen from Mr and Mrs M's chosen builder on completion of the work (albeit a different method used), didn't include any costs noted for VAT. So, I don't require AXA to pay this. Unless Mr and Mrs M can provide evidence, they did pay VAT. They would need to provide an invoice showing the VAT, in order for AXA to pay this.*

*As above, AXA has also noted sealing the cattle ventilation holes would need to be completed. I've thought about whether the £40,000 offered is also enough to cover the costs of this, as well as the wall. And I think it is. The figure of building the wall is £35,343 – leaving £4,657 of additional funds for the cattle holes to be sealed. I've seen information on the cost of purchasing the materials to apply in the holes – and this came to around £90. So, I think it's most likely that purchasing this, and the cost of the labour to apply it, wouldn't come to more than the £4,657 left over. Given this, I'm satisfied the offer of £40,000 settlement offer is fair.*

*AXA has also noted it needs evidence of the £40,000 spent on the retaining wall, before it will pay the above. I've thought about whether this is necessary. And I don't think it is. Mr and Mrs M were entitled to this sum of money under their policy, to put their property in a pre-loss condition. AXA are aware, based on the evidence from its civil and structural engineer, that this would be the true cost of the work. So, regardless of whether Mr and Mrs M did this, or what their builder has said in the past about costs of building the wall, it is Mr and Mrs M's entitlement to receive the £40,000.*

*AXA should have either completed the above work (retaining wall and cattle holes) or provided for these repairs within its cash settlement offer initially. So, I consider it reasonable for 8% interest to be paid on the above amount, from the date of loss, to the date of settlement, less any tax properly deductible. However, I'm aware Mr and Mrs M had to take out additional lending to do the work to the outside of the home (including parts AXA should have already paid for). So, if Mr and Mrs M can provide any information to show that the rate of borrowing was over the 8% detailed here, they should provide this to me to consider in response to this provisional decision.*

### **Alternative accommodation**

*Mr and Mrs M were provided with the initial cash settlement for their claim in August 2014. They have noted they had to pay for alternative accommodation themselves, between February 2015 when AXA stopped paying for alternative accommodation, and October 2015 when they moved back home. I've thought about whether it would be fair to require AXA to pay further alternative accommodation costs in this case. And I think providing three months further alternative accommodation costs would be reasonable.*

*I say this because when Mr and Mrs M were provided with their cash settlement in August 2014 it wasn't enough for them to complete the above works. Mr and Mrs M could have used the initial cash settlement to start excavating and building the wall at that point. But I can understand that Mr and Mrs M would have needed to think carefully about this, seeing as those funds were provided to them for other necessary reinstatement works. So, they would have needed to make other arrangements to ensure they could pay for the work needed.*

*Mr and Mrs M re-mortgaged to release funds. So, this would have taken time to be sorted. AXA did think about how long it would take for insured works to be completed, when they finalised the alternative accommodation payment to Mr and Mrs M. It said that there would be a likely two-week lead time before building work could start, four weeks to dry the property, and a further 16 to complete the work needed. But this didn't consider the insured costs of rebuilding the retaining wall and sealing the cattle ventilation holes. So, I think it is reasonable to suggest the work would have taken longer than AXA originally thought.*

*I'm never going to know exactly how much time this added to the claim. And Mr and Mrs M would also have needed to live elsewhere, whilst they were undertaking the lengthy uninsured work too. For example, action to remedy the lack of drainage installed in the building. And because of that, I think a compromise is a reasonable way to settle this element of the claim – because it recognises the need for AXA to have taken responsibility for accommodation whilst all the insured works were being done. But takes into account that a lot of uninsured work was also undertaken before Mr and Mrs M could move back home.*

*Mr and Mrs M's alternative accommodation was £950 a month – from what I've seen discussed between the two parties before. So, this would make a sum of £2,850 to be paid by AXA. Plus, eight per cent interest, simple per annum, from the date Mr and Mrs M paid this amount, to the date of settlement, to take into account the time Mr and Mrs M were without these funds.*

### **Compensation**

*Mr and Mrs M's claim was made in December 2013, some 6.5 years ago. During this time there were various times where the progress of the claim has been outside of AXA's control.*

*For example, it was unable to move the claim forward to settlement initially, because of delays with Mr and Mrs M's builder being unavailable to meet to agree the scope of works.*

*And, there was a significant amount of time between the cash settlement being provided to Mr and Mrs M in August 2014, and them raising their concerns in September 2016. So, during that time I wouldn't have expected AXA to take any further action. When Mr and Mrs M did raise concerns again in September 2016 AXA did promptly ask Mr and Mrs M more questions to look into the matter – but didn't receive an answer to their questions until April 2017.*

*But, as above, when AXA made its initial cash settlement to Mr and Mrs M, it left out a substantial part of the work needed to create an effective and lasting repair to the flood damage. And in doing so, it left Mr and Mrs M in a situation where they knew without undertaking further work, at their own expense, they were never going to be able to dry their property and return to living in it.*

