

The complaint

Ms B is unhappy with AXA Insurance Plc's (AXA) handling and settlement of a claim made under her home insurance policy.

Where I've referred to AXA, this also includes any actions and communication by agents acting on their behalf.

What happened

Ms B has a home insurance policy underwritten by AXA. In April 2023, an outbuilding at Ms B's property caught fire and the fire spread to the main building causing extensive damage. A claim was made to AXA, the claim was accepted, and Ms B was placed into temporary alternative accommodation (AA).

During claim validation, AXA's agent concluded that Ms B's buildings, outbuildings and contents were significantly underinsured. Due to the underinsurance, AXA settled the claim proportionately based on the sums insured against the correct sums that should have been insured. This resulted in the claim being settled for significantly less than it would've otherwise been. AXA also paid £400 compensation for delays during the claim and for the service they'd provided.

Ms B was unhappy with AXA's handling of her claim and the reduced claim settlement, so she approached the Financial Ombudsman Service.

One of our investigators looked into things. He said that despite requesting information from AXA, they hadn't provided it. And on this basis, he said he wasn't persuaded AXA had demonstrated they had fairly reduced the claim settlement. He therefore recommended AXA:

- Settle the entire claim in full based on AXA's own contractor's higher quote, rather than Ms B's lower quote, and without deductions for underinsurance
- Pay 8% simple interest on the additional amount due to Ms B from the date of the original proportionate settlement to date of payment of the remainder
- Reconsider the AA and disruption payments for the period Ms B was out of her property until repairs to make it habitable were completed. He said this should include consideration of any costs Ms B can evidence that she incurred for accommodation outside the period AXA provided it. But he said this didn't include any additional amounts for Ms B to forward on to friends and family where she stayed with them where there was no formal or legal obligation to pay them
- Reimburse the £200 excess that was deducted from the content's settlement

AXA responded but they didn't agree with the majority of the recommendations, they also provided some of the relevant information that had previously been asked for. This included information how the underinsurance had impacted the premiums paid for the policy. AXA also referred to the terms and conditions and to reiterate that they felt they had fairly

proportionately settled the claim in line with the terms.

AXA also said that a broker sold the policy and was responsible for that, so if Ms B had concerns about the sale, she'd need to direct those to the broker. AXA also said that they maintained the proportionate settlement should be based on Ms B's quote, rather than their contractors. They also said that if Ms B incurred costs as a result of being in AA beyond those which would have otherwise been incurred by her, that could have been discussed with them.

But AXA accepted the £200 excess had been incorrectly deducted from the contents settlement and said they were happy to reimburse that.

Following AXA's response, the investigator revisited things to take into account the additional information AXA had provided. Although the investigator still broadly upheld the complaint, the recommendations he made were slightly amended. He said:

- AXA still hadn't provided details around what was asked at the point of sale, or what capacity the broker was acting in. But as Ms B had already said she was provided with a rebuild calculator when taking out the policy, he said it was likely that it was explained the sum insured needed to be the full cost of rebuilding the insured property. He also said this was reflected in the policy documents too, so Ms B should have been reasonably aware of this
- He said that he couldn't see Ms B had taken reasonable steps to ensure the rebuild value and sum insured were correct since taking out the policy. He said the responsibility was on Ms B to make sure the information she provided was reasonable, and he said he wouldn't expect the business to tell her that she was underinsured. Therefore, he didn't think AXA had acted unfairly by saying there was underinsurance
- The investigator noted AXA had reduced the settlement proportionately in line with the policy terms. However, he didn't think AXA settling the claim in this way was fair. Instead, he said the impact to AXA of the underinsurance was receiving less premiums than they otherwise should have. So, he said the proportionate settlement should be based on the difference in premiums, rather than the difference in rebuild sums. Therefore, he said the proportionate settlement should be based on the premium shortfall which would mean a higher settlement should be given to Ms B
- He said that he still thought the proportionate settlement should be applied to AXA's higher quote, rather than Ms B's lower quote. This was because he said it's difficult to guarantee that any quote is 100% correct and Ms B would likely incur higher rates than AXA would pay contractors, and it would be reasonable to allow a contingency amount which had been included in previous estimates AXA had obtained
- The investigator said that it wasn't fair to apply a proportionate settlement to the AA settlement, as it hadn't been shown underinsurance applied to this
- In relation to additional costs Ms B incurred whilst out of the property, he said as a general approach we'd expect an insurer to consider reasonable additional costs. And in the absence of documentary evidence of these expenses, a disturbance allowance would need to be considered for the duration of any non-long-term accommodation which doesn't provide similar facilities to the insured property

