

## **The complaint**

H (a Limited Company) complains that AXA Insurance UK Plc took too long to settle its insurance claim. It's also unhappy with the amount they offered.

## **What happened**

H had a property which was rented out as several flats. AXA provided the insurance for it, along with a number of other properties. The property which is the subject of this complaint suffered extensive damage, so H made a claim for the repairs.

AXA took quite some time to validate the claim, but those delays were the subject of a previous complaint. This case focusses on the settlement amount. AXA said the property was underinsured so they had applied what's known as 'average' when calculating a cash settlement.

AXA said if H didn't want to accept a cash settlement, they could instruct independent surveyors to put together a full scope of work and to reassess the value at risk, i.e. the total rebuild cost. H declined that offer and maintained the property wasn't underinsured, that AXA had overvalued it and therefore the application of average was unfair.

An investigator here looked into the matter, they said AXA had treated H fairly and so they didn't uphold the complaint.

H didn't agree. Briefly, H said the interim payment of £150,000 was insufficient and never viewed as a total settlement including loss of rent. H said the reason the offer of an independent surveyor was declined was because he'd lost faith in AXA and because he was of the view it wouldn't be accurate given how long had passed since the loss occurred.

H suggested the day one uplift allowed for in the policy should be considered when assessing any underinsurance, particularly given the increase in building costs in recent years. And in any event, he said he'd provided a rebuild estimate that was in line with the sum insured. H also suggested that if AXA cannot accept the losses presented then it would take the matter to court. The matter couldn't be resolved so has been passed to me to decide.

I issued a provisional decision last month, in which I said the following:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so, I can't say AXA's settlement offer was unfair. So, while I've considered the case in a different way from the investigator, I don't think they need to go any further. I'll explain why.*

*First of all, I don't agree with average being used in the settlement calculation. Rather, I think AXA ought to have considered the provisions set out in the Insurance Act 2015. But, even if they had done that, it wouldn't have materially altered the settlement amount, in this*

particular case, so there's no further payments due to H (save for those already offered, or any which may not have previously been considered).

The Insurance Act 2015 covers misrepresentation, in that it sets out what insurers are able to do in the event that the risk they insured turns out to be different from the risk that was presented to them. This is mostly relevant when the insurer considers the risk presented was inadequate, and the Act sets out what remedies are available to them when settling claims.

H took its policy out through an insurance intermediary (or broker). Between the two of them they are required to present the risk accurately. As far as I am aware, H hasn't pursued a case against the broker and I haven't seen enough to suggest either of them consider there to have been anything wrong with the figures presented. That means I move on to how AXA has considered those figures against their own.

AXA considered the property to have a value at risk of around £900,000, against the insured value at risk of £519,100. AXA's figure was provided to them by their surveyors, and was verified by another as being reasonable, so on the face of things, I consider it appropriate for AXA to trust and rely upon it. H say it's too high and is unjustified. But, I haven't seen enough from H to make me agree with that.

While H provided a 'rebuild estimate' of around £650,000, AXA wasn't persuaded by it. They explained to H that it didn't allow for a number of significant costs that would've been incurred and that, once included, it would have been broadly comparable to their estimate of £900,000. As far as I can see, H didn't contest this.

And I don't consider the day one average terms in the policy to be applicable because the policy says if the declared value is less than the cost of reinstatement then any proportionate reduction will be limited to the proportion of the declared value, i.e. not the day one average, or uplift as it may be viewed.

Returning to the Insurance Act 2015, as opposed to the application of average. This provides for insurers to reduce claims by a percentage based on the premium charged and the higher premium they would have charged had they been aware of the risk at stake. This is also provided for in the policy terms and conditions. And in this case, AXA have confirmed that the original underlying premium was £1,055.99, but if the value at risk had been £900,000 it would have cost £1,659.65.

So, claim settlement would be on an approximate basis of 63% (give or take decimal points).

AXA considered the reinstatement works to the property would be £210,000. Using the average calculation AXA said payment would be around £124,000. It would be around £132,000 using the Insurance Act 2015 provisions. But AXA's interim payment was higher than both of those, so I don't think it was unreasonable either way.

I think one of the main issues here is that AXA offered what they considered to be a fair and reasonable interim payment. I can't see that it wasn't thought through nor that they didn't consider factors such as loss of rent, and it was an interim payment after all. So, I consider their approach to have been reasonable in the circumstances. Of course, it may well have

proven more accurate to have an independent surveyor put together a fuller report with a full scope of works – so as to provide further view on the value at risk and underinsurance.

