DRN-4793032

The complaint

Mrs B has complained about the way in which AXA Insurance UK Plc ('AXA') handled a claim for storm damage under her home insurance policy, and the subsequent impact this had on her policy. For the avoidance of doubt, the term AXA includes reference to its representatives, agents and contractors for the purposes of this decision.

What happened

Unfortunately, Mrs B's conservatory was damaged following a storm in November 2023, and water had poured into the lights and fan in the room. AXA sent out its assessor eight days. In the meantime, Mrs B had to call out a workman to fix the roof on a temporary basis. AXA said that it would only pay 62% of the claim as Mrs B hadn't disclosed a previous subsidence claim when purchasing insurance, and premiums would also increase significantly. Her policy excess for subsidence would also increase from £1,000 to £5,000.

AXA explained that the policy excess had increased due to a third-party insurer noting a subsidence claim in Mrs B's records for March 2019. It said that if it had known about this, Mrs B's premium would have been higher, and so she'd paid only 62% of what should have been charged. Mrs B said the information about a subsidence claim was incorrect and she wanted the total claim to be paid. She also wanted the excess figure to be changed. Finally, she'd paid the increased premium but didn't agree with it. She only stayed with AXA because she couldn't get insurance elsewhere due to what had happened.

Mrs B complained to AXA, however it maintained its position, so she referred her complaint to this service. The relevant investigator upheld her complaint and didn't think that AXA had acted in a fair and reasonable manner in all respects. AXA didn't respond to the investigator's view and the matter has therefore been referred to me to make a final decision in my role as Ombudsman.

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.

It appears that AXA had accepted that the conservatory fan, and lights had been damaged due to storm conditions and that the damage was covered in principle under the relevant insurance policy. The key issue for me to determine is therefore, whether AXA acted in a fair and reasonable manner in reducing the settlement offer due non-disclosure of a previous matter by Mrs B, increasing premiums going forward and in significantly increasing the subsidence excess. I don't consider that it did act fairly and reasonably in all respects, and I explain my conclusions as follows. In reaching my final decision, I've also considered the submissions of the parties as summarised below.

Mrs B stated, *'I would just like to be fairly treated by AXA'*. She'd provided all emails from the previous insurer to AXA which explained that there had been no subsidence claim in 2019, but she said that AXA ignored the information. The previous insurer had reinstated Mrs B's no claims bonus and had also been happy to talk to AXA to clarify that the insurance

database had been corrected. She couldn't understand why she would have been expected to disclose a non-existent claim for the purposes of obtaining a policy.

Mrs B therefore complained about the stance taken by AXA and the resulting consequences. She also complained about delays in processing the claim. As to AXA's assessor, she thought he'd been *'very pushy'* in trying to get her to sign her acceptance of his *'guesstimate'* as to the cost of damage, despite having no evidence as to how this figure was arrived at. She said that, at that point, she didn't have her own estimates to ensure a proper repair of the roof and replacement of the ceiling fan and light. She therefore didn't know if the offer would cover the cost of the damage.

Finally, Mrs B said that she had to remain insured with AXA and pay the extra premium, *'as no other insurance company will even give me a quote now'.* Mrs B said she'd placed the claim on hold while the matter was investigated. She said that she'd had to pay for all repairs herself as she, *'couldn't have rain coming through roof down my kitchen light'.*

I now turn to AXA's submissions regarding this matter. It explained that as part of the validation process, searches were carried out, *'to make sure information provided when taking the policy out is correct'*. It said that this revealed *'an undisclosed claim'* and it needed to ensure that the policy reflected the position as it would have been if the information had been disclosed. It did however agree to proceed with the storm damage claim in principle.

Having noted the previous matter, it increased premiums and amended the policy terms as follows, '*As you have only paid a portion of the required risk premium all claims made under this policy will be dealt with on a proportional basis. You have paid 62% of the required risk premium which means that in the event of a valid claim we will only be liable for 62% of the claim value. This amount will be subject to the excesses as detailed on your policy document. The remaining 38% of the claim value will fall to you to pay.'*

As to any delays on the claim, it considered these to have been unavoidable. It said that *'due to the non-disclosure, the claim had to be referred to the underwriting team before it could progress'*. AXA felt that it had acted proactively in ensuring the policy was adjusted to reflect the correct terms. As to the figure which AXA's agent had provided during his visit, AXA said that this was the surveyor's scoped figure which was calculated using the insurer's rates. It was willing to pay this as a cash settlement to Mrs B using its standard procedures.