- The investigator said that by AXA applying the proportionate settlement in the way that it had resulted in a difference of approximately £40,000 of shortfall in claim settlement, which impacted Ms B's ability to carry out repairs in the first instance and to be able to return home. He said AXA had caused Ms B significant distress, upset and worry over a sustained period and she should be compensated for this

After revisiting things, the investigator recommended AXA should:

- Pay the proportionate settlement to the buildings and outbuildings based on the difference in premiums, rather than sums insured
- Pay the AA costs without any proportionate settlement applied, and consider whether further payments were due for any additional costs Ms B can prove were incurred for AA
- On the difference payable to Ms B, add 8% simple interest from when the proportionate settlement was paid to the date of payment of the remainder
- Consider disruption costs for the period Ms B was out of her home, in a hotel, without suitable AA, until works to render the property were completed, with 8% simple interest added to any additional amount payable
- Reimburse the £200 excess deducted from the contents claim settlement
- Pay Ms B £1,000 compensation

As an agreement couldn't be reached, the case was passed to me to decide.

I reached a slightly different outcome to our investigator, so I issued a provisional decision, to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

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

I’ve reached a slightly different outcome to our investigator, so I’m issuing a provisional decision to give both parties an opportunity to respond before I reach my final decision.

I don’t intend to comment on every event or communication that occurred. Instead, I’ll focus on the key points I consider important when reaching a decision which is fair and reasonable in all the circumstances of the case. I don’t mean this as a discourtesy to either party, instead it reflects the informal nature of this service and my role in it. Having said that, I’d like to reassure both parties that I’ve considered all the information they’ve provided when reaching my provisional decision.

As there are several main issues, I’ll consider each separately.

Underinsurance

When validating the claim, AXA established Ms B was underinsured. They concluded:

- Buildings – AXA calculated the rebuild cost as £258,662 against the declared sum of £100,000. AXA said the sum declared was only 38.66% accurate*
- Outbuildings – AXA calculated the rebuild cost as £16,250 against the declared sum of £7,500. AXA said the sum declared was only 45.39% accurate*
- Contents – the total claimed was £37,889 against a sum insured of £25,000.*

Following inspection of the damage, AXA’s contractor calculated the buildings repair costs to be £98,682.10 (excluding VAT). Ms B also obtained her own quote for repairs which was £95,500 (excluding VAT).

Applying a proportionate settlement calculation using the percentages outlined above, AXA paid Ms B the following in settlement of her claim:

- £50,821.20 for the main building repair costs and AA, with the proportionate settlement calculation applying to both and the deduction of the £200 excess*
- £908 for the outbuilding repair costs after applying the proportionate settlement calculation*
- £24,800 for contents, which was the sum insured minus the £200 excess*
- Total paid in August 2023 - £76,539.20.*

AXA hasn't provided detailed evidence of exactly what was asked during the sale of the policy. However, in communication with this service, Ms B has said that a rebuild calculator was provided when taking out the policy. So, like our investigator, on balance, I think it's likely when taking out the policy that Ms B was told the sum insured needed to represent the full cost of rebuilding the insured property and that's why a rebuild calculator was provided.

In addition to this, the policy terms, including at renewal, also outline:

"You can find Your cover limits in Your Policy Document. When you read this, make sure You've requested adequate levels of cover:

- When taking out a policy. You are asked the amount it would take to completely rebuild Your Home, Outbuildings or replace Your Contents, specified items or general possessions (on a 'new for old' basis), the "sum insured" or, for individual items, their "worth".*

Therefore, I think this made Ms B reasonably aware that the sum insured needed to represent the full rebuild cost of the property. So, Ms B should have been aware that the declared £100,000 would have needed to represent a sufficient amount to do this. The amount calculated by AXA shows the figure provided by Ms B was significantly short as the rebuild cost of the main home was calculated as £258,662 against the declared sum of £100,000, and the outbuilding should have been £16,250 against a declared sum of £7,500.

