

complaint

Mr M and Miss S have complained about AXA Insurance UK Plc following a claim they made under their home insurance policy after the tank in their loft leaked causing water damage throughout their home.

background

The house (which includes an annex) was damaged by a leak in November 2016. AXA accepted the claim and, in January 2017, in preparation for strip out work to begin, the family moved out of their damaged home. The damage was extensive and AXA opted to tender the work for reinstatement, a number of contractors viewed the damage, three returned quotes and AXA selected one.

By the end of June AXA's contractors had stripped the property and begun the reinstatement work. Mr M and Miss S planned to do some private work and AXA agreed to allow this. They'd found a contractor to carry out some roof work, but AXA's contractor had agreed to do some work directly for them. It also introduced them to other specialist traders. However, Miss S became unhappy with AXA's contractors – she returned to the house one day and found the undamaged areas hadn't been properly protected and some items had been damaged.

In September 2017 the contractors appointed by AXA walked off the job, citing problems with contractors doing private work, and AXA said it would settle the remainder of the claim in cash. That meant Miss S had to find her own contractors to complete the work. But Mr M and Miss S were unhappy with the settlement offer AXA made (of circa £114,000); feeling it was generally low and that whilst AXA accepted that some work to reinstate the kitchen would be necessary, no allowance was made for this work. And Mr M and Miss S felt the kitchen needed replacing in its entirety. Around this time Mr M and Miss S made their first contact with this service.

In November 2017, Mr M and Miss S's electrician began work to make safe the electrical installation at their home. AXA didn't accept that all the work the contractor was doing was necessary as part of the claim so wouldn't pay for all of it. Mr M and Miss S felt the work needed doing regardless, and before any other reinstatement work could be done, so they went ahead, even without any payment from AXA having been made. They'd also decided to use a contractor, for the general reinstatement work, that had visited the property at the same time as AXA's original contractor.

Debate about the electrical repair costs continued as did disputes about most of the rest of the work. AXA felt that many items included within Miss S's contractors' scopes weren't part of the claim repairs. AXA also felt the non-claim repairs being carried out impacted the length of the reinstatement process.

The lease for the family's alternative accommodation that AXA had paid for was due to run out in January 2018. AXA wouldn't agree to fund any stay beyond that point.

In December 2017, before we completed our initial investigations into the complaint and just before the lease expired, AXA released a claim payment to Mr M and Miss S of £160,200. It saw that as full settlement of its liability for the claim. Mr M and Miss S said they'd accept this as an interim payment only. AXA made the payment and Mr M and Miss S authorised

their contractor to proceed with the reinstatement works. It was expected that the works would complete by the middle of April 2018.

However, Mr M and Miss S remained concerned about the amounts AXA had allocated across lots of different parts of the work that made up the £160,200 paid. And there was still no allowance for reinstating the kitchen. When our investigator looked at the matter she felt AXA hadn't always acted fairly and reasonably. She issued three views setting out what she felt had gone wrong and what AXA needed to do to make up for its part in that.

During our investigation, and as a result of some of the findings made by the investigator, agreement was reached on some issues – for example it was agreed that AXA would pay the reasonable cost of utility bills. But other things, such as that AXA should pay the cost submitted by Mr M and Miss S for electrical work, was disputed by AXA. For their part, Mr M and Miss S felt the recommendations didn't go far enough, particularly as it hadn't been recommended that AXA pay for the entire main kitchen to be replaced.

As the parties couldn't reach agreement, the complaint was passed to me and I issued a provisional decision. I said I could only make a recommendation and I explained what this meant. The parties responded and my provisional findings, their replies and my final considerations are set out below. My provisional findings are quoted in italics.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. For practicality purposes I've only included a summary background above but I'm aware of everything that went on. In respect of the parties' responses to my provisional findings, I've only stated where an objection has been raised and considered by me. If I don't record any comment that is because that point was agreed with or not objected to by either party.

I explained provisionally that there are rules which apply to this service. One of them is that we can only make binding awards against insurers up to the value of £150,000. So where a complaint is made to us and the potential cash settlement for an insurance claim could exceed this amount, the most we can make the insurer pay is £150,000.

In this case, after Mr M and Miss S complained to us, AXA paid them £160,200. This is more than the limit I'm able to award. And because it was paid during our complaint process it effectively means our award limit has already been reached. I can't, therefore, make AXA pay any more. I can only recommend that it do so. So Mr M and Miss S need to be aware that even, if they accept any final decision I make within the deadline set, AXA won't be bound to comply with it. Further, it's unlikely that if Mr M and Miss S accept my final decision they'll be able to pursue AXA in court. They may wish to seek legal advice before deciding whether to accept my final decision.

Turning to the points in dispute; I've set out my provisional findings below in italics. The parties' responses and my replies are set out in normal font after each section, unless no comment or objections were made.

“AXA opting to settle in cash

AXA felt that the private work was more extensive than first planned and that it impacted its own contractor's work. It said it would have settled the claim in cash at the outset if it had

known the extent of the planned private works.

Miss S has said there wasn't much private work going on but I think there was sufficient to cause reasonable concern for AXA and its contractor. The mix of private and insured work can complicate things. AXA's contractor had responsibility for managing the site but it had no control over traders employed by Mr M and Miss S. I understand why AXA reviewed its position as time went on. I'm satisfied that the policy allows for settlement in cash and AXA's decision to do so was fair and reasonable."

Mr M and Miss S said whilst they accept private work can complicate insured repairs, AXA had agreed to them being carried out here. And when it reverted to settling in cash they had nothing booked in, in terms of upgrading their home, in addition to what had been initially agreed. They had had roof work carried out but at AXA's request. They'd always been willing to compromise and AXA could have stopped and given them options. Immediately reverting to settling in cash had been unfair.

