

The complaint

Mr M complains, on behalf of W, that AXA Insurance UK Plc offered a reduced settlement amount for a claim he made on W's commercial property insurance policy.

Reference to Mr M or AXA includes its respective agents and representatives.

What happened

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

- Mr M took out property insurance for his business in June 2021, through a broker, which included cover for a number of buildings. It was underwritten by AXA.
- Mr M made a claim after the roof of one of the buildings was damaged during storm weather in November 2021. He provided a quote for around £30,000 to repair it.
- AXA accepted the claim and appointed a loss adjuster. They said the buildings should have been insured for around £475,000 combined. But they had only been insured for £150,000. Because of this, they said the claim would be settled by 'average'. That meant offering Mr M around 30% of the quote, £9,000. I understand the loss adjuster later reduced the estimate to £350,000, although it doesn't seem that led to an increased offer.
- Mr M took advice from a local construction company. They estimated the rebuild cost at £275,000 in August 2022. He complained about the settlement offer and the way the claim had been handled. He said it had taken too long and he'd had to accommodate a second loss adjuster visit to consider the building valuation again.
- In its April 2023 complaint response, AXA maintained its position.
- During our investigation Mr M provided further information from the local construction company. They estimated the rebuild cost to have been £170,000 at June 2021 prices. Mr M questioned some of the measurements and cost per area estimates the loss adjuster had used to reach their estimate and set out how he thought £150,000 would have been reasonable in June 2021, if these factors were changed. He also said the loss adjuster had included a fifth building that might not be insured. Mr M provided a quote from August 2023 to replace one of the buildings for around £45,000, noting that the loss adjuster had estimated £115,000 for the same building to highlight his concern about the accuracy of their estimate.
- Our investigator thought the complaint should be upheld. Looking at all the estimates he'd been given, he thought £275,000 was the fairest reflection of the rebuild value at the relevant time. Based on the premium AXA would have charged for this sum insured, our investigator said AXA should pay 55% of the claim value. He also said it should pay £200 to reflect the distress and inconvenience caused to Mr M.

- Mr M agreed but AXA didn't. It had a new desktop estimate carried out, based on June 2021 costs. It agreed to reduce some of the measurements and cost per area estimates and reached a figure of around £410,000.
- Our investigator wasn't persuaded to change his mind, so the complaint has been referred 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.

Many of the complaint points Mr M has raised relate to the way the policy was sold. For example, whether it was made clear what information he needed to provide when taking out the policy, the consequences of not providing the right information and that the policy might be settled by average.

The policy was sold by a broker, who was acting independently. That means in this complaint, I can't consider how the policy was sold by the broker. And, as a result, I can't consider those points Mr M has raised. I can only consider how AXA acted in relation to the things it was responsible for – which is the way it handled the claim, including the settlement offer it reached.

There's no dispute the claim is, in principle, covered by the policy. The main dispute is about how much it should be settled for. And also how the claim was handled.

AXA seems to have accepted Mr M's quote for around £30,000. I understand that was from June 2022 and I'm not aware the work has been carried out. If not, it's likely prices will have risen since then and Mr M may wish to get an updated quote for settlement to be based upon. That means I don't know what the work will cost, so I'll discuss the percentage AXA should settle the claim at, rather than the specific monetary sum.

AXA has questioned the approach our investigator has taken, which is to consider things in line with the Insurance Act. I'm satisfied that's a reasonable approach to take. I'll explain why. In summary, AXA has reduced the claim settlement because it says Mr M didn't provide the right information when he took out the policy in June 2021. The Insurance Act sets out the obligations on the parties when a policy is taken out is the, so I think it's relevant here.

AXA would like to apply average. It can only do so if, amongst other things, it has a clearly worded term in its policy and it would be fair and reasonable to do so, bearing in mind the Insurance Act and any other relevant circumstances.

I can't see that AXA has quoted a policy term to support its right to apply average. So I don't know what term its seeking to rely on. The only one I can see in the policy that appears relevant is called 'Day one average cover'.

It's a very long term, subject to numerous conditions, so I won't set it out in full here. Its effect seems to be that if the 'value' is more than 115% of the 'declared value', Mr M will be responsible for a proportionate share of the loss. The word 'value' on its own is not defined. So it could mean rebuild value or market value or some other value. The phrase 'declared value' is defined as, effectively, the rebuild value set by Mr M. But I can't see where Mr M set a declared or rebuild value. The policy schedule refers only to 'sum insured' which need not be the same as a declared or rebuild value. So even if it I thought it were fair for AXA to set

aside the Insurance Act and rely on the average term, I'm not persuaded the term is clear enough, in conjunction with the policy schedule, for AXA to reduce the claim value.