I can't see that Ms B took reasonable steps to ensure these amounts were correct. From what Ms B said to this service, she expected AXA to tell her she was underinsured and what the correct rebuild was or prompted her to use the rebuild calculator each time. But I don't agree. The policy terms, as outlined above, explain it was for Ms B to ensure this was correct, and I can't see she took reasonable steps to do so. Whilst Ms B also says it should have been index linked, the policy terms don't outline this is something that would happen, so I don't think AXA acted unreasonably by not doing so. In any event, even if the £100,000 sum insured had been index linked, Ms B would still have had a significantly lower amount declared than the correct rebuild amount.

I also note Ms B's policy schedule confirmed:

"Minimum Contents Cover

Please note – we have increased your Contents sum insured to £25,000 – our minimum level of cover."

And against a sum insured of £25,000, the amount of damaged contents was £37,889 (so including undamaged items it's likely to have been much higher than this). So, it seems that the amount insured would've been lower for the contents too, but for AXA increasing this to the minimum they could offer which ultimately resulted in a higher settlement than otherwise would've been due. I can't see that Ms B took reasonable steps to ensure her contents sum insured was reasonable or correct either.

With the above in mind, I don't think AXA has acted unreasonably by saying there was underinsurance for the buildings, outbuildings, or contents.

Proportionate settlement

Ms B's policy terms say that in the event of underinsurance, AXA will proportionately reduce the settlement:

"If the "sum insured" isn't enough. You are "underinsured". This means that any claim that is settled will be reduced in proportion depending on how underinsured You are, regardless of the amount of the claim.

- For example, if Your Contents are actually worth £50,000, but You have only listed £25,000 as Your Contents sum insured, any contents claims will be proportionally adjusted by 50% - a £10,000 Contents claim would be settled at £5,000.*
- Certain types of cover within the policy also have an individual specific limit. This is the maximum We would pay in any claim."*

So, by AXA paying 38.66% of the building repair costs and 45.39% of the outbuilding repairs costs, AXA has acted in line with the policy terms.

However, as AXA will already be aware, whilst we consider whether an insurer has acted in accordance with the strict application of policy terms, our remit also extends to what is fair and reasonable in all the circumstances. This means that whilst a claim may have been settled in line with the policy terms, I can direct a business to do something different, if I consider it's fair and reasonable in all the circumstances to do so.

Here, AXA is contractually entitled to rely on this term, but in doing so, I don't think AXA is treating Ms B fairly. I'll explain why.

I accept that Ms B was underinsured as outlined above. However, the impact of that underinsurance to AXA is that they received less premiums than they would have if the sums insured had been accurate. So, whilst comparing the declared against correct sums insured which equated to 38.66% of the buildings, and 45.39% of the outbuildings, the actual difference in premiums had these amount been correct is significantly different to this.

AXA has recalculated what the policy would've been with the rebuild at £258,662 and the outbuilding at £16,250. AXA has calculated that Ms B has only paid 71.09% of the premiums she should otherwise have done.

Given Ms B has only paid 71.09% of the premiums she should've, this is the impact to AXA as a result of the underinsurance. So, I think the fair and reasonable remedy in all the circumstances is for AXA to proportionately settle the buildings and outbuildings claim at 71.09%, rather than 36.66% and 45.39%.

Ms B's contents sum insured was £25,000, against a claim made for damaged contents totalling £37,889. But AXA didn't seek to reduce the contents settlement proportionately and instead settled based on paying the full policy limit of £25,000. However, when doing this, AXA then deducted the £200 policy excess, meaning a final payment of £24,800.

The policy terms outline the excess would be applied prior to the policy limit, so the settlement should have been £25,000 rather than £24,800. AXA accepts they made a mistake here and didn't act in line with the policy terms, and as recommended by the investigator, AXA said they would be happy to pay the £200 deducted in error. I think this is fair.

Applying the proportion to the repair quotes

As outlined, unless anything changes as a result of the responses to my provisional decision, I'll be directing AXA to proportionately settle the buildings and outbuildings claims by 71.09% rather than 36.66% and 45.39%.

