

The complaint

Mr G complains that, in respect of his claim for fire damage to his let property, AXA Insurance UK Plc proposes to reduce any pay-out for underinsurance. He also complains about the way it has dealt with the claim. The claim was dealt with in part by loss adjusters, although as AXA is responsible for their actions, for convenience, unless I say otherwise, I shall refer to AXA throughout.

What happened

In August 2021 Mr G's let property was severely damaged in a fire. He made a claim to AXA, who appointed loss adjusters. Following a site visit, a schedule of works was drawn up, but Mr G was advised that the property was underinsured, and that AXA consequently proposed to reduce any pay-out on the claim. He had declared a value for it of £120,000 at renewal before the fire in September 2020. However AXA valued it at £135,000.

Mr G didn't accept this, as he said AXA had the floor measurements wrong. He said an appropriate value was £126,000. AXA suggested getting an independent valuation but Mr G didn't want that as he felt it was just the measurements that were wrong.

The claim stalled because the underinsurance issue couldn't be resolved. AXA proposed the matter on a cash basis, with Mr G appointing his own contractors. But he had wanted AXA to appoint contractors, and AXA's proposed reduction for underinsurance was unacceptable to him.

Mr G referred his complaint to the Financial Ombudsman Service. Our Investigator proposed that Mr G agree to an independent valuation. He agreed to this but was concerned not to be any worse off as a result. Our Investigator pointed out to the parties that their view was based on the result of any such valuation as not putting Mr G in a worse position.

The parties continued to argue over the valuation – Mr G thought that the valuer should simply remeasure the area, AXA said it was to be a full valuation. AXA then attempted to appoint a valuer but the one approached said they had already carried out a valuation. It transpired that after the fire, Mr G had obtained a valuation in readiness for the September 2021 renewal. He agreed to provide that valuation to AXA. That valuation assessed the reinstatement value as of September 2020 to be £179,000.

AXA proposed accepting that valuation. Mr G didn't agree with it, pointing out that he had a number of issues with it. He further said that the matter had caused a great deal of distress to himself and his wife and that he had been paying for counselling sessions.

He further said that he had had to travel to the property every week to check on it, incurring travel expenses and the cost of his time.

Our Investigator said that under the Insurance Act 2015 (IA), by giving an undervalue of the property at his insurance renewal, Mr G had not made a fair presentation of the risk. But as it wouldn't have made any difference to the premium, they said that the contracting out provisions of the IA applied and it couldn't put Mr G in a worse position than the remedies

allowed for by the IA. So AXA wasn't entitled to apply an average (reduce the claim proportionately to any undervalue) to the property settlement. They further said that AXA should pay £500 compensation for distress and inconvenience and additional costs from the property not being tenantable, including travel, council tax, gas, electric and water.

AXA didn't agree that the IA was applicable, as in its view, not declaring the reinstatement value accurately isn't a matter concerned with the fair presentation of risk. It further pointed out that legally it could apply average and that the IA didn't stop it doing this.

I issued a provisional decision. In it I said that I didn't think the IA applied in this case. But I also said that I didn't think it was reasonable for AXA to apply average. So I said it was responsible for the delays in settling the matter. I said it should pay Mr G's expenses and also the loss of rent, and utility costs from the start of the claim until reletting.

Mr G accepted my provisional findings, although he pointed out that our Investigator had also proposed that Mr G appoint his own surveyor, paid for by AXA.