*Mr and Mrs M needed to locate the funds to build a retaining wall and close the cattle holes, to ensure the property was dry. I can see how this would have been very upsetting, and stressful – at a time where Mr and Mrs M had also become aware of other problems that they would have needed to self-fund to remedy.*

*Part of AXA's obligation as Mr and Mrs M's insurer, was to provide guidance to them, in respect of their claim. In failing to cover the retaining wall, and explain how this should be built, I think AXA caused substantial inconvenience to Mr and Mrs M. AXA does say it made clear to Mr and Mrs M that building a retaining wall was the way forward in this scenario. But I can't see any firm evidence to show me it provided any guidance to Mr and Mrs M on how to do this, or how much this should cost. If AXA had included the costs for building a retaining wall and closing the cattle holes, in the original scope of works, which it should have done, this would have provided the guidance to Mr and Mrs M that was needed – even if they were being provided with a cash settlement, to complete the works themselves.*

*Mr and Mrs M have needed to continue raising their concerns about the settlement for a long time as a result of the above. And this would evidently be distressing, inconvenient and draining. Mr and Mrs M needed to borrow money to sort the insured problems – as well as the uninsured ones. And whilst the total sum they needed to borrow is not because of AXA, the part it played in the matter would have been distressing for Mr and Mrs M. Mr and Mrs M no longer live at the address this case concerned – but they are still having to deal with the loss they suffered as a result of AXA, some years later.*

*Because of this, I think it would be fair and reasonable for AXA to provide Mr and Mrs M with compensation, to recognise the significant distress they have experienced as a result of the handling of their claim, and the inconvenience this caused to them. I consider an amount of £2,000 would fairly take into account the level of distress caused, over the lengthy period of time.”*

AXA responded to my provisional decision and agreed with my findings. It didn't provide any further information or evidence.

Mr and Mrs M disagreed. They provided a further report from a surveyor it appointed to review the property following AXA's most recent report. And they raised a large number of points. I have summarised the central points raised below. But I'd like to reiterate I have

considered everything both parties have provided on this case when coming to my final decision.

Mr and Mrs M noted that;

- They didn't feel a single retaining wall would have been enough to retain the land at the back of the property. They said the pressure of holding so much land could be a problem for a single wall. Mr and Mrs M said the soil behind the property was liable to collapse as there was a lot of slate in it. And the foundations would have needed to be very deep to correctly build the wall;
- A single wall would be very high, and they felt that in terms of health and safety this may pose a risk;
- They were concerned about where run-off water would drain to;
- AXA would have had difficulty to get a digger behind the property in order to dig out all of the retaining land. They would have had to seek access by way of the farmer fields behind the property – and this may have proved problematic.
- When excavating the land behind the barn it was found that the barn was not held up properly on its own, and that the land was keeping the barn in place. The building would have collapsed without acting – and they also needed to render this area to ensure it was watertight;
- There was a lot of land to dispose of when excavating it, and Mr and Mrs M didn't know whether AXA had taken this into account in its recent costing of works it said were appropriate;
- They had made a patio area, terracing the land, because this was the advice they were given, in light of the above. And, they wanted a patio area out the back of the property they could sit out on. Mr and Mrs M said they did have a patio before.
- They accepted the alternative accommodation offer, but didn't agree £950 a month was the correct figure to use here. Mr and Mrs M noted they had needed to move out of this property, because the landlord sold it. So, they had to move elsewhere – and this was at a cost of £1,100 per month.

### **My findings**

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, my final decision does remain the same as that noted in my provisional decision, and for the same reasons. So, I haven't detailed this again. But I have carefully considered the additional information provided and have commented on what I consider to be key points, below.

### **Repair method**

Mr and Mrs M's responses show they disagree with the repair method AXA is now saying would have been reasonable. And because of that, they feel the settlement offer provided to them should be increased. So, I've considered the additional information I've been provided with in reference to the repair method.

Ultimately Mr and Mrs M feel that a single retaining wall would not have been fit for purpose, given its height, the amount of land it would need to retain and the lack of access to the back of the property.

I've looked at the further report Mr and Mrs M have provided from a structural engineer. This does say;

*"The construction of a single retaining wall would have presented practical, safety and design problems.*

*A single wall would have been significantly higher than either of the existing walls."*

It goes on to say the higher wall would have meant it would have had to be built further back, and the soil either temporarily piled or battered back. The surveyor felt this all carried with it a risk of collapse, and that this would be expensive.

I've thought carefully about what has been said here, as well as what has been said by Mr and Mrs M. And compared this information with the report and quotation provided by AXA.

As mentioned in my recent provisional decision, I think AXA's engineer has given detailed consideration to necessary works – based on its previous site visit, as well as evidence on the soil type in the location. From the quotation provided to me, I'm aware the cash settlement offer also includes for the foundations of the wall, and concreting this in. As well as for disposal of the soil that was removed when excavating the land.