I'm satisfied that AXA was clear from the outset that it would allow limited private work to be carried out as long as that didn't interfere with its programme of works or extend the repair period. I can see by September 2017 it had concerns its conditions weren't being kept to. It's also clear the roofer arrived unannounced, which I understand caused concerns for those in charge of site safety. As the conditions had been made clear at the outset, I don't think AXA reasonably needed to allow a further chance before reverting to a cash settlement. Furthermore, there are still debates today, subject to this complaint, about the extent of AXA's liability for work done (what it sees as private works and Mr M and Miss S see as insured). So I don't think it would've been possible, even had AXA sought to talk about the issue, for the parties to reach an amicable agreement that would've allowed AXA to feel able to resume the repair contract.

"issues with the quality of work completed

Mr M and Miss S's original concerns centered around what AXA would and wouldn't pay for – and that is the main focus of my decision. But Miss S has now identified various issues with the work (private and insured reinstatement work) completed at her home. She feels that because AXA introduced the contractors that were used for all of the work, even the contractor they used to complete the reinstatement following AXA's cash settlement, it is responsible for all of the problems that have now been found.

My view is that AXA isn't responsible for any of the private works. The contract for that work exists between Mr M, Miss S and the contractor. AXA is not party to it. The only work for which AXA can be held accountable is anything completed by its contractor before AXA elected to make a cash settlement. That means it has no liability for work completed at Mr M and Miss S's home that was subject to that payment. So as far as the quality of finish of any private work, or insured reinstatement work that is or should have been subject of the settlement AXA made, I'm not going to make any further comment or any recommendation. The issues I'm satisfied need considering against AXA are set out below."

Mr M and Miss S say that AXA is responsible for everything its authorised contractors did. They were told they had to use those contractors, they were working for AXA and its policy makes it liable for them as well as requiring AXA to guarantee their work.

I understand Mr M and Miss S's frustration but private work is just that; private. AXA has no liability for it and the policy wording doesn't extend to it. Even when that private work is

carried out by its contractors who are simultaneously carrying out insured work on its behalf. That's because there is no contract between AXA and the contractor for the private works – that contract exists between the contractor and Mr M and Miss S. The contractor in that instance, is carrying that work out for them, not for AXA.

“items still under consideration

Mr M and Miss S's claim for contents items hadn't been fully made or assessed by the time the complaint came to us. The parties had been content to focus on the buildings claim. But Mr M and Miss S had told AXA of their concern that their contents may have been contaminated by asbestos. AXA agreed, during our process, to check Mr M and Miss S's contents items prior to them being returned home. Mr M and Miss S welcomed this offer. The family in due course did return home and no further comment or concern has been raised about this aspect, so I won't make any finding regarding the contents claim here.

I have though taken into account what happened regarding the asbestos removal below in as far as it affected the building claim and the concerns Miss S raised about whether the family's health had been affected. The family weren't living at home at the time though or using their exposed contents items. But if AXA's tests found they had been contaminated this may have increased the reinstatement costs and/or caused further distress and/or inconvenience. If there are concerns about this, I'd expect AXA to consider them and a further complaint can be made if Mr M and Miss S remain dissatisfied.

AXA had agreed to consider Mr M and Miss S's carpet replacement costs once they'd had the damaged carpets assessed. I understand from what Mr M and Miss S have said that they incurred a cost for the assessment and that a quote for replacement has been sent to AXA. I also understand that AXA is considering all of this. Therefore, as the issue is still in consideration, I'll say no more about it here (it isn't an issue in deadlock that currently requires my assessment).”

AXA said it is awaiting details of the contents claim but, having been forwarded the estimate for carpets, said it would pay this (£17,360.04).

I think AXA's offer to pay the carpet estimate is reasonable, but it is now more than a year out of date. AXA knew the carpet issue was outstanding but didn't seek to progress it during this time. To account for this not getting resolved earlier and for any increase in costs that may have occurred, I'm going to recommend that it pays interest on the estimate amount from its date 15 July 2018 until settlement is made. To clarify for Mr M and Miss S, carpets are contents items.

Part of Mr M and Miss S's concern about this claim has been that AXA caused damage to their property. They sent photos of damaged curtains and curtain poles. These are contents items so will fall for consideration under the contents claim. But I'm satisfied that when assessing the contents claim AXA should accept these were damaged by its contractors, acting for it, as they were removed, and seemingly not stored carefully, during the strip-out work (that it carried out).

“claim handling and delay, including asbestos removal

The leak occurred at the end of November 2016 and AXA sent a drying company to the property as soon as it was notified of the loss. This was because of the extent of the water damage. I think it acted prudently in this respect. An initial asbestos test was carried out at

the same time. The results were negative but the test was limited. The drying company confirmed in December that it couldn't strip out the property and tenders were sought. Once these came back the successful company demanded that further asbestos tests were carried out. These tests found significant amounts of asbestos throughout the building, and not just present in ceilings (as is most common). Costs for safe removal were sought and AXA agreed to cover this as part of the insured works. Removal began in May/June 2017 and took around a month to complete.

It is clear from AXA's file that it should have completed a more comprehensive test initially. And I think that if it had done, the first (and ultimately insufficient) tender could have been avoided. The work that was necessary to reinstate the property, after the asbestos was cleared from the home, was far more extensive than that allowed for in the initial tender, effectively making it null and void. Therefore, the time taken to obtain this could have been 'saved' if the initial testing had been comprehensive enough.