AXA didn't accept my provisional findings. It said:

- It disagrees with what it says is my view that as the policyholder is not a business at his negates the need to provide an accurate assessment (of the rebuild value).
- Having obtained a professional valuation before the 2021 renewal, Mr G chose to ignore that when renewing. Showing that he accepted the risk of underinsurance
- Mr G knowingly withheld information from AXA (independent valuation report) pertinent to both the claim and the complaint. This information only came to light, by chance, when AXA picked the same independent firm to try and resolve the matter. He was therefore deliberately obstructive in reaching the resolution because it appears he was aware the result was not in his favour.
- It did not agree to be bound to the agreement only if this was favourable to the policyholder, to do so is clearly unfair. It believes Mr G attempted to get this agreement as he was already in possession of the independent valuation and knew this was not favourable. The report clearly demonstrates that the valuer was asked to comment on the value back in September 2020. This is not information that would be provided unless it was specifically asked for.
- As Mr G objected to the Value at Risk (VAR) assessment, AXA arranged more involved assessment (by its in-house Surveyors) and each concluded the property was underinsured. And his own independent advice agrees that the property is significantly underinsured.
- Whilst I proposed to disregard the findings of the independent report, I also proposed to use it in part for the calculation of the VAR. It does not feel that this is acceptable.
- Mr G has not attempted to mitigate his loss in any manner. The challenges over the VAR impact the claim payment by only a small percentage and therefore a significant sum of monies is already available for him to progress repairs.
- It disagrees that it is responsible for the delays. It has detailed a timeline of the claim, and from the timeline Mr G was offered cash settlements, three times, which could have been accepted as an interim payment to start repairs whilst conversations were ongoing over the application of average.

- So it disagrees that it should pay compensation or reimburse any losses outside the terms of the policy. In particular only twelve months' loss of rent is covered.
- It proposes that the parties agree to an independent valuation (perhaps of the Financial Ombudsman Service's choosing). Or that the matter proceeds without the application of underinsurance with it providing a cash settlement to Mr G, ignoring any underinsurance.

my provisional findings

I have set those out below italics:

"underinsurance

I don't think that the IA applies here. It is concerned with actions before an insurance contract is entered into (and a new contract arises on each renewal). The insured person must make a fair presentation of the risk. This means essentially disclosure of every material circumstance which the insured knows or ought to know. Under the terms of this policy at the start of each period of Insurance the insured must tell AXA the declared value of the property. They are not required to declare the reinstatement value of the property. The policy goes on to state that:

"If at the time of the damage the declared value of the property is less than the cost of reinstatement at the start of the period of insurance our liability for any damage will be proportionately reduced and will be limited to the proportion that the declared value bears to the cost of reinstatement."

So under the terms of the policy, the insured can declare the value of the property (subject to a minimum of £50,000) which doesn't have to be the reinstatement value. But the applicant takes the risk that in the event of an undervalue, any claim may be proportionately reduced. So I don't think that the declared value against reinstatement value is a material circumstance, so the IA doesn't apply (subject to what I say below).

The Financial Ombudsman Service's approach is that an insurer is entitled to apply average if it has a term in the policy which allows it to do so. I think the term I've quoted above does entitle AXA to apply average to the claim if it is fair and reasonable to do so.

So I have to consider whether it is fair and reasonable for AXA to apply average in the circumstances of this case.

The parties reached an agreement with a previous Investigator that an independent valuer would be appointed, and that Mr G should be no worse off as result of that valuation. It appears to me that neither party now wants to be bound by that agreement. AXA proposes to accept a valuation vastly in excess of the £135,000 its loss adjuster proposed. And Mr G doesn't agree with that valuation.

I don't think that the application process for this policy would have fairly required Mr G to obtain a market valuation of the property. The application form suggested contacting the ABI (Association of British Insurers) or a surveyor for guidance as to assessing a value. And as the policy covers just the one property I don't think the letting of the property could be described as a professional business, so shouldn't have required a professional valuation.

So I think it was right to use the loss adjuster's method of calculation. They set a valuation at £135,000, and although AXA sought to increase that, it added on demolition costs which had already been accounted for. However Mr G said the square meterage was wrongly

calculated. The loss adjuster said it was 87m2. I've noted that the independent valuer put this figure at 83m2. Mr G says it was lower still, so I think it reasonable to use the valuer's measurement (which I note AXA accepted).

Using that figure I calculate that the reinstatement value of the property at the time of the claim should have been around £129,000 against Mr G's declared value of £120,000, around 94%.

