

The complaint

Mr C and Mrs C complain about AXA Insurance UK Plc's settlement offer after they made a claim under their home insurance policy.

What happened

The background to this complaint is well known to both parties so I'll provide only a brief summary here.

Mr C and Mrs C have a home insurance policy underwritten by AXA which covers a property they own and its contents. The policy includes cover for outbuildings.

In January 2023, Mr C and Mrs C's garage was damaged during a storm and they made a claim to AXA.

AXA sent an assessor to inspect the damage and agreed that the claim was covered.

Mr C then obtained quotes for the necessary repair work. He had to do this twice because AXA thought the first quotes involved replacement of an asbestos roof with tin, which amounted to betterment.

I understand the quotes for the work ended up at around £2,500.

In the meantime, AXA had been considering their assessor's report. And they let Mr C and Mrs C know that they were underinsured.

In essence, AXA said Mr C and Mrs C had paid for £7,500 of cover for outbuildings. They calculated the full replacement cost for all outbuildings was over £33,000. And so, they would settle the claim proportionally and pay just under 23% of the claim (less the policy excess) – that is, around £200.

Mr C and Mrs C weren't happy with this and made a complaint to AXA. And when AXA maintained their position, Mr C and Mrs C brought their complaint to us.

Our investigator looked into it and thought AXA had acted unfairly in settling the claim the way they had. He thought they should settle the claim in full (less the excess), pay Mr C and Mrs C interest at 8% simple on the increase in the final settlement, and pay them £150 in compensation for their trouble and upset.

Despite being chased, AXA haven't provided any response to our investigator's view and so, the complaint has come to me for a final decision.

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.

We take the view that an insurer may be entitled to settle a claim proportionally if a policyholder carelessly provides inaccurate information when they buy a policy – and where that misleading information leads to the insurer to charging a smaller premium than they would have done had they known the full facts.

We say that where they do this, an insurer needs to calculate what the higher premium would have been. And then pay out, in response to the claim, a proportion of the total claim value equal to the proportion of the re-calculated (higher) premium the customer actually paid.

In this case, AXA would need to show that the information provided by Mr C and Mrs C was in fact inaccurate and that Mr C and Mrs C acted carelessly in providing that information.

And then they would need to calculate the effect the accurate information would have had on the policy premium. And settle proportionally on that basis.

There are, in essence, two reasons why AXA can't reasonably and fairly do what they proposed to do in settling this claim.

First, they've calculated the proportion of the total claim value they say they will settle based on a comparison of the cost of re-building the outbuildings at the property against the £7,500 limit on the outbuildings cover Mr C and Mrs C bought.

That's not in line with our view of how the proportion should be calculated, which is to go back to the effect it would have had on the premium if the accurate information had been known at the point of inception.

AXA have now provided information to us which shows that the premium Mr C and Mrs C would have paid - had they asked for cover over £7,500 and sufficient to rebuild all their outbuildings – would have been around £3 (or 1%) higher than the premium they actually paid.

So, if we were to allow AXA to settle this claim proportionally, they could only legitimately reduce the total claim value by around 1% (about £25).

However - and to come to the second reason why I think AXA can't settle the claim in the way they proposed - I'm satisfied they can't show that Mr C and Mrs C carelessly provided inaccurate information when they bought the policy.

Mr C and Mrs C bought the policy on-line. The relevant question said:

"Your policy includes £7,500 cover for rebuilding and repairing all detached outbuildings. Is this sufficient?"

Mr C and Mrs C answered yes in response to this question – and so, the relevant policy documents said they were covered for up to £7,500.

If Mr C and Mrs C had been asked to specify the rebuild cost of all their outbuildings, then AXA would have a reasonable case for saying the information they provided was inaccurate – and carelessly so.

AXA have shown that the rebuild cost for the garage alone is well in excess of £20,000. So, we needn't detain ourselves with any questions about whether their definition of outbuildings – to include walls, paving and fencing, amongst other things - is either reasonable or clearly explained to their customers.

However, Mr C and Mrs C weren't asked what the rebuild cost for their outbuildings was. They were asked if the cover specified was sufficient – and I note that there is a default here, to the £7,500 limit, rather than an open question.

So, on balance, I don't think Mr C and Mrs C could be said to have underestimated the rebuild costs (carelessly or otherwise). That's not what they were asked for. They may reasonably have assumed that they were opting for a level of cover which might or might not fully pay for any damage to their outbuildings, on the assumption that cover for £X (as an upper limit) comes at a cost (premium) of £Y.

And on that basis, I don't think it would be fair to settle this claim proportionally at all – even at the 99% level suggested when you compare the premium actually paid to the premium that should have been paid.

Putting things right

It follows that I agree with our investigator about the fair and proper settlement of this claim (of around £2,500). AXA should settle the claim in full - up to the policy limit of £7,500 and subject to any excess being applied.

It's also beyond any doubt that Mr C and Mrs C have been deprived of that money because they had to pay for the repairs themselves.

It would always have taken AXA some time to settle the claim. But it's reasonable to conclude that it ought to have been settled fully at the point AXA made their original offer. If AXA had proposed a fair settlement at that point, it would have been accepted (or if it hadn't been, that wouldn't have been AXA's fault).

So, AXA should pay interest at 8% simple on the difference between the final settlement and their previous offer, calculated from the date of AXA's previous offer to the date the payment I'm directing here is actually made.

Mr C and Mrs C have also suffered a degree of trouble and upset as a result of AXA's errors in handling the claim and the settlement.

Mr C had to obtain two sets of quotes because AXA didn't at first specify what type of roofing material would be an equivalent replacement for the asbestos original - and that caused him no little inconvenience.

It was also frustrating and worrying for Mr C and Mrs C when AXA made the original settlement offer at around £200. They have been left for a significant amount of time believing that they might be unfairly out of pocket after the damage to their garage.

So, I agree with our investigator that AXA should pay Mr C and Mrs C £150 in compensation for their trouble and upset.

My final decision

For the reasons set out above, I uphold Mr C and Mrs C's complaint.

AXA Insurance UK Plc must:

- settle Mr C and Mrs C's claim in full, up to the outbuildings policy limit of £7,500 (less the policy excess);
- pay Mr C and Mrs C interest at 8% simple on the difference between the settlement amount and the amount they previously offered – calculated from the date of their first settlement offer to the date they pay the final settlement (as directed above); and
- pay Mr C and Mrs C £150 in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 17 May 2024.

Neil Marshall
Ombudsman