So I accept that there was a degree of frustration and inconvenience related to this failure by AXA. But I'm not convinced that the failure ever put Mr M and Miss S and their family at risk. Nor do I think that Miss S was ever really that worried in this respect – I accept that she had some concern but she herself said in an email in June 2016 that she accepted there was little risk and didn't really believe any harm had been caused.

When AXA's contractors pulled out of the job this left Mr M and Miss S to complete the work themselves. I can see they were reluctant to do this and, given the extent of the work, I'm not surprised they challenged AXA's decision to settle in cash. I can also see that their challenges resulted in AXA increasing its settlement offer. But, given the size of the settlement in question I think AXA could have sent an initial payment to Mr M and Miss S, with the caveat that they could start (the main reinstatement) repairs with this fund and/or continue to complain about the points in dispute. If AXA was adamant that it was going to settle in cash then that would have been the right and fair thing to do. As it was AXA didn't release any funds until we became involved, a delay of around three months. Once this was done Miss S authorised the main reinstatement work to start. I'm satisfied that AXA's failure to set out and/or make any settlement earlier, as well as causing delay to the works, resulted in distress and inconvenience to the family. Particularly if payment had been made earlier, the reinstatement could have begun and been completed sooner, meaning the family wouldn't have been out of their home as long as they were."

AXA said that it didn't think it was fair for it to be criticised for not having issued cash sooner because Mr M and Miss S had indicated they didn't want this. It didn't think this had held up the work.

It is true that Mr M and Miss S had objected to the cash settlement but I don't think it's true to say AXA didn't pay it because it was trying to reach agreement with them. I say that because AXA simply wasn't prepared to carry out the work. It may have been negotiating for an agreeable payment – but that wasn't good reason not to pay its minimum accepted level of liability. An initial, interim, without prejudice payment, could have eased Mr M and Miss S's worry and allowed them to instruct the contractor sooner. I remain of the view that the situation regarding asbestos and the withheld settlement payment both caused unreasonable and avoidable delay to this claim.

“the impact of private work on the length of the claim

AXA feels that, regardless of delays, but for the private work, the family wouldn't have needed to live elsewhere beyond the end of the lease it had paid for (which had been due to end in January 2018).

I can see that the main kitchen was re-fitted in its entirety, the annex kitchen was moved and the annex bathroom re-configured. I can't be sure how much time that work took, or how much longer that was than it would have taken to do the work accepted as necessary as a result of the claim. But I think it likely did impact the period of reinstatement work to some extent. So I have to take that into consideration when determining what costs and compensation I think AXA should pay.”

Mr M and Miss S said they were very clear with the contractors – all work was to run concurrently so there would be no delay. There were some delays, such as plaster taking extra time to dry, but all these were things AXA would have encountered if it had completed the work.

I understand that Mr M and Miss S would have made best efforts to keep the work period as short as possible. However, I remain of the view (see below) that extensive work was carried out by them that AXA wasn't liable for completing. I'm satisfied that the period of works was longer as a result.

“compensation and costs for rent and storage

The lease for the property the family were staying at was extended by three months. So there were three months more rent and storage costs to pay, as well as three months more upset suffered. As I've explained though, I don't think it's fair to say AXA was responsible for all of that. But I also explained it's not possible to reach an accurate finding about exactly how many days or weeks AXA is responsible for. I think that to reflect the dual liability that I'm satisfied exists, it is fair to view AXA as having liability for 50% of the extended period.

I've taken this into account alongside the claim handling and delay issues I mentioned above. Having done so, I'm satisfied that AXA caused Mr M and Miss S some substantial distress and inconvenience. I think payment of £1,500 compensation is fair and reasonable in the circumstances here.

Regarding the rent and storage, I'm going to recommend that AXA pays for half of any costs incurred for the period 18 January 2018 (the first day of the extended lease) until 16 April 2018 (the day the family moved home). To any sum paid AXA will have to add interest on any figure that makes up that sum from the date the related total cost was incurred by Mr M and Miss S until settlement is made.”*

AXA asked if the £1,500 was in addition to the £1,500 it had agreed with our investigator it would pay. It also said it didn't think it should pay anything for rent and storage as it didn't feel it had delayed the claim.

I note AXA agreed the £1,500 payment earlier in our process. My recommended payment doesn't seek to add to that. What I have set out here is the totality of what I think is required to settle this claim and complaint.

I've set out my final decision regarding delays above. AXA did, in my view, cause delays and it should, therefore, reimburse Mr M and Miss S's resultant losses.

Mr M and Miss S, for their part, say my suggestion of AXA paying 50% is unfair because of the multiple delays it caused, and the fact that they didn't cause any unreasonable delays. I've explained above that I don't accept that the extent of work they carried out was all necessary as result of the claim and that it most likely extended the repair period.

I remain of the view that both parties caused delays in this claim which impacted the extent of the repair period and the costs incurred by Mr M and Miss S. I have no way to calculate a proportionate liability using specific time periods – the variables are too great. So, to reflect the dual liability for the costs incurred, I'm satisfied that a 50% split is a reasonable settlement recommendation. I also remain of the view that it's reasonable to say that to its share AXA will have to add interest*.

Regarding compensation, Mr M and Miss S said my award was too low, particularly as they had used contents items that had been exposed to asbestos. They said they wanted me to increase the amount and make an allowance to let them accept my decision on a without prejudice basis to them taking legal action against AXA if required in respect of the asbestos issue. Particularly because my award was far below what the courts might award.

I understand Mr M and Miss S would like more compensation. But I can't make any allowance or agreement regarding accepting my decision with caveats. Our rules simply don't allow for that. What impact accepting my decision might have on any legal claim Mr M and Miss S may want to make is something they'd need to seek legal advice on. My view remains that, at the time of their complaint they weren't too worried about the exposure they'd experienced. As my view regarding delays has also stayed the same, so does my view on fair and reasonable compensation; I recommend that AXA pays £1,500.