I have to consider whether in the circumstances of this case, it is fair and reasonable for AXA to apply the average clause, and reduce the amount it will pay out on the claim accordingly. I understand that a £135,000 declared value wouldn't have led to any increase in premium. So if the IA had applied, AXA wouldn't have been entitled to reduce the claim under the principles set out in that Act. So I don't think it's fair and reasonable to allow AXA to put itself in a better position than it would have been in applying the IA where there had been a misrepresentation. Bearing in mind that the declared value is within 7% of the reinstatement value I don't think it is reasonable for AXA to apply the average clause here. This means that when settling the claim AXA can't reduce any pay-out for reasons of underinsurance.

other complaints

It's fair that, in the context of that I consider Mr G's original complaints. These were a lack of communication, lack of progress in the claim and delays. As our original Investigator said, AXA's position in that respect would be looked at if a finding was made that it was unreasonable for AXA to seek to apply underinsurance. The claim has now been delayed for over 18 months. If I consider that it should have taken AXA about 6 weeks to get to the stage of being ready to start work on the property, and the work took three months, it should have been ready for letting by mid-February 2022."

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 have considered both parties submissions.

I start from the position of what is reasonable to accept as a method of valuing the property. In applying for a policy, AXA doesn't require the applicant to obtain a professional valuation. I think that my comments about this not being a professional business are relevant. The property is Mr G's former family home. So I think it likely that we would regard Mr G as a consumer, subject to the Consumer Insurance (Disclosure and Representations) Act (CIDRA) rather than the IA.

I would expect the application form to set out what is required in respect of the value at risk. The question asked is "*What would it cost to rebuild this property?*" There is a "?" symbol which the applicant can click on which gives a guide to what should be included in such a cost and, as I've said in my provisional findings refers the applicant either to the ABI's website or suggests asking a professional valuer.

But I maintain my view that a professional valuation was not required. Mr G was asked to give his opinion as to the rebuild value and could have obtained additional guidance, but didn't have to. I again maintain my view that the IA (nor for that matter, CIDRA) does not apply.

I set out my view on the likely value to demonstrate the likely acceptable rebuild value. As

this case has shown, all sorts of different valuations have been put forward. Whilst AXA don't think I should take the square metreage from the valuer's report without accepting its value, I did that as it seemed to be somewhere between the three valuations (Mr G's, the loss adjuster's, and the valuer's). However, if the loss adjuster's valuation, of £135,000 is accepted that's still within a range which didn't affect the premium.

Turning to the valuer's report, Mr G obtained this for the 2021 renewal. It may well be that he was concerned about it being very much higher than the loss adjuster's valuation, so was reluctant to agree to an independent valuation..

I think it's a moot point as to whether there was a concluded agreement between the parties that an independent valuation would be obtained on the basis that Mr G wouldn't be any worse off as a result. At the time our Investigator said, in their view::

"You're concerned that might put you in a worse position – but I've not seen anything to suggest that would happen. I'm happy to recommend that doesn't happen, should the valuation reached by that surveyor be greater – I don't think it'd be fair to penalise you for pursuing a complaint or accepting AXA's resolution."

Our Investigator twice tried to get AXA to confirm this, but it didn't reply on that point. I note the complaint was closed down by our Investigator who thought there had been such an agreement. If AXA didn't agree to those terms it should have said so at the time. I note that it went ahead to appoint a valuer, ostensibly in compliance with our Investigator's view.

I'm not clear though why the valuation Mr G had obtained in respect of the renewal had any bearing on the claim. The amount Mr G chose to insure it for the following year isn't relevant. It's plain that he didn't agree with it. But I do think he thought the sum insured was only relevant in the event of a total loss (which this was not). I understand that the loss adjuster told him this in an email:

"For the purposes of calculating adequacy of cover the sum Insured is not relevant, it only comes into consideration in the event of a total loss.... which is not the case here. In all other circumstances it is the adequacy of the declared value which is the important factor."

