

The complaint

Mr and Mrs N complain AXA Insurance UK Plc have offered an unfair settlement to their home insurance claim.

All references to AXA also include its agents.

What happened

The details of the complaint are well known to both parties, so I won't repeat them in detail here. The following is a summary of the events that led to this complaint.

- Mr and Mrs N took out the policy in 2018
- Mr and Mrs N's home is insured, but also includes an annex they rent out as a holiday home
- In February 2020, the annex was damaged during a storm and Mr and Mrs N initiated a claim with AXA
- After inspecting the annex, AXA concluded Mr and Mrs N were underinsured by 72% for cover relating to outbuildings – which includes the annex
- Under the terms and conditions of the policy. AXA said it would settle the claim proportionately to the amount Mr and Mrs N was underinsured
- Mr and Mrs N disputed the figure offered by AXA, and appointed their own surveyor
- Based on the figure provided by Mr and Mrs N's surveyor, they say they were only underinsured by 34%
- Mr and Mrs N said they previously consulted their own surveyor regarding costs of rebuilding the main property, and the amount of outbuildings cover needed when taking out the policy

Our investigator recommended Mr and Mrs N's complaint be upheld. He said Mr and Mrs N had taken reasonable steps to ensure the figure they gave was correct when taking out the policy. So he didn't think it was fair for AXA to apply the clause.

He recommended AXA pay the full claim, up to the level of cover and refund the cost of the surveyor's report incurred by Mr and Mrs N.

AXA didn't agree with our investigator. It said the information set out when the policy was taken out would have given Mr and Mrs N clear guidance on how to correctly calculate the amount of cover they needed.

AXA also disagreed with accuracy of the information provided by Mr and Mrs N's surveyor. It said the figure provided was for a new build and didn't consider the listed status of the

property.

The complaint then passed to me.

My provisional findings

I issued a provisional decision on 28 May 2021. In my provisional findings, I said:
"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

I've seen screenshots of the questions Mr and Mrs N would have seen on screen when taking out the policy.

From looking at the information available, I'm satisfied AXA provided clear guidance on how Mr and Mrs N can give accurate information on rebuild costs. The screen shot sets out options for the main building and the outbuildings. And there is information clarifying how a customer can calculate costs – such as a recent surveyors report or mortgage valuation or referring to the calculator on the Chartered Institute of Surveyors website.

Mr and Mrs N confirmed they didn't do any of the above but did seek advice from their own surveyor on the cost of rebuilding the outbuildings – which was provided to them verbally. Considering the rebuild costs quoted by both parties differs significantly to the amount insured, I'm satisfied the question asked was answered incorrectly by Mr and Mrs N. As AXA have confirmed this would have impacted the premium they would have charged, this could be classed as a qualifying misrepresentation. However, considering the circumstances I don't think Mr and Mrs N deliberately intended to provide false or misleading information to AXA.

The clause

AXA are relying on a clause in the policy which says if a customer is underinsured, any claim that is settled will be reduced in proportion depending on how underinsured they are, regardless of the amount of the claim.

Looking at the relevant law, I think The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) would apply here and takes precedence over the clause. However, in this instance, the remedy would be similar given Mr and Mrs N made a qualifying misrepresentation and AXA has confirmed it would have charged more for the policy. As a claim has been made, the appropriate remedy under CIDRA would be for AXA to make a proportionate settlement to Mr and Mrs N.

The settlement

The main area of dispute lies in the figures provided regarding the rebuild of the outbuildings at the property, and therefore the percentage to be paid out on the claim.

AXA have provided a breakdown of the rebuild costs for each area considered outbuildings to the property. Mr and Mrs N disputed this, so obtained a quote from a surveying company. Mr and Mrs N's quote doesn't contain detail of the author, or their relevant qualifications, but does provide a breakdown of the costs of rebuilding the outbuilding – which it estimated to be around £113,000.

However, the report doesn't include the total costs of all outbuildings defined in the policy. The report also says the rates for building work reflects standard construction – which doesn't appear to recognise the grade 2 listed status of the property (which is set out in the

policy certificate). I can see there are also several exclusions from costing listed at the bottom of the report.

So I'm not persuaded the costing provided in the report is an accurate reflection of the total rebuild cost of outbuildings defined in the policy.

AXA's report does appear to consider the listed status of the property and as such I think, it's more likely than not the value it provides is an accurate reflect of the rebuilding costs. In light of this, I'm not intending to ask them to change this.

So for the reasons I've set out above I think AXA's proposal to settle the claim in the way it has offered is reasonable."

Responses to my provisional decision

Mr and Mrs N didn't agree with my provisional findings. They reiterated that the figures they gave when they took the policy had been provided by a qualified surveyor who deals with grade 2 listed properties. They also provided additional points for me to consider including:

- The outbuilding is not grade 2 listed, only the main house, so Mr and Mrs N said the rebuild cost would be much lower
- AXA didn't carry out a survey of the outbuilding or the house. Mr and Mrs N said the representative from AXA who did attend didn't have any knowledge of the local area or property rates, and their valuation was based on a guess

I put Mr and Mrs N's comments regarding the question of the listed status of the building to AXA. AXA said the report provided by Mr and Mrs N doesn't reflect the listed status of the property – and that their stance remained the same.

I will now consider all information provided by both parties in my final decision.

What I've decided – and why

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

I've considered what Mr and Mrs N said, but it doesn't change my decision – or my reasoning.

I appreciate Mr and Mrs N have reiterated the reason they gave the value they did at the time the policy was taken out. However, for the reasons set out in my provisional findings I remain satisfied the claim should be settled in line with the remedies available under the *The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA)*.

Mr and Mrs N have argued the outbuilding doesn't have listed status and therefore the rebuild value would be lower. The listed status of a main property would usually mean similar considerations would need to be given to any outbuildings as these would need to be in keeping with the main property. I haven't seen any information that persuades me the outbuilding is not subject to these or similar considerations.

Although the person who attended the site on behalf of AXA wasn't a surveyor, a surveyor did issue a report using information taken during AXA's visit to the property. From looking at all the information available to me, and for the same reasons as set out in my provisional findings I think it's more likely than not the value AXA provided is an accurate reflection of

the rebuilding costs. Considering this, I'm not intending to ask them to change this.

Putting things right

AXA should settle the claim in how I've set out in my provisional findings

My final decision

My final decision is that I uphold Mr and Mrs N's complaint. AXA Insurance UK Plc should settle things in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Ms N to accept or reject my decision before 7 July 2021.

Michael Baronti
Ombudsman