

## **The complaint**

Mr V complains about the way AXIS Speciality Europe SE settled a fire damage claim under a Landlords Occupied insurance policy.

## **What happened**

A property Mr V rents to tenants suffered extensive fire damage in 2021. So, he raised a claim to AXIS which it accepted.

AXIS concluded Mr V was underinsured. That's because its estimate for the cost of rebuilding the property at the time of the claim was more than the sum insured he declared when taking out the policy. So, AXIS offered to pay Mr V roughly 80% of the claim settlement. It says this was the amount he was adequately insured for. AXIS say the sum insured ought to have been at least £300,000, and Mr V said the sum insured was just under £259,000.

Mr V told AXIS he wasn't happy about this. The sum insured was based on what a surveyor recommended the sum insured be within a home buyers report previously, and Mr V had included an increase to reflect inflation over the years.

He also says AXIS inflated its estimate for the rebuild cost after the claim incident when employing a surveyor who thought the sum insured should be £392,000. And this was after several surveyors provided various sum insured figures. He says when he took out the policy, he was asked what the buildings sum insured was and provided a reasonable answer. He asked our Service for an impartial review as he thought AXIS settled the claim unfairly – leaving him substantially out of pocket.

The Investigator recommended the complaint be upheld. She wasn't persuaded AXIS demonstrated Mr V failed to provide a fair presentation of the risk based on the question asked by a broker – nor did AXIS provide information it asked the broker to gather for them. So, she didn't think AXIS acted in line with The Insurance Act 2015 and therefore AXIS should settle the claim in full and include interest.

AXIS said the sum insured was inadequate, and although the question asked by the broker didn't offer a lot of clarity, the policy information sets out the consequences of being underinsured. This didn't change the Investigator's view, so the case was passed to me to decide.

## **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.

AXIS has reduced the claim settlement because it doesn't think the sum insured provided by the Mr V when he took out the policy was sufficient. The relevant law about this is The Insurance Act 2015 ("The Act"). It sets out the duty on the policyholder when taking out the policy – and potential remedies available to the insurer if the policyholder doesn't fulfil their

duty. So, I'm satisfied it's fair and reasonable to take into account the law in the circumstances of this case.

The Act requires a policyholder to provide a fair presentation of risk. So, my starting point is considering the question AXIS think Mr V answered unreasonably. In this case, the policy was sold through a broker.

AXIS confirmed the broker asked Mr V, *'What is the building sum insured?'*

AXIS isn't responsible for the sale, the question(s) asked, or any surrounding guidance or support provided during the sale. But it is responsible for setting out to the broker what information is required in order to set up the policy properly. Our Service asked AXIS what information it asked the broker to gather for it in relation to the sum insured. AXIS hasn't provided anything regarding the same. So, I'm not satisfied it's clear AXIS asked the broker to gather an estimate for the rebuild cost from Mr V.

AXIS accept the question cited above doesn't offer a lot of clarity in isolation. It's my view it's not that it's unclear, it's that it doesn't ask for the right information from Mr V. But AXIS say the policy information provided to Mr V clearly set out the consequences of underinsurance, he needed to ensure cover was adequate, and he could have asked the broker for clarity if he needed it. I'll return to this point later.

It's important to say the onus is on the insurer to show an answer provided by a policyholder didn't amount to a fair presentation of the risk. AXIS hasn't shown it wanted to know the rebuild cost, it merely wanted a 'sum insured'. So, I need to consider whether Mr V gave a fair presentation of the risk in that context. I don't think it would be fair to penalise Mr V for not providing a rebuild cost when AXIS hasn't shown that's what it wanted him to provide.

Mr V says he selected a sum insured of £258,750. And this sum insured was based on a 2007 pre-purchase report from a qualified surveyor who recommended the sum insured be £190,000. Mr V says he calculated inflation costs to reflect any increases over the years. I think that's reasonable. I say this because Mr V answered the question based on a professional's opinion of the sum insured. And he took reasonable steps to consider the increase from 2007, and what a reasonable sum insured was when incepting the policy.

I've also kept in mind several sum insured amounts have been provided following the claim. What other surveyors have provided after the claim isn't relevant here because that information wasn't available to Mr V when he took out the policy – all he had was the one estimate and it's my view he used that reasonably.

Therefore, I'm not satisfied AXIS acted fairly and reasonably when concluding Mr V failed to make a fair presentation of risk. Under The Act, AXIS has no remedy if the policyholder makes a fair presentation of the risk. So, AXIS acted unfairly when it proportionally settled the claim.

Returning to my earlier point, I acknowledge AXIS say the policy documentation detailed the consequences of being underinsured. The policy instructs Mr V to read the whole documentation carefully, and to contact the broker if the document is incorrect, or if he has any questions. Then, on page 20 of the policy documents, it sets out how AXIS will settle buildings claims. And that AXIS will pay for the full cost of repairs so long as:

- *'the sum insured is enough to pay for full cost of rebuilding the **buildings** in their present form...'*

The policy goes on to say:

### ***'Your sum insured***

*2. If **you** are under-insured, which means the cost of rebuilding the **buildings** at the time of loss or damage is more than **your** sum insured for the **buildings**, then **we** will only pay a proportion of the claim. For example, if **your** sum insured only covers one half of the cost of rebuilding the **buildings**; **we** will only pay one half of the cost of repair or replacement.'*

AXIS ultimately is seeking to rely on its right to apply a proportionate settlement to a claim based on a policy term on page 20. Whilst the term is in the policy and is clearly worded, I'm not satisfied it would be fair and reasonable in the circumstances for AXIS to rely on it. To do so would mean putting Mr V in a worse position than provided for by The Act – and The Act is clear that an insurer may only do so if it takes certain steps to 'contract out' of The Act. But AXIS hasn't said this is what it has done or pointed to any of the relevant steps.

### **Putting things right**

The Act requires a policyholder to provide a fair presentation of risk. I'm not satisfied AXIS has demonstrated Mr V answered the question cited above unreasonably, and therefore failed to provide a fair presentation of risk. Nor am I satisfied AXIS contracted out of The Act because I'm not satisfied the evidence supports it fulfilled the transparency requirements set out within The Act. Therefore, it follows, I'll be directing AXIS to meet Mr V's fire claim in full and include interest on the outstanding claim settlement amount payable.

AXIS should keep the buildings sum insured at £258,750 for the policy year in which the claim occurred because that's what Mr V wanted as the sum insured. But this doesn't impact the outcome of the claim as the claim value is lower than the sum insured in any case.

### **My final decision**

For the reasons I've given above, my final decision is I uphold the complaint. I now require AXIS Speciality Europe SE to settle the remainder of Mr V's buildings claim for fire damage. It must include 8% simple interest\* to the remaining claim settlement, from the date the initial claim settlement payment was made, to the date of settlement.

\*If AXIS Speciality Europe SE considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr V how much it has taken off. It should also give Mr V a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 28 December 2023.

Liam Hickey  
**Ombudsman**