I now turn to the reasons for my decision to uphold Mrs B's complaint. Firstly, I will briefly deal with the relevant law regarding misrepresentation. This is found in the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). It says that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. If a consumer fails to take care in giving or confirming information, the insurer then has certain remedies where there is a *'qualifying misrepresentation'*. For a qualifying misrepresentation to apply, the insurer must show it would have offered the policy on different terms or indeed not at all if the consumer hadn't made the misrepresentation. The remedy available to AXA under CIDRA would depend on whether any qualifying misrepresentation was deliberate, reckless, or careless.

I note that AXA doesn't maintain that it wouldn't have offered Mrs B a policy at all due to any suggested misrepresentation. It maintains however that the policy would have been more expensive if it had known about the historical potential subsidence issue. Unfortunately for Mrs B, if an insurer is informed of a potential issue or claim, it's then standard practice for this to be noted in a policyholder's records and this will be shared with future insurers. It can sometimes affect a future insurer's attitude to risk and can result in higher premiums.

In this case, AXA had asked about Mrs B's claims history. It had asked whether there had been any claims or losses in the last five years, *'including whether you considered making a claim but did not follow this through'.* Mrs B disclosed a claim from July 2018 in response, however she hadn't mentioned the query which she'd made with her previous insurer, albeit she didn't follow this through. That query had been about cracks discovered in certain walls of Mrs B's home and it prompted her to make an approach to her former insurers, who at the time, recorded a possible subsidence claim, even though it was subsequently confirmed that subsidence wasn't the cause, and the claim was closed without it being contested.

Under CIDRA, from the way in which AXA has responded, it appears that it accepted that Mrs B had made an innocent, or at worst, a careless misrepresentation in failing to disclose the potential claim of 2019. In the circumstances, it was willing to pay out a certain percentage of the claim and it purported to place Mrs B back in the position she would have been had she disclosed the potential claim in 2019. I'm satisfied that it was fair and reasonable for AXA to have relied upon information recorded on the insurance database at the relevant time.

I'm also unable to say that AXA acted in an unfair and unreasonable manner in offering to proportionately settle Mrs B's current claim, as it was acting on the information which was available to it at the relevant time. AXA confirmed that it would have still offered Mrs B a policy had the 2019 issue been disclosed. This would have been more expensive however and would have involved a 38% increase in the premium. On this basis, the settlement was reduced by the same amount. I've carefully considered this point and can't say that the settlement approach was itself was unreasonable, or for AXA to exercise this remedy in the way that it did under CIDRA.

In summary, I can't hold AXA responsible for the way in which the previous insurer had logged the issue on the relevant database. However, it would be expected to recognise any correction of the database if Mrs B chose to maintain a policy with AXA in future years.

As to the remainder of the complaint points, I'm also unable to say that the delays caused by the need to investigate the circumstances around the historical claim were unfair or unreasonable. It's necessary for insurers to make responsible enquiries where the relevant database highlights a potential misrepresentation under CIDRA. This ensures that potential policyholders receive fair insurance quotes which reflect the full history of claims and potential claims. As to the assessor's estimate, from the available information, I can't say that it was unfair or unreasonable for him to calculate the cost of repairs based on AXA's standard repair rates. I also can't say that the increase in the excess for subsidence was unfair, and this will be a commercial decision which each individual insurer is entitled to make when it offers insurance to a policyholder.

As to Mrs B's concern that she is no longer able to obtain a competitive quote from other insurers, I note that the historical issue should have been corrected to enable her to obtain competitive quotes in future.

Finally with regard to the revised premium, I see that Mrs B paid the additional premium amount even though she didn't agree with it. I agree with the investigator that CIDRA doesn't give insurers the right to automatically increase the premium. By significantly increasing the premium as well as imposing a proportionate reduction in the settlement, I consider that AXA was unfairly duplicating a penalty for Mrs B's innocent or mistaken misrepresentation. I don't consider that it was fair or reasonable to do this.

In conclusion, AXA should now pay the claim in full to reflect the fact that she's now paying an increased premium, or it should refund the additional premium she's paid, together with interest.

To put things right, AXA should either agree to pay the claim in full, or it should refund the additional premiums she paid and amend the policy to confirm that claims will be settled on a proportionate basis. Should it do this, it should also add 8% simple interest to the amount from the date Mrs B paid the additional premiums to the date the refund is issued.

My final decision

For the reasons given above, I uphold Mrs B's complaint and I require AXA Insurance UK Plc to do the following in response to her complaint: -

Either;

- pay the claim in full, as long as Mrs B has paid the relevant premiums in full for 2022/23 and 2023/24.

Or;

- refund any additional premiums paid by Mrs B and incorporate the amendments to the policy to confirm that claims will be settled on a proportionate basis.

- with regard to the second option, AXA must add 8% simple interest* to the refunded amount from the date Mrs B paid the additional premiums to the date of the refund.

*If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give Mrs B a certificate showing this if she asks for one, so that she may reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 8 July 2024.

Claire Jones
Ombudsman