“utility bills and gardening costs

AXA said it would reimburse costs totalling £2,925.47 incurred during the time the family lived elsewhere but only up to the date the original lease ended in January 2018.

For the period AXA has considered, I'm satisfied the offered amount is fair and reasonable. I've seen what Mr M and Miss S have asked AXA to pay for and I'm satisfied its settlement is based on costs they wouldn't have incurred but for the claim and living elsewhere. I'm also satisfied that AXA has fairly refused to reimburse costs incurred for work or services that Mr M and Miss S would always usually pay or would have to have paid. For example, the costs Mr M and Miss S paid in relation to maintaining their garden – getting an extra bin and re-seeding areas of lawn due to moss growth as a result of trees. The need for this work and the associated costs didn't arise or become payable as a result of the claim, work AXA carried out or any delay it caused. It was always work Mr M and Miss S would needed to have done, and, therefore, a cost they would always have faced. Having considered everything I'm not going to recommend that AXA pays any more for costs incurred during this period.

However, given I've found that AXA has some liability for the lease having been extended, I'm also of the view that it isn't fair for it to refuse all liability for all other additional costs incurred associated with living elsewhere during that extended period. Following on from my finding above I think AXA should review any costs submitted by Mr M and Miss S as having been incurred between 18 January 2017 and 16 April 2017 (inclusive). It should then

offer to reimburse 50% of any costs accepted as having been incurred due to the extended stay away from home. To any settlement it should add interest on each partially reimbursed amount from the date the related whole cost was incurred by Mr M and Miss S until settlement is made.”*

AXA again said it felt it shouldn't have to pay anything here as it hadn't, in its view, caused delays.

I've set out my final decision regarding delays above. AXA did, in my view, cause delays and it should, therefore, reimburse Mr M and Miss S's losses as I've suggested.

Mr M and Miss S said the charge for the bin was an annual one. So it hadn't asked AXA to pay for a new bin. The alternative, they said, was for their gardener to pay for disposal of waste at the local tip – an expensive exercise.

Upon review I noted that AXA had actually paid for the extra bin. Settlement for this was sent along with the reimbursement for the cleaning bill, but the excess was taken from the total of these sums. Miss S said she recalled receiving a lump sum but didn't know what it was for. I'm reasonably satisfied AXA has paid this sum, and I stand by my provisional findings in any event – it was a cost that Mr M and Miss S would always have likely incurred in relation to the upkeep of their garden – so if AXA hadn't paid it, I wouldn't be asking it to.

“cleaning the rental property

The lease for the rental property required that it be professionally cleaned. AXA agreed this was a cost related to the stay in alternative accommodation that it would need to pay for. Mr M and Miss S have been asked to provide proof they paid £680 for this and the invoice has been sent but this doesn't show when the payment was made. I'm likely to recommend AXA pays this sum, plus interest from the date of payment until settlement is made (if it hasn't done so already).”*

AXA confirmed that this sum, net of the excess was paid in June 2019. Mr M and Miss S said they recall receiving a lump sum but weren't sure what that was paid in respect of.

As I said above the sum paid in June/July 2019 comprised the cleaning bill and green bin amount, less the excess. I'm reasonably satisfied AXA has paid this sum and Mr M and Miss S have received benefit of it. If they check their records and find they haven't they should show proof to AXA.

If interest wasn't added then AXA should pay an amount in that respect now on the cleaning bill amount. Simply it should have reimbursed this cost sooner. On review I can see Miss S paid the bill 1 May 2018, so interest* will have to be calculated based on the bill amount from then until settlement was made.

“main kitchen

There's no allowance within AXA's settlement for reinstating the kitchen, even though it accepts that some carcasses were swollen as a result of the water incident. Mr M and Miss S had the kitchen replaced in its entirety. They said there was damage to tiles from the strip-out and the units were more damaged than first thought. They upgraded their kitchen but said a like-for-like replacement would cost around £12,000, plus labour, tiling and fitting of a breakfast bar.

I think AXA should have made some settlement regarding the kitchen, considering it accepted there was some damage. But I'm not persuaded by what I've seen that it should reasonably have agreed to its complete replacement.

The only damage I've seen regarding tiles is one missing and some loose ones around the breakfast bar area. But another photograph, also after the ceiling was taken down, shows the missing tile in place. I'm not convinced this damage resulted from the ceiling being taken down in a careless manner. Even if I could be persuaded that was the case, I think these could have been repaired. And even if they couldn't then a compromise could have been reached for replacing the tiles in that small isolated area.

The units accepted as damaged by the incident are separate from the rest of the kitchen. I've seen no proof that other units were damaged, that doors were affected or that worktops and the like couldn't be re-used. I've also not seen proof that the sink was damaged or any of the appliances. I note the extractor was covered in dust and debris when it was taken down but there is nothing to show this didn't work or that it had been materially affected by the dust.

Both parties have seen the like-for-like quote for replacing the kitchen units. I'm going to ask AXA to go through this highlighting what was required to resolve the water damage it accepts had occurred in the kitchen. For the avoidance of doubt I think at least the carcasses to the left of the door likely needed replacing. Once AXA has done that and given a total, I'll share it with Mr M and Miss S for them to comment upon. I'll then decide what I think should be paid."

AXA hasn't created a cost at this stage. It will now need to do that following my decision, if Mr M and Miss S accept it and if it agrees to honour my findings. In doing that it will have to take into account the policy wording regarding matching sets which says it won't pay for undamaged but matching items unless they are part of a bathroom suite or fitted kitchen.