AXA obtained a repair cost quote from one of their contractors, this totalled £98,682.10 (excluding VAT). Ms B obtained her own quote for repairs totalling £95,500 (excluding VAT). AXA then proportionately settled the claim based on Ms B's lower quote.

Our investigator recommended that AXA proportionately settle Ms B's claim based on their own contractor's higher quote, rather than Ms B's lower quote. He said this on the basis:

- AXA's quote is fair for all the work required*
- Given the large amounts involved it's difficult to guarantee the quotes are correct*
- Ms B is likely to pay higher rates*
- It would be reasonable to include a contingency amount*

However, I'm not minded to agree with this. I'll explain why.

It's often the case that an insurer is able to obtain preferential rates from contractors due to commercial relationships. What this means in practice is that an insurer often can have works completed for a lower amount than that which a private individual policyholder is able to have the work completed for, and at lower rates than a policyholder is able to access.

In situations where an insurer is forcing a cash settlement rather than carrying out works, or isn't able to carry out works and has to cash settle (here due to underinsurance), we'd generally expect an insurer to settle the claim based on the costs available to the consumer, rather than at the insurers lower costs which often includes preferential rates a consumer isn't able to secure. So, if AXA's contractor was providing preferential rates, which meant the quote would be cheaper for AXA than Ms B would ever be able to get works completed for, then it might be fair to direct AXA to settle the claim based on the higher quote.

However, unlike in the above scenario, Ms B's quote is actually lower than AXA's. So, this is the cost Ms B is actually able to access and have the works completed for. Therefore, it wouldn't be fair or reasonable to direct AXA to proportionately settle the claim based on a higher quote than Ms B is able to get the works completed for, as this would (pre-proportionate settlement), result in an excess of funds not required for the works.

Whilst the investigator said AXA's quote included a contingency for any unseen costs, this was in the reserve rather than the quote itself and I wouldn't expect a contingency sum, which may or may not be used, to be included in a cash settlement. This is because if this isn't then required for the works, it would leave a cash surplus (if it wasn't for the underinsurance).

With this in mind, I don't think AXA has acted unfairly in principle by basing the proportionate settlement on Ms B's lower quote, rather than their own higher quote. But as outlined above, the cash settlement should be increased to 71.09% of the quote, rather than the reduced 36.66% and 45.39% that AXA has so far applied.

However, if Ms B encounters/encountered additional costs beyond the quote she provided (pre-proportionate settlement), she'd need to raise this with AXA to consider further at that time. But it wouldn't be fair for me to say that a contingency or higher quote should be used (pre-proportionate settlement), just on the basis that it might be needed or to increase the settlement amount Ms B isn't entitled to due to the underinsurance.

Alternative accommodation and disturbance allowance

It appears AXA applied proportionate settlement to the AA part of the settlement too, at the same 38.66% as the buildings part of the claim. As mentioned, whilst AXA is contractually entitled to apply the proportionate settlement in this way in accordance with the terms, I don't think that is a fair approach.

However, in relation to the AA itself, I'm not minded to conclude it's fair or reasonable to apply a proportionate settlement to this at all, either in line with the terms, or the revised way I outlined above (based on the premiums). I'll explain why.

The policy cover includes a separate sum insured of £75,000 for AA. From the information provided, no concerns have been raised about this being an insufficient amount. Regardless of the rebuild cost, I don't think AXA has shown this part, which is standalone and a separate limit to the rebuild, was actually underinsured.

Taking into account what AXA has said about rental costs in the area for similar properties, these range from £600-£1,200. So even if a similar rental property would cost £1,200 per month, the £75,000 limit would mean there were sufficient sums insured to provide AA for in excess of five years. Even in the very worst-case scenario, and the property having to be fully rebuilt from the ground up, I can't see that this amount wouldn't be sufficient.

With this in mind, I don't think AXA is acting fairly by proportionally limiting or reducing AA costs on the basis of underinsurance, and I'm minded to direct AXA to pay this in full without underinsurance deductions.

Ms B says she also incurred additional costs, for additional AA and whilst in AA. AXA says that they could have discussed additional costs with Ms B if they'd been presented. However, this hasn't yet been discussed between the two parties, or detailed information provided in support of these alleged costs. Therefore, I can't reasonably reach a conclusion on this at this stage.