Somebody who is accustomed to dealing with insurance may well understand what that means, but I don't think the meaning would be very clear to an ordinary consumer.

As regards the delays, first whether holding it up for an independent valuation (or Mr G's reluctance to agree with obtaining one) was reasonable, I don't think it was. AXA had a valuation from its loss adjuster and seeking a professional valuation was I think unreasonable. Though I understand our Investigator attempting to agree this between the parties.

Secondly and following on from that I don't think, for the reasons set out in my provisional findings, that AXA could reasonably apply underinsurance in the circumstances of this case. I think that is the crux of this complaint.

As for Mr G failing to mitigate his loss, the offers of settlement were all based on a cash settlement, net of deductions for underinsurance. Yet Mr G had made it plain that, with his surveyor acting as project manager, he wanted AXA to appoint one of its recommended contractors which the loss adjusters wouldn't undertake until the question of underinsurance was agreed. And on the same point AXA has now offered to ignore the underinsurance, which it could have done at the outset.

As regards the appointment of a surveyor, I understand that AXA was prepared to agree that

Mr G appoint his own surveyor to act as a project manager. I'm happy to confirm that, although the precise terms of any surveyor's appointment would have to be agreed as a part of the claim.

I don't think either of AXA's proposals settling the matter at this late stage are reasonable. The independent valuer route was taken by our Investigator and that didn't work out. And AXA should be well aware that the Financial Ombudsman Service do not choose or appoint experts. AXA has for the first time since Mr G made his complaint in September 2021 proposed to settle the matter by ignoring the underinsurance. That is noted but I don't think it's appropriate, at this late stage, to have an informal settlement of Mr G's complaint to this service. Not least as AXA still disputes its liability for Mr K's upset and financial loss. I think it's too late now to settle the matter without me reaching and issuing a final decision to formally bring the complaint to a close.

Save as otherwise set out above, I remain persuaded by my provisional findings and those findings, along with my final comments here, are now final and form part of this final decision.

Putting things right

Mr G has been put to considerable additional expense. He advises us that he has had to visit the property every two weeks to check on it. This was at a cost of 45p per mile – 52 miles each way @ £46.80 per visit. AXA should reimburse that cost, plus interest from six weeks after the claim started, to date.

I understand Mr G also incurred costs to meet with the loss adjusters, cleaners, builders, and forensic experts. That is part of dealing with a claim so he would have to incur that expense anyway.

As for council tax, AXA should pay that on receipt of the necessary invoices from the start of the claim until the property is in a position to be relet. The same applies to any gas and electricity charges. It should add interest to any such payment. Mr G will also incur further costs such as loss of rent. AXA should pay that, plus interest, again from the start of the claim until the property is in a position to be relet. I believe Mr G has received an interim payment for that which may be deducted from any payment.

I further understand that Mr G has suffered considerable distress and inconvenience and has had to take counselling sessions. I won't award the cost of those sessions or travel expenses attending them but I will take it into account in considering the compensation payable for distress and inconvenience. Mr G has been caused a significant degree of distress and inconvenience over a period of many months. I think that AXA should pay compensation of £1,000.

To summarise:

- AXA should settle the claim without applying any reduction for underinsurance.
- AXA should pay the appropriate costs of Mr G visiting the property, loss of rent, electricity gas and council tax, in the way set out above. It should add simple interest* at 8% per year from the dates the losses were incurred until reimbursement.
- AXA should pay, as part of the claim, Mr G's costs of appointing his own surveyor.
- AXA should also pay £1,000 compensation.

*HM Revenue & Customs may require AXA to deduct tax from any award of interest. It must give Mr G a certificate showing how much tax has been taken off if he asks for one.

My final decision

I uphold the complaint and require AXA Insurance UK Plc to provide the remedy set out under “Putting things right” above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 1 June 2023.

Ray Lawley
Ombudsman