

The complaint

Mr and Mrs G are unhappy with how AXA Insurance UK Plc ('AXA') dealt with a claim they made on their home insurance policy. They say AXA has only offered to proportionately settle the buildings part of this claim.

AXA are the underwriters of this insurance policy. In my decision, any reference to AXA also includes the actions of their associated agents.

What happened

The background to this complaint is well known to both Mr and Mrs G and AXA. I won't repeat in detail what is already known to both parties.

In December 2019 Mr and Mrs G purchased this policy. In February 2021 Mr and Mrs G suffered storm damage to their property and outbuilding. On 21 February they contacted AXA to register a claim on their policy.

Mr and Mrs G said they'd been in touch with a previous insurer to find out if they were still covered. They also have since said that a previous landslip or subsidence problem (which wasn't claimed for with AXA) hadn't been declared when taking out this policy.

AXA were made aware of this and then put the claim on hold temporarily. AXA say an exclusion was applied for subsidence, backdated to policy inception.

AXA arranged for a loss adjuster to visit Mr and Mrs G's property to assess the damage and claim. On 15 March an offer was made to settle the claim, but as AXA found Mr and Mrs G were 'underinsured', they then offered to proportionately settle the claim. Mr and Mrs G rejected the settlement as they felt it didn't cover their loss.

Mr and Mrs G expressed unhappiness at how the claim was being handled and the time it was taking to be resolved. Following some further communication between both parties - including quotes obtained for repairs to the flue for their cooker, the loss adjuster made an increased offer.

Mr and Mrs G say that the length of time taken to resolve the claim meant they had to go ahead and arrange repairs, discard some contents that had been exposed to further adverse weather and were unable to use their cooker which they relied on for fear of fumes entering their house. They also say they weren't sent a contents claim form after having requested it multiple times and have referred to their circumstances meaning this experience was extra difficult for them.

AXA partially upheld their complaint and offered Mr and Mrs G £250 for any trouble and upset caused. Mr and Mrs G remained unhappy and asked our Service for an independent review. Our investigator considered the evidence but didn't recommend that the complaint be upheld. As Mr and Mrs G did accept the investigator's recommendations the complaint was passed to me for a decision.

In my provisional decision I outlined my intended findings and both parties were given another opportunity to respond with any further comments or evidence by 24 March 2022. Both parties confirmed receiving the decision. AXA requested an extension to respond.

I granted a very short extension - until 30 March 2022, but AXA didn't respond by that deadline. I've now reconsidered the complaint for a 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.

As neither party has responded with any material new evidence, I see no fair or reasonable reason to deviate from my intended findings as outlined in my provisional decision. When considering AXA's request for an extension to respond (which I partially granted) I kept in mind that AXA are the experts in this relationship with Mr and Mrs G and should be aware of the approach they should've followed under CIDRA.

My provisional findings form part of this, my final decision - so for ease I've included a copy below.

Copy of provisional findings:

"I'm sorry to hear of the storm damage Mr and Mrs G have suffered. Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. However, I've given careful consideration to all of the submissions made before arriving at my decision. I won't comment on every point raised as part of this complaint. This isn't meant as a discourtesy, but it simply reflects the informal nature of our service.

Given that AXA accept this damage being claimed for caused by a storm, I need to only decide if the claim has been settled fairly and reasonably as well as how AXA have treated Mr and Mrs G overall.

AXA have referred to the actions they took regarding previously undisclosed land slip or subsidence. Based on what I've seen, an exclusion was applied to this policy and backdated to the beginning. I haven't seen any evidence that the exclusion has had a material impact on the approach AXA have taken to settling Mr and Mrs G's claim. Therefore I won't comment further on it in this decision.

The under insurance and how AXA settled the claim

The starting point in this complaint is the non-disclosure of information when taking out this policy. AXA have chosen to apply the 'average clause' – that is, where underinsurance occurred they've chosen to settle the claim proportionately against the underinsurance value.

Generally in insurance claims, in this type of situation, insurers will follow The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). AXA should be familiar with the approach our service follows in these types of complaints.

As AXA chose to not follow CIDRA as expected, for completeness and to ensure Mr and Mrs G haven't been disadvantaged by the approach taken, I've had to consider what the end result would've been had AXA followed the remedies as set out under CIDRA. Under CIDRA I'm specifically considering the under insurance and not the non-disclosure of the

subsidence - as I'm satisfied that doesn't impact this claim.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

AXA thinks Mr and Mrs G failed to take reasonable care not to make a misrepresentation when they answered a question about the cost of rebuilding their property (including their outbuildings).

I've looked at screenshots of the question asked at the time of application. The question asked was: 'Your policy includes £7,500 cover for rebuilding or repairing all detached outbuildings. Is this sufficient?'. There were two options to select from 'Yes' or 'No' and below this a brief explanation given of what outbuildings included. It seems Mr and Mrs G selected the 'Yes' option for covering being sufficient.

I'm satisfied that AXA asked a reasonably clear question and think that Mr and Mrs G didn't take reasonable care to answer it accurately.

Mr and Mrs G will also note that I haven't referred specifically to the policy wording for 'outbuilding'. That's because our Service can't tell insurers how to set their policy terms or define certain terms. But I'm satisfied that the application and policy terms made the definition clear.

AXA have provided evidence in the form of their loss adjusters report that the actual cost to rebuild the outbuilding would've been much greater – almost £40,000.

AXA have also told us that had a more accurate rebuild estimation at the point of sale would've resulted in a higher premium being charged – but not actually disclosed what the higher premium would've been.

