

The complaint

Mr B is unhappy that AXA Insurance UK Plc intends to reduce the amount it will pay for a subsidence claim he made on his home insurance policy.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- In September 2019, Mr B took out a home insurance policy for his property through a broker. It was underwritten by AXA. His property was insured for £208,525.
- In July 2020 he got in touch with AXA after he noticed cracking at the property. It appointed a loss adjuster to handle the claim.
- The loss adjuster thought the damage was caused by subsidence and arranged for further investigations.
- It also said Mr B was 'underinsured'. It thought the cost of rebuilding the property was around £357,000. As a result, it said it would pay 58% of the repair cost and Mr B would have to make up the difference.
- Mr B didn't think this was fair and complained to the broker, which I've considered separately. He also complained to AXA. It didn't provide a response in time, so he referred his complaint to this service. AXA then told us it thought the rebuild value was £293,000. That would mean Mr B was insured for around 71% of the repair cost.
- Our investigator didn't think AXA had acted fairly. She thought AXA was effectively saying Mr B had made a misrepresentation when taking out the policy. So it should follow the relevant rules for that situation. And in this case, that would mean settling the claim according to the proportion of premium Mr B had paid, compared to that he would have paid if the property had been insured for £293,000. That comes to 78%.
- AXA disagreed. It said the misrepresentation rules and the policy terms were separate things and it was entitled to rely on the policy terms alone.
- An agreement couldn't be reached, so the complaint has been passed to me.

My provisional decision

I recently issued a provisional decision in which 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 considered the complaint against the broker separately, so I won't go into detail about that here. This complaint is solely about the proportion AXA has offered to pay

for the repair cost. So I haven't gone into detail about what happened during the claim or considered the way it's been handled.

AXA says it relied on a policy term to reduce the amount it would pay for the repairs. In summary this term says that if the amount Mr B is insured for is less than the full rebuilding cost of the property, the claim will be settled at the percentage Mr B is insured for. In this case that's 71%.

I'm satisfied the term is in the policy and is clearly worded. However, in this case, I'm not persuaded it would be fair to rely on it. I'll explain why.

This dispute centres on one thing – the amount Mr B insured the property for when he took out the policy. So, whilst I recognise AXA is only seeking to rely on a policy term, it's ultimately doing so because it thinks Mr B didn't provide the right information at the time he took out the policy. Because of that, I think it's fair to consider what happened at that time, as well as the policy term.

Before the policy started, AXA wanted to know how much it would cost to rebuild Mr B's property and for that figure to be the sum insured.

AXA says £293,000 is a reasonable figure, whilst Mr B insured it for £208,525, almost 30% less. I think that's a significant difference.

AXA has provided evidence to show why it thinks £293,000 is a reasonable estimate of the cost to rebuild the property. It's calculated the figure using guidance and methods provided by an independent and credible source, together with measurements and other details specific to Mr B's property. I'm persuaded it's a thorough and detailed assessment.

Mr B doesn't have any evidence to challenge AXA's valuation or to show why the amount he insured his property for is a more accurate or reasonable valuation.

How Mr B came to be insured for a much lower amount is the subject of his separate complaint against the broker. But, as far as AXA is concerned, he insured his property for £208,525 – and he doesn't have evidence to show why that is a reasonable estimate.

An estimate is a matter of opinion – there won't be one specific correct answer. There's likely to be range of answers that are all reasonable. Because of that, the rules mentioned by the investigator, known as CIDRA, may not be appropriate to consider. Instead I'll decide this complaint according to what I consider to be fair and reasonable in the circumstances. That includes taking into account the approach of this service prior to the introduction of CIDRA.

I'm satisfied AXA's estimate is within the range of reasonable answers as it's based on a thorough and specific assessment and no other evidence has been put forward to challenge it. I'm not satisfied Mr B's sum insured is within the range as it's significantly different. So I think it's fair to consider what impact Mr B's estimate being unreasonable has had.

If Mr B had insured his property for £293,000, AXA says it would have charged a higher premium - £522.53 instead of the £407.04 it actually charged – to reflect the greater risk. That means Mr B paid around 78% of the premium he should have done. AXA is offering to pay 71% of the cost of repair by relying on the policy term.

Whilst AXA is entitled to rely on the terms in its policy, I'm not satisfied doing so would produce a fair and reasonable outcome in this case. It would mean Mr B has paid 78% toward the premium he should have done – but will only receive 71% of the repair value in return. In my view, it would be fair for him to receive the same contribution to the repair cost that he paid for the premium – 78%.

AXA has been clear it intends to apply the proportionate reduction to the final repair cost only – not to other aspects of the claim, such as the investigation costs. I'm satisfied that's a reasonable approach to take.

I understand the claim is ongoing and the cost of repairs is yet to be finalised. Because of that, I think the appropriate remedy at this stage is to set out the proportion of the repair cost AXA should pay when the time comes, rather than award a specific sum of money.

When AXA calculates the repair cost, it should reduce it to 78% *and then* apply the excess.

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.

AXA responded to say it had nothing further to add.

Mr B let us know he accepted the findings of my provisional decision.

As neither party disagreed with or commented on my findings, I see no reason to change my mind or comment further in detail. I remain satisfied it would be fair to uphold this complaint for the reasons set out in my provisional decision.

My final decision

I uphold this complaint and require AXA Insurance UK Plc to settle the claim based on paying 78% of the repair cost.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 July 2022.

James Neville
Ombudsman