Mr M and Miss S argued that an inappropriate non-matching repair would devalue their home and they shouldn't have to live with such when damage was caused by AXA's contractors. Likewise any usual arrangements for settlements regarding loss of match shouldn't be applied where the loss is due to the insurer's failures. The extractor was clearly full of debris, as was the sink, and appliances were affected too. AXA could have tested if it had wanted to but didn't. Mr M and Miss S said they've recently been told the worktops can't be removed to allow for the cupboards to be replaced and then re-used, and they've likely warped anyway. They've been told the whole kitchen does have to be replaced for hygiene reasons.

An inappropriate repair wouldn't be satisfactory – but given the location of the damaged tiling in particular, I'm not convinced that it would be impossible to find an appropriate repair. And as I said provisionally, I'm not convinced that these tiles were damaged by the strip-out work. I'm not convinced that any loss of match has been caused by AXA's failures. When AXA reviews the scope it can consider whether the appliances were likely damaged and in need of replacement. It hasn't tested anything to date but if Mr M and Miss S say they need replacing it is up to them to show this. The fact of the extractor and sink being covered in debris doesn't mean they were irrevocably damaged as a result of that. It is sometimes necessary to prop worktops whilst cupboards beneath are replaced. They don't always have to be removed and re-fitted. I haven't seen evidence they're warped but again AXA can consider this.

AXA didn't think the kitchen needed replacing, on account of hygiene grounds or anything else. I haven't seen an expert opinion that this is most likely necessary. If Mr M and Miss S have it they can send it to AXA for it to consider alongside the estimate when determining what should be paid. Based on what I've seen, to date, I'm not persuaded to change my provisional findings.

“wardrobes

These were removed by AXA and couldn't be re-fitted. AXA said it would only cost £200 to replace them. There were four wardrobes and it isn't clear to me if the £200 stated by AXA is for all four or each. Either way, I think that is likely to be insufficient; timber alone, even for the smallest wardrobe (which seemingly had little fittings internally but included double doors top and bottom and an end panel), would likely cost that much.

Miss S provided evidence to show they had been professionally fitted wardrobes which would cost, based on sale prices in January 2018, £10,514 to replace. Her evidence consisted of an estimate from the national retailer with a comment on it that it was re-fitting on a like-for-like basis to the original.

I'm not persuaded this means the wardrobes were definitely supplied by that retailer originally. A salesman could view photos and conclude that looks like something it may have provided – but I bear in mind comments AXA's made about the age of the wardrobes and that the smallest one at least seems to have just been a shell, which is not the type of fitment normally provided by this retailer.

So I'm not persuaded by either party's assessment of value and I'm not in position to put an actual price on this work. To draw this matter to an end I'm going to recommend that AXA pays Mr M and Miss S £5,000 to reinstate all the wardrobes, less any amount already paid. This figure is roughly half way between what Mr M and Miss S want and what AXA has said it would pay. It reflects the inadequacies in evidence from both sides and that four wardrobes, one of which at least was a fairly substantial installation with mirrored doors, need replacing.”

AXA said it still thinks the proposed costs are unrealistic. Whilst I've referred to timber it thinks the small wardrobe was made of nothing more substantial than vinyl wrapped chipboard. It feels £1,000 is a more reasonable sum.

I understand AXA's concerns but its opinion on this hasn't changed my mind that a sum of £5,000 constitutes a fair settlement here. Whether the small wardrobe was timber or chipboard, I can't see it could have been reconstructed for £200. And there were three other wardrobes to consider too, one of which was mirrored. AXA hasn't convinced me that those three, plus the smaller wardrobe, could most likely be replaced on a like-for-like basis for less than £5,000.

Mr M and Miss S said they felt the evidence from the previous house owner, who had confirmed the wardrobes had been purchased from the retailer that had quoted for replacements, had been ignored. I did consider this previously but noted it was a short email with little detail, and from the owner's daughter, not the owners themselves, and based on her recollection. It wasn't, in my view, reliable or persuasive evidence.

“underfloor heating

Miss S said this was damaged during strip-out works as insufficient protection was provided to the floors. Her expert report and invoice for repair, totalling £382.25, refers to repair of a loop damaged during strip-out works. AXA hasn't presented anything to make me doubt this finding.

I'm going to recommend that AXA makes a payment in this respect, plus interest. Seemingly it should've taken more care when stripping the home.*

electrical work

AXA allowed just over £3,000 for this in its settlement, but said the contingency of just over £5,000 could be used too. Mr M and Miss S's bill for electrical work came in at around £17,000. AXA said it included uninsured work – for example more lights in the kitchen and hall than there had been before.

I note that Mr M and Miss S have said changes were made to account for current regulations – so wall lights were not reinstated. I'm not convinced though that accounts for the changes made or that the installation completed at the property was the best like-for-like work that could be done having taken into account the necessary regulations.

But it was reported that at least part of the reason for additional costs was that the property needed re-wiring. Seemingly the cabling for lights had been cut during the strip-out work and the cabling for sockets as well as the fuse-board needed updating.

I've not seen that the insured work necessitated any repairs to the sockets. Nor have I seen that these or the fuse-board had to be updated in order to allow insured work to complete. But it was AXA that stripped the property.

Therefore, I don't think AXA is responsible for any costs related to updating the sockets and fuse-board. But I am going to recommend that AXA makes an additional payment to cover the cost of re-wiring work necessary to reinstate the lights as they were before."

AXA said it would agree to this, as long as it's satisfied the contingency has been expended elsewhere, otherwise the funds for this should come from that.