But H declined that offer. And while I can understand it having lost faith in AXA – including the reasons why, such as the passage of time – the declinature didn't help advance H's position. Furthermore, if H wanted to provide further evidence to support its view, then it'd

*have been welcome to do so. It is also of note that H sold the property in May 2021, so such an option no longer remains available.*

*As things stand, and considering loss of rent, AXA have said there is a further amount of £84,000 on offer and open for acceptance by H (and that it has been for some time). I'd add that while H said payments previously offered didn't include loss of rent it's clear to me that those discussions were had. Given everything above, and taking into account the provisions of the Insurance Act, I believe it is now for H to consider that (which is in addition to the £150,000 interim payment) or seek guidance on alternatives such as possible court action.*

*H has referred to some other issues within their responses to us. These include having to bear additional premiums and significant excesses as a result of the requirement to declare AXA's subsequent refusal to offer policy renewal. I consider these to be new issues which H may wish to pursue with AXA separately.*

*H has also referred to the loss of council tax. I note its policy says loss of rent includes the costs of local authority rates on empty premises. Although there are conditions attached to that. I couldn't see that AXA had considered this and so in the first instance I think that would be for them to do before I should comment on it. If AXA thinks these are included in their total offer, they should provide relevant information in their response.*

*Overall, I consider this case to have had a number of complications from the beginning. My focus has been the claim settlement amount. AXA's offer wasn't unreasonable, when based on information available to them, and I haven't seen enough from H to make me think otherwise."*

H replied to my provisional decision. It said it was surprised to learn there was a further £84,000 on offer and open for acceptance, H said no such formal offer had been received and that it was inadequate because it didn't appear to include any provision for council tax.

H considered a total of approximately £106,000 would be more appropriate.

H also provided estimates which it considered to show the property was more than adequately insured. Although it said, in the alternative, H ought to be allowed to retrospectively pay the difference in premium referred to by AXA, so as to avoid the need for a proportionate settlement.

AXA's reply to my provisional decision focussed on my comments relating to council tax. They said, they would need evidence of H paying the council tax in order to consider this further.

### **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.

Having done so I maintain the findings set out in my provisional decision, although I will address the points made in response to that.

#### *knowledge of the additional £84,000 and its adequacy*

H says it wasn't aware there remained £84,000 open to acceptance. It also says this figure is inadequate on account of it not including council tax. But AXA's records, from September 2001, refer to an offer of £230,000, in an effort to conclude matters, being turned down by H. And in one of AXA's internal emails, from a few months later, there is reference to the figure

of £234,000 being suggested to H's broker (which I consider to be reasonably taken as being the £150,000 plus the £84,000).

Based on what I've seen, I can't know for certain whether this figure was put forward to H directly. But the evidence I've seen suggests it was at least discussed with his broker and as they were acting for H, I don't consider that to be unreasonable.

Turning to its adequacy, H has suggested it ought to include provision for council tax. I put it to the parties in my provisional decision that this didn't appear to have been considered by AXA. They have been unable to confirm otherwise and have said they would need sight of evidence from H to consider further. Bearing in mind it's reasonable for evidence of losses to be requested, and considered, this is a fair suggestion.

#### *the underinsurance and proportionate settlement*

H has provided two estimates. One is said to be for the repairs at around £300,000, including VAT. The other is said to be for the rebuild cost at around £650,000, including VAT.

It is the rebuild cost that is important when considering the adequacy of the value at risk. That was addressed in my provisional decision, and I maintain for the same reasons, it wasn't unreasonable for AXA trust and rely upon their own surveyors' estimates when they were considering underinsurance/the Insurance Act 2015.

That said, the cost of repairs (or reinstatement) becomes important when calculating the proportionate settlement. AXA considered reinstatement would be £210,000 which, as covered in my provisional decision, would come out as £132,000 against an interim offer of £150,000.

Using H's reinstatement estimate of c£300,000 it would come out at around £189,000 on a proportionate settlement. I do appreciate that is greater than the £150,000 interim offer. But I'm mindful that it was an interim offer and so could have been revised upwards if the actual costs incurred were greater. I'm also mindful that H declined the offer of having an independent surveyor provide a further estimate of the repair costs and value at risk. So, I don't think AXA's approach here to have been unreasonable.

H has also suggested an alternative to following the proportionate settlement route, for it to make up the shortfall in premium in order to remove that from the calculation. In other words, H pays the premium AXA would have charged based on their view of value at risk and AXA pays the settlement in full.

However, as AXA has followed the provisions set out in the Insurance Act 2015 – in terms of reducing the settlement proportionately – I see no reason to find their approach to have been unfair or unreasonable.

Based on the surveyors' opinions obtained by AXA they considered H to have provided an inadequate value at risk, and in doing so had shown a lack of reasonable care, when giving details of the risk being undertaken by them in agreeing to insure the property. It was reasonable for AXA to view this as a lack of reasonable care, particularly as H is a limited company and is in the business of property. And while H doesn't think the value at risk was inadequate, I have explained why I consider AXA's stance on this to have been fair.

In this case, if AXA wished to settle the claim in a more generous manner than the Act requires that would be a decision for them to make, not me.

In view of all of the above, I remain satisfied that AXA's approach to the settlement calculation of H's claim was appropriate – including the additional offer of £84,000 and the consideration of council tax on provision of further evidence.

### **My final decision**

It is my final decision that I don't uphold H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 15 January 2024.

Will Weston  
**Ombudsman**