And from the report AXA's surveyor provided, I can see they did consider battering back the land – and noted that given the soil type noted by the British Geological Survey that this might be possible. But, in thinking about the different options, the surveyor noted a reinforced retaining wall would be most appropriate in holding the land back. So, this is what it allowed for when arriving at the cash settlement figure it is now offering.

Given this, I'm satisfied AXA has offered a fair and reasonable cash settlement, to take into account the damage brought about by the flood, the need for an effective and lasting repair.

Mr and Mrs M have highlighted a number of concerns with the drainage at the property. And they have also explained that when excavating the land, it was noted that a part of the land was retaining the barn, and they had to reinforce, rebuild and render this part of the wall.

I don't dispute this is what Mr and Mrs M found. But I need to differentiate between what is covered under Mr and Mrs M's insurance policy, and what isn't. AXA's liability under the insurance policy is to remedy the damage caused by the flood and ensure the property could be dried. It doesn't need to remedy any further problems than that. And, as detailed above, I'm satisfied the offer AXA has now provided is a fair and reasonable offer towards remedying the flood damage and ensuring an effective and lasting repair. So, I won't be requiring AXA to increase its offer.

Mr and Mrs M have that they also wanted to ensure they had a patio they could sit out on – as they had a patio prior to the flood. I do accept Mr and Mrs M had a patio before – they have provided me with photos of this. But this patio was small, and not comparable to the terracing at the property now – so this point doesn't alter the outcome of this complaint.

One of Mr and Mrs M's other concerns was how AXA would have accessed the back of the property, without purchasing more land. And they have highlighted that this would rely on them gaining access to the neighbouring farm fields. I understand why Mr and Mrs M have raised this – they mentioned needing to negotiate with the owner of that land in order to gain access that way themselves. But I see no reason why AXA may not have been able to talk to the owner and come to an agreement on temporary access to facilitate the work needed on the footprint of the land Mr and Mrs M owned. So, I don't think this alters what would be considered a reasonable repair method in this case.

Given the above, I do remain satisfied that AXA's now offer of £40,000 towards external work at the property is fair.

AXA should have either completed the above work (retaining wall and cattle holes) or provided for these repairs within its cash settlement offer initially. So, I consider it reasonable for 8% interest to be paid on the above amount, from the date of loss, to the date of settlement, less any tax properly deductible. However, I'm aware Mr and Mrs M had to take out additional lending to do the work to the outside of the home (including parts AXA should have already paid for). So, if Mr and Mrs M can provide any information to show that the rate of borrowing was over the 8% detailed here, they should provide this to me to consider in response to this provisional decision.

### **Alternative accommodation**

In my provisional decision I said I intended to ask AXA to pay for an additional three months of alternative accommodation for Mr and Mrs M. Neither party disagreed with this point. Except to say, that Mr and Mrs M said they needed to move from the alternative accommodation that had been costing them £950 a month – because the landlord sold the property. And this meant, that instead of paying £950 a month, they needed to pay £1,100.

I'm still satisfied it is fair for AXA to pay for three additional months of alternative accommodation. I haven't seen any firm evidence of the increased cost Mr and Mrs M paid for their alternative accommodation on moving. So, this should remain payable at the rate of £950 – so £2,850 to be paid in total. Unless Mr and Mrs M can evidence the increased cost to AXA. If they can, then AXA should pay for the three months alternative accommodation at the rate of £1,100 a month instead. So, this being £3,300 in total.

### **my final decision**

Given the above, I uphold this complaint. And I require AXA Insurance UK Plc to pay Mr and Mrs M;

- £40,000 for the cost of building a retaining wall. If Mr and Mrs M can show they paid VAT on this amount, evidence of this should be provided to AXA. And if this is evidenced, AXA should reimburse Mr and Mrs M for the VAT costs on this amount too.

- Eight per cent interest on the above, simple per annum, from the date of loss, to the date of settlement, less any tax properly deductible. If Mr and Mrs M evidence that the rate of borrowing they took was over 8%, then AXA should pay interest based on the rate Mr and Mrs M actually paid on their borrowing.
- £2,850 for alternative accommodation. Mr and Mrs M have said the accommodation actually cost them £3,300 during this time. So, if Mr and Mrs M can evidence this, then AXA should pay that amount instead. 8% interest, simple per annum should be paid on the three months alternative accommodation amount, from the date of loss, to the date of settlement, less any tax properly deductible. If Mr and Mrs M can show the rate of borrowing they took was over 8%, then AXA should pay interest based on the rate Mr and Mrs M actually paid on their borrowing.
- £2,000 compensation for the upset and inconvenience experienced.

If AXA Insurance UK Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr and Mrs M how much it's taken off. It should also give Mr and Mrs M a certificate showing this if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 23 January 2021.

Rachel Woods  
**ombudsman**