This means I'm satisfied Mr and Mrs G's misrepresentation was a qualifying one. I'm also satisfied that this was a careless misrepresentation by Mr and Mrs G rather than deliberate or reckless. I say this because I believe that it was a simple mistake by them. As I'm satisfied Mr and Mrs G's misrepresentation should be treated as careless, I've looked at the actions AXA can take in accordance with CIDRA.

Under CIDRA, where there was a qualifying misrepresentation and AXA would've still offered cover but with a higher premium, AXA should settle the claim proportionately taking into account what premium would've been charged had the correct insured value of the property been declared. Instead, AXA have chosen to rely on the averages approach. The averages approach is where AXA have offered a settlement only considering what cover Mr and Mrs G actually had paid for.

Before coming to this provisional decision I made two information requests to AXA to determine what the outcome would've been for Mr and Mrs G had the approach set out

under CIDRA been followed. Neither information request was responded to satisfactorily. This is most disappointing as it has delayed the timely resolution of this complaint which has already been ongoing for some time.

Therefore - for completeness, my current intended direction for this part of the complaint is that AXA should calculate how the claim would've been settled had the remedies set out under CIDRA been followed - rather than the averages approach:

- should this result in a more favourable outcome for Mr and Mrs G, then AXA should settle the claim in this way (following CIDRA) and add 8% simple interest to the difference between the 'averages approach' claim settlement figure and the higher figure reached by following CIDRA*
- if following CIDRA doesn't result in a higher claim settlement - in the interest of fairness, AXA should allow the claim to settle based on the averages approach they've already taken. This is to ensure Mr and Mrs G aren't negatively affected by having raised a complaint.*

How AXA handled the claim

It's not in dispute that there were delays during the course of this claim. For reference, the claim was made in late February 2021 but the evidence I've seen suggests it was still ongoing many months later. AXA accepted in their final response letter that the service delivered fell below what they expected and offered Mr and Mrs G £250 compensation.

Whilst its positive that AXA recognises the impact of how they handled things, I don't believe this goes far enough to recognise the impact on Mr and Mrs G and that some of these delays were avoidable.

When considering this complaint I've kept in mind the ages of Mr and Mrs G. AXA were aware of this and I can see they recorded a vulnerability marker on their case file on 10 March. However, I've not seen that any actions taken afterwards recognised that Mr and Mrs G were vulnerable. For example, I've noted that Mr and Mrs G let AXA know very early into the claim about the flue issue meaning fumes were entering when it was used. This was also identified by a surveyor on 1 March. But this issue dragged on for weeks afterwards and given that Mr and Mrs G relied on the cooker for heating and cooking, I find the impact of this delay great on them.

Mr and Mrs G have referred to the surveyor's schedule of works stating that a specialist would attend site to review the flue. But they had to chase AXA on this issue a number of times and ultimately arranged a specialist themselves.

A phone note between Mr and Mrs G and AXA from 30 April refers to a discussion about them not being without cooking facilities as they have a small convection oven and a microwave. The note also refers to using a portable heater. Given how long they'd been without the safe use of their cooker at this point, I don't find this satisfactory. To further compound this issue, AXA then included the costs of repairs to the flue in the offer for the main house. In all, the flue wasn't repaired for approximately a few months after the claim was made. This, in my opinion is an unacceptable delay caused by the how the claim was dealt with.

As another example, there appears to have been a misunderstanding between AXA and Mr and Mrs G about who was actually going to repair the flue.

I've also noted that there were delays in AXA processing the contents claim form and

repeated requests from Mr and Mrs G to be sent this document. In that time (and because of the delays in settling the outbuildings claim) further damage occurred to some contents which had to be disposed of. I've not seen AXA sufficiently acknowledge this as part of their investigation. Again, bringing back into focus the policy holder's vulnerabilities, I find that AXA ought reasonably to have dealt with this issue much sooner.

Summary

Claim settlement

I currently intend to direct AXA to calculate if settling the claim by following CIDRA would've resulted in a more favourable outcome than by following the averages approach. If it would've, AXA should now settle the claim by following CIDRA and pay Mr and Mrs G 8% simple interest on the difference from the date the claim settlement was previously paid and the date the increased settlement is paid.

As outlined, if AXA conclude that following the averages approach was more favourable for Mr and Mrs G they don't need to do anything further.

For transparency, a copy of the updated calculation (regardless of the outcome) should be communicated to Mr and Mrs G.

How the claim was handled

Given the length of time this complaint had been going on and the known vulnerabilities of Mr and Mrs G - as well as poor communication on occasions, I don't find the compensation offered fair, reasonable or proportionate. I currently intend to increase the compensation for trouble, upset, frustration and annoyance caused by how AXA handled this claim by an additional £250. This will mean an overall total of £500 (if AXA have already paid Mr and Mrs G £250)."

Putting things right

AXA should now calculate if settling the claim by following CIDRA would've resulted in a more favourable outcome than by following the averages approach.

- If it would've, AXA should settle the claim by following CIDRA and pay Mr and Mrs G 8% simple interest on the difference from the date the claim settlement was previously paid and the date the increased settlement is paid.
- But, if AXA conclude that following the averages approach was more favourable for Mr and Mrs G - they don't need to do anything further.
- For transparency, a copy of the updated calculation (regardless of the outcome) should be communicated to Mr and Mrs G.
- AXA should now pay Mr and Mrs G a total of £500 compensation*. This consists of £250 in addition to the previous offer of £250 for how they handled this claim. This is £500 in total.

*AXA previously offered £250, but Mr and Mrs G have suggested that this hasn't yet been paid to them.

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 28 April 2022.

Daniel O'Shea
Ombudsman