Mr M and Miss S said their quote was like-for-like, all sockets on the second floor had been removed and had been damaged by the leaking water anyway. The electrician had recommended re-wiring to resolve the issue caused by the cut lighting cables and the insured repairs couldn't be done without replacing the old wiring and fuse-box.

The electrician's report shows all sockets needed upgrading. AXA wouldn't in my view, need to do that. But it would need to replace sockets that it stripped out, as I said it would regarding the lighting cables. The report does recommend re-wiring due to the lighting cables having been cut but doesn't explain why. And the fact some cables for one particular part of the wiring installation have been cut doesn't seem to naturally or obviously result in a conclusion that the whole installation needs fixing as a result. Or that resolving the cabling and/or sockets, couldn't be done without everything else being done too. Regulations might require that, as Mr M and Miss S have suggested, but I haven't seen an expert opinion demonstrating that.

If Mr M and Miss S accept my decision and AXA agrees to honour my recommendations,

then AXA will have to determine the price for the work I've said it must cover the cost of and whether any part of that has been covered already by the settlement previously made. The settlement didn't include anything for light fittings. It will need to factor a settlement for fittings into its consideration.

But I'm not going to allow AXA to take the contingency money into account here. This was a large complex and costly job, the £5,000 contingency amounting to only a fraction of the overall cost of insured work. I think it would be highly unlikely for such a large job to not encounter unforeseen costs along the way. On balance, given the sums and work involved, I'm satisfied the contingency was most likely required for insured work.

That means I'm not going to add an allowance into my recommendation regarding the contingency. In my view that consideration isn't necessary. Therefore, AXA will need to calculate what it owes Mr M and Miss S given what I've said it reasonably needs to provide settlement for. In doing that it can, of course, take into account the original settlement it made and what that covered.

"missing keys

AXA agreed, during our involvement, to cover the reasonable replacement cost for missing window keys under the policy. I think that's reasonable. But Mr M and Miss S said many internal door keys had gone missing too. However, the policy only covers the cost of replacing locks where keys for external doors are lost or stolen. As there were many contractors working in the property, not all appointed by AXA, it isn't possible to say AXA is most likely responsible for the internal door keys being missing. And the policy doesn't offer cover for the cost of replacing those locks. Therefore, I'm only going to make a recommendation to AXA to cover the reasonable replacement cost of window locks."

Mr M and Miss S welcomed this finding as far as it went. But said nothing should be done under the claim or policy and, in fact, AXA should replace all locks as it was its contractors that lost the keys.

The difficulty for Mr M and Miss S in this regard remains that I'm satisfied that contractors on site weren't entirely working for AXA or solely acting as its agents. I can't be satisfied that the loss occurred as a result of AXA's insured work. It may have done. But it is just as possible that it happened during private works when the contractors were acting for Mr M and Miss S. Therefore, I can reasonably require AXA to cover the loss/replacement as part of the claim, but only to the extent allowed for by the policy.

"other minor damage

Miss S says there was damage to the property, such as to the bannister. AXA said damage like this could be picked up and rectified through use of the contingency payment it had allowed for within its settlement. I might be minded to accept this argument, except AXA has also said the contingency could be used towards electrical repair costs. I'm not sure how far AXA expects its contingency to stretch.

But nor is it clear to me what was needed to restore the woodwork or what this would have cost. From what I've seen I think all woodwork was replaced, I'm not sure that was necessary – it seems to me some filling, sanding and re-varnishing might have resolved a lot of the damage reported as having resulted from the ceiling removal. And I'm aware that AXA seems to think a figure of around £1,000 would have resolved the damage. In the

absence of persuasive detail as to the extent of this damage and its cost for repair I'm going to recommend that AXA pays £1,000 to allow for reasonable repair."

AXA again consented to this on the proviso that the contingency has been spent elsewhere, otherwise, it said, the funds for this should come from that.

My view on this point is the same as that set out regarding electrical work. In summary, I'm not persuaded this is a valid argument from AXA, it doesn't persuade me to change my recommendation about this payment.

Mr M and Miss S sent photos showing the extent of damage and explained that they'd tried some localized repair of the woodwork which had been unsuccessful before opting to replace it all. They said the wood had been pristine before AXA stripped the property in a careless manner and they shouldn't have to live with unsightly repairs as a result of that carelessness. Further some doors had warped so couldn't be repaired and some architraves had been disposed of by AXA.

I've reviewed the schedule of works AXA's original settlement was based on. There was some allowance in that for some wood to be replaced and for other wood to be sanded and varnished or painted. Whilst I've seen the photos Mr M and Miss S have sent I'm not convinced they showed more damage than that which is accounted for in the settlement and by the £1,000 I said provisionally seemed fair.

Mr M and Miss S also showed evidence that their kitchen blind was damaged. I told AXA it seemed it had removed this during strip-out work and not stored it properly. I said it should repair or replace this item. In response AXA said it had no comment to make.

"plumbing

AXA agreed to an additional payment in respect of the costs requested by Mr M and Miss S for this of £5,121.25, plus VAT. If this hasn't been paid already I'll likely recommend in my final decision that it is paid, plus interest from the date Mr M and Miss S paid for the work."*

AXA said it agreed with my findings and didn't say this had been paid already. Mr M and Miss S didn't object to what I'd said here but added that they have some snagging issues with some plumbing work and they view AXA as being responsible for this.

I don't know the extent of the problems Mr M and Miss S have. I think much of the plumbing work was done following AXA's cash settlement. That being the case AXA has no liability for the work that was carried out, the cash payment ended its liability. If Mr M and Miss S can show AXA that the problems they're now having stem from any of the work its contractor did as part of insured works prior to the cash settlement being made then I'd expect it to consider that.