In order to move this part of the claim forward, I intend to direct AXA to review whether any further AA costs or disruption payments are warranted. To do this, Ms B will likely need to liaise directly with AXA and evidence any costs she incurred. If Ms B is unable to present any evidence of actual costs, then AXA will need to consider whether a daily disturbance payment is warranted in the absence of evidence.

But to be clear here, Ms B would always have incurred costs if the claim hadn't occurred and she remained in her home, such as food, utilities etc. So, AXA would only need to consider reasonable additional costs beyond those which would normally be incurred. And if Ms B was staying with friends or relatives without costs incurred, then I wouldn't expect AXA to pay a lump sum in lieu of Ms B actually incurring costs.

I'll also outline here that I'm not intending for Ms B to provide evidence of those costs to me in response to my provisional decision. Instead, if my final decision remains the same as my provisional decision, and Ms B accepts it, then she'll need to liaise with AXA. If after AXA has considered matters, and if Ms B remains unhappy with whatever settlement AXA offers in relation to this, she'd be free to raise a new complaint with them before referring it to this service in line with our usual rules and timescales.

Impact

It's clear having a fire extensively damage your home would be very distressing in itself. I can't hold AXA responsible for that. But whilst I agree in principle AXA was right to conclude Ms B was underinsured, I think by AXA settling the claim in the way that they did was neither fair nor reasonable and because of this, Ms B has been unfairly impacted.

As a result of AXA reducing the settlement in the way that they did, this resulted in Ms B receiving a proportionate settlement in the range of approximately £40,000 less than it otherwise should have been had AXA applied this based on the premium shortfall instead.

Whilst there always would have been a lower settlement than the full cost of repairs based on underinsurance, this has had a much greater impact on Ms B's abilities to have repairs completed and to be able to get her home into a habitable condition in order to return home. This meant she was out of her home longer than she otherwise would've been. And this would have caused significantly more distress and inconvenience on a daily basis, over a sustained period, at what was already a very difficult and distressing time not only because of the fire, but also a very recent bereavement.

AXA already paid £400 compensation for claim delays before the settlement was offered. However, I don't think that settlement was then fairly reduced in the way that it was which then caused Ms B additional prolonged distress. With this in mind, unless anything changes as a result of the responses to my provisional decision, I intend to direct AXA to compensate Ms B a further £600 for the additional distress and inconvenience they caused, taking the total compensation to £1,000."

So, I was minded to uphold the complaint in part and to direct AXA to:

- Recalculate the cash settlement, based on Ms B's repair quote, but apply the proportionate settlement of 71.09% rather than 36.66% and 45.39%
- Review whether any further alternative accommodation or disruption costs or payments are due, without applying a deduction for underinsurance
- To the above, add 8% simple interest to the difference due from the date of the previous settlement to the date of payment of the remainder
- Pay back the £200 contents excess incorrectly deducted
- Pay Ms B a total of £1,000 compensation (including the £400 offered previously)

The responses to my provisional decision

Ms B responded and said she was happy with the provisional decision. She also asked for clarification on the next steps for the accommodation part of the provisional decision.

AXA responded and said they accepted the provisional 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.

And I've thought carefully about the provisional decision I reached. As neither party has provided anything that would lead me to reach a different conclusion, my final decision remains the same as my provisional decision, and for the same reasons.

To clarify the next steps in relation to the accommodation part of the provisional decision, if Ms B accepts the final decision, she'll then need to liaise with AXA directly about any information they need to consider this further. Once AXA has considered this, and if it makes an offer Ms B is unhappy with (or no offer at all), then she'd be free to raise this as a new complaint with AXA, before referring back to this service in line with our usual rules and timescales.

My final decision

It's my final decision that I uphold this complaint in part and direct AXA Insurance Plc to:

- Recalculate the cash settlement, based on Ms B's repair quote, but apply the proportionate settlement of 71.09% rather than 36.66% and 45.39%
- Review whether any further alternative accommodation or disruption costs or payments are due, without applying a deduction for underinsurance
- To the above, add 8% simple interest to the difference due from the date of the previous settlement to the date of payment of the remainder
- Pay back the £200 contents excess incorrectly deducted
- Pay Ms B a total of £1,000 compensation (including the £400 offered previously)

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 19 July 2024.

Callum Milne
Ombudsman