But even if I took the view that declared value, rebuild cost and sum insured all meant the same thing – or perhaps there is a clear average term I haven't seen – the policy also contains a 'fair presentation of risk' condition. Again, it's a very long term, so I won't set it out in full, but it effectively summarises AXA's rights under the Insurance Act if Mr M hadn't provided the right information when taking out the policy. So AXA's own policy acknowledges the Act and the steps involved.

This means the policy sets out two different ways of settling a claim if the right information wasn't given when the policy was taken out. But for the reasons above, I'm not satisfied it would be fair for AXA to rely on the average term. That leaves only the Insurance Act – and the policy term which mirrors it – to consider.

The Act requires Mr M to make a 'fair presentation of the risk' when taking out the policy. As above, I can't consider how the policy was sold – so I take into account what questions and guidance, if any, the broker asked or ought to have asked. But the Act nonetheless requires AXA to show Mr M failed to make a fair presentation of the risk in order for AXA to have any remedies available – such as reducing the claim value.

The policy schedule says the sum insured for 'all farm buildings' is £150,000. AXA says it ought to have been more than this, so effectively its saying Mr M didn't make a fair presentation of the risk in relation to this point. AXA says this is because £150,000 wasn't an accurate rebuild cost when the policy was taken out.

But a sum insured need not be the rebuild cost, it can be based on a number of things. And I haven't seen anything from AXA to show it required the broker to treat the sum insured as the rebuild cost. As above, that's not clearly set out in its policy either. So I'm not satisfied it would be fair for AXA to treat the sum insured and rebuild cost as the same thing. And apart from its view about the rebuild cost, AXA hasn't set out any reason why Mr M setting the sum insured at £150,000 didn't amount to a fair presentation of the risk.

Taking all of this into account, I'm not satisfied AXA has shown Mr M failed to fulfil his duty set out in the Act. And, in these circumstances, the Act gives AXA no remedy. That means it didn't have the right to reduce the claim value at all.

To put things right, AXA should settle the claim without making any deduction for what it considers to be underinsurance. All other policy terms and conditions remain.

The claim was made in November 2021. Two years later it remains unsettled, largely as a result of the dispute about the rebuild estimate. For the reasons above, AXA hasn't persuaded me that's something it needed in order to settle the claim. Whilst some investigation would always have been required to consider the claim, likely including one loss adjuster visit, and that would inevitably have taken some time to do, I think there remains a significant and avoidable delay handling this claim.

To put that right, I'm satisfied AXA should pay compensation for the inconvenience caused to W. It's clear Mr M's attention has been diverted away from the business to deal with this matter for far longer than ought to have happened. I'm satisfied £500 compensation would be reasonable in the circumstances.

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.

In response to my provisional decision, AXA said it had previously sent us the wrong policy wording. It sent us the correct one and pointed to the average policy term, which says:

If at the time of damage the sum insured ... is less than the value of the property insured, the amount we will pay will be reduced proportionately.

It's disappointing that AXA sent us the wrong policy wording initially. I'd expect it to ensure all information submitted was correct, especially such an important document. But now that it's sent the correct one, I'll reconsider things.

As I said in my provisional decision, AXA can only apply average if, amongst other things, it has a clearly worded term in its policy and it would be fair and reasonable to do so, bearing in mind the Insurance Act and any other relevant circumstances.

Whilst this policy term doesn't use the phrase 'declared value', it still uses the word 'value' without defining it. Which could mean rebuild value or market value or some other value. So, for the same reasons as I gave in my provisional decision, I'm not persuaded the term is clear enough for AXA to reduce the claim value on the basis it considers Mr M is underinsured in relation to the rebuild value.

Even putting that to one side, AXA has reduced the claim settlement because it says Mr M didn't provide the right information when he took out the policy in June 2021. And the relevant law for such a situation is the Insurance Act. AXA hasn't challenged or commented on my findings about that. So my finding that Mr M made a fair presentation of risk remains – and accordingly my view that AXA has no remedy under the Act also remains. That means it didn't have the right to reduce the claim value at all under the relevant law.

Overall, I don't think the average term is sufficiently clear for AXA to rely upon it. And even if it was clear enough, I think the appropriate and fair way to look at the situation is to consider the Insurance Act – and under the Act, AXA has no right to reduce the claim value.

For these reasons, I'm still satisfied it would be fair for AXA should settle the claim without making any deduction for what it considers to be underinsurance. All other policy terms and conditions remain.

Neither party challenged or commented on my view about compensation. So I see no reason to change it.

My final decision

I uphold this complaint

I require AXA Insurance UK Plc to:

- Settle the claim without making a deduction for underinsurance.
- Pay £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 20 December 2023.

James Neville
Ombudsman