"annex kitchen

AXA accepted some work was needed here but Mr M and Miss S said that the work couldn't be done as AXA intended as current building regulations wouldn't allow it. The kitchen, at a higher cost than AXA had allowed for, had to be moved to a larger space. I haven't seen any evidence to show the kitchen had to be moved. I'm not minded to make any recommendation in this respect."

Mr M and Miss S explained again why the kitchen had to be moved but said their costs submitted for work were purely like-for-like and didn't include any extra costs associated with moving the kitchen, or the material difference with the new kitchen.

My comments on this issue weren't made as a result of the costs submitted but because Mr M and Miss S had said they wanted to know what AXA was reasonably liable for given they couldn't, in their view, reinstate as before. My position remains that I've not seen any expert evidence showing the kitchen had to be moved. Without evidence I can't fairly adjudge the situation, which in turn means I can't fairly make a finding that recommends AXA makes a further payment in respect of reinstating the annex kitchen.

“bathroom suites

Mr M and Miss S have claimed for reinstating three bathrooms at the property. AXA allowed £6,000 for reinstating two of them. But it didn't give a breakdown of the costs allowed for. It felt the suites didn't need replacing, whereas Mr M and Miss S said they did as they were damaged during strip-out and/or when they were removed for other work to be done. AXA's costs not being broken down is problematic for it – but for me to recommend it pays more I still have to be satisfied that insured work Mr M and Miss S had to carry out likely cost more than this sum.

In all three bathrooms the top row of tiling was damaged when AXA's contractor removed the ceilings. Mr M and Miss S, using their contractor, completely re-tiled the bathrooms and the suites were taken out to facilitate this. When the suites were removed, unavoidable and irreparable damage was done and so the suites were replaced. But they also reported some staining and impact damage from the ceilings being taken down and that one shower wasn't working. In addition the configuration of the annex room was changed, with a wall being taken down and fixtures moved.

I'm not persuaded that the bathrooms needed complete re-tiling due to the top row of tiles being damaged. That seems quite drastic – cornicing or an alternate tile could have been used at ceiling height. And Mr M and Miss S's report also confirms that taking the suite out wasn't necessary for re-tiling the room. And I'm not persuaded the suites were damaged when the strip-out work was completed either. Whilst Mr M and Miss S report one toilet seat was damaged, that wouldn't have necessitated a whole new toilet. So I'm not persuaded that the insured work that Mr M and Miss S completed at their home likely cost more than the £6,000 allowed for by AXA.”

Mr M and Miss S have raised similar arguments as they have in response to other provisional findings I've made. Essentially that they couldn't make appropriate matches and they shouldn't have to put up with poorly matched items or things that were different to that which they had before due to AXA's failings. But also that the policy covers for undamaged matching parts of a bathroom suite.

I'm still not convinced that AXA caused any loss of match to occur. And even if it did, or a loss occurred as a result of the claim, I wouldn't necessarily require an insurer to resolve that by reinstating everything. Even where a policy allows for such. It is my role to make a fair and reasonable decision, even in respect of policy wording. It wouldn't be fair for a settlement to be made that was disproportionate to the loss caused. For example, a broken toilet seat that has to be replaced but which can't be exactly matched. A toilet seat costs relatively little and it would be easy to find something that contrasted or went with the room, even if it didn't exactly match the suite. This would be different to what was there before but

living with that would be a fair compromise. The alternative, in terms of work and cost, to replace the whole suite and all that goes with that, wouldn't be fair. It would be disproportionate to the loss, which is the dissatisfaction of living with the change. There's no evidence that such a change would devalue the home. Or cause any other loss. And my view here extends to the situation with the tiling.

Having reviewed matters I'm not convinced that Mr M and Miss S's reasonable costs for reinstating their home following the water leak extended beyond that allowed for by AXA. I'm not going to recommend it pays anything more.

"bi-fold doors

AXA seemed to think Miss S had suggested it had agreed to pay for these. I'm not persuaded that is the case. I think the confusion has arisen because there was an uncertainty whether this private work could be factored into the insured repairs whilst AXA's contractor was still carrying out that work. As it was, Miss S got them fitted privately in the gap of time between AXA's contractors leaving site and it offering a cash settlement for the reinstatement work.

other damage

Mr M and Miss S say the driveway and fireplace were damaged during the work, as well as various instances of damage occurring around the house, such as but not limited to; chipped and cracked tiles (other than tile damage I've mentioned already in the kitchen and bathrooms), the shower door and the toilet flush. I'm not going to make AXA do anything regarding any of this reported damage. I simply don't have enough evidence to persuade me that it was either done during the course of the repair, or done by AXA's contractors working solely for it, or, if it was, due to negligence."

Mr M and Miss S said they were disappointed by my findings in this respect. They said there was plenty of evidence that showed AXA hadn't taken care of their home. And setting aside for a minute the issue of care and who had caused the damage, the driveway had certainly been subject to increased use during the claim so that should be taken into account with any damage being settled for.

The overriding difficulty I have with attributing damage to AXA is that, as explained above, not all contractors at the property were working for AXA, and even those that did carry out some work on behalf of AXA, also then, at times, acted directly for Mr M and Miss S. Whilst not wishing to disappoint Mr M and Miss S, I'm not going to say AXA should accept liability for these issues. If the driveway was used more and suffered wear as result, that is on account of the claim and/or private work. That isn't something AXA needs to offer settlement or compensate for.

"professional fees

AXA agreed to pay 10% of the net contract value to allow for surveyor's fees. Mr M and Miss S want that to extend to the settlements I've suggested AXA should make as part of my decision. I see no good reason not to suggest AXA pays this; as I understand it the policy allows for it and AXA was happy to offer it initially. To be clear though not all of my awards are to do with the contract value for insured work or reinstatement necessary due to AXA's failure to take care when stripping the property. So the 10% wouldn't, for example, apply to any settlements I've suggested are made to account for financial loss or contents items."

VAT

In response to my provisional findings Mr M and Miss S said they expect AXA to pay them VAT on everything as AXA can then claim this back, whereas they cannot.

Whether AXA can reclaim VAT isn't relevant to whether or not it should pay such in settlement of the claim. It's quite standard for an insurer to make settlement against estimates for repair less any VAT shown on the paperwork, until such a time as it's shown that a cost regarding VAT has been incurred. I haven't seen that AXA's settlement was unfair in terms of VAT i.e. that it didn't pay VAT even though a cost for this was incurred by Mr M and Miss S.

claim costs

In response to my provisional findings, Mr M and Miss S have asked that AXA record any costs related to its damage and delay outside of the claim and policy. They don't want the non-water damage related costs to affect their cover, including the premium.

It is the case that most insurers record all costs related to a claim, howsoever caused. That's because it all relates to risk. But it's also often the case that insurer's price for cover is based on whether there have been claims made, or sometimes if costs have passed a certain threshold. What insurers view as relevant, including what if any threshold is applied, varies. But the total value of the claim usually isn't relevant. At this stage, I haven't seen that Mr M and Miss S's policy has been or most likely will be affected because of costs attributable to AXA's unfair actions during the course of the claim. Therefore, I'm not going to make any recommendation against it in this respect.

change in outcome from investigator's findings

In response to my provisional findings Mr M and Miss S said they felt my change in position from that stated by the investigator showed a lack of consistency. They said they hoped that as part of my final review I'd revert to the investigator's findings.

I appreciate my view of the complaint has disappointed Mr M and Miss S, and I'm sorry for that. But this service operates a two-stage process whereby if the parties don't agree to settle following our investigator's involvement the case is reviewed by an ombudsman. That is a complete review, from the top. Whilst we strive for consistency across broad complaint issues, the point of the second stage review is that it brings a fresh set of eyes to the situation. On occasion that means issues are viewed differently. On a complaint of the magnitude of Mr M and Miss S's, I'm not surprised that I didn't agree entirely with our investigator's view. But I remain satisfied, as stated provisionally and now here in my final decision, that my findings are fair and reasonable in the circumstances of this complaint.

court action

I'm aware that Mr M and Miss S felt that if my provisional findings didn't change and result in a markedly increased recommendation, they'd be unlikely to accept my final decision. My final findings haven't resulted in my markedly increasing my recommendation as to what I think AXA should pay. Regardless of how Mr M and Miss S feel about my findings, as there is so much at stake, I think they'll likely want to obtain legal advice before deciding what to do. To facilitate that I've set the decision deadline to two months (it's usually one).

my final decision

I uphold this complaint in part. However, as AXA Insurance UK Plc has already paid £160,200, during our involvement and which is above our award limit, my upholding of this complaint is restricted in that I can only recommend that further payments and/or actions that will likely result in payments are made.

Therefore, I *recommend* that AXA Insurance UK Plc:

- Pays Mr M and Miss S £17,360.04 for replacement carpets, plus interest* from 15 July 2018 until settlement is made.
- When considering the contents claim, accept the damaged curtains and poles were damaged by it and make settlement accordingly.
- Pays Mr M and Miss S £1,500 compensation.
- Reimburses half of any costs incurred by Mr M and Miss S in respect of rent, storage and duplicated bills (across the two properties), for the period 18 January 2018 until 16 April 2018. Plus interest* from the date each partially reimbursed amount was paid until settlement is made.
- Reimburses half of any reasonable additional costs incurred by Mr M and Miss S in respect of utility and gardening bills that they otherwise wouldn't have had to pay if they weren't living elsewhere, between the period 17 January 2018 and 16 April 2018. Plus interest* from the date each partially reimbursed amount was paid until settlement is made.
- Reimburses Mr M and Miss S the £680 paid for cleaning the alternative address, if they show that this hasn't been paid already.
- Even if the £680 (less the excess) has been paid, if interest wasn't added pay an amount equivalent to interest* on the sum of £680 from 1 May 2018 (the date the bill was paid) until settlement is made.
- Pays an amount for reinstating the main kitchen, taking into account my comments above.
- Pays £5,000 for reinstating wardrobes.
- Pays £382.25 for fixing the damaged underfloor heating, plus interest* from the date this was paid for until settlement is made.
- Pays an additional amount, in line with my comments above, to account for necessary electrical work not yet accounted for.
- Pays an amount to replace window locks.
- Pays £1,000 in respect of repairing woodwork.
- Repairs or replaces, as necessary, or pays Mr M and Miss S to repair or replace as necessary, the damaged kitchen blind.
- Pays £5,121.25, plus VAT for agreed additional plumbing work, plus interest* from the date this was paid for until settlement is made.

For any additional costs for buildings reinstatement work, found due here, or that are found to be due as the result of any further review recommended here, pay an amount equating to 10% of their cost to Mr M and Miss S, to account for professional fees.

As this is a recommendation only, even if Mr M and Miss S accept this decision within the time limit set, AXA Insurance UK Plc will not be bound to follow my recommendations. If Mr M and Miss S accept my final decision, and AXA Insurance UK Plc chooses not to follow

my recommendations, it's doubtful that Mr M and Miss S will be able to pursue it in the courts. They may wish to take legal advice before making any decision about what to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss S to accept or reject my decision before 17 December 2019.

Fiona Robinson
ombudsman

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If AXA Insurance UK Plc considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr M and Miss S, it should tell them how much it's taken off. It should also give Mr M and Miss S a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.