

The complaint

Mr and Mrs G have complained about the cash sum AXA Insurance UK Plc paid to settle a claim they made under their home and buildings insurance policy following an escape of water. Mr and Mrs G complained that AXA had mis-sold the policy to them.

All reference to the insurer AXA in my decision includes agents acting on its behalf.

What happened

Mr and Mrs G bought a home and buildings insurance policy online in 2019. They renewed their policy each year. The policy in question was insured by AXA.

In December 2022 unfortunately their home was significantly damaged by an escape of water from the loft.

AXA accepted the claim. In April 2023 AXA said it would pay a cash settlement as agreed. But the settlement was much lower than the original claim settlement because it said Mr and Mrs G had significantly underinsured the rebuilding sum insured cost. Mr and Mrs G insured the property for a rebuild cost of £60,000. But AXA said the rebuilding sum insured was £183,994. So it applied an 'average' to the amount based on the correct rebuild sum insured cost and in line with the policy.

The full claim settlement under the buildings section was £53,854.67. But after the adjustment, AXA paid £14,605.91 to Mr and Mrs G for the buildings claim. AXA paid a separate amount for the contents claim.

In April 2023 Mr and Mrs G complained to AXA about the reduced cash settlement for their buildings claim. They said the decision was unfair and they felt misled by AXA when buying the policy. They wanted AXA to meet their claim in full.

Our Investigator didn't think AXA had mis-sold the policy or misled Mr and Mrs G when they bought their insurance. And she thought AXA had fairly determined the correct rebuild sum insured. But in line with our approach where a customer has misrepresented information, she looked at the Consumer Insurance Disclosure and Representations Act (CIDRA) to see if the Act would put Mr and Mrs G in a better position than following the proportionate settlement applied under AXA's policy.

The Investigator asked AXA to provide its underwriting information to us to show what impact the correct rebuild sum insured would have had on the premium Mr and Mrs G paid. But despite her requests, AXA didn't provide a response.

So in February 2023 the Investigator said – in line with CIDRA - she couldn't see that a qualifying misrepresentation had taken place or that the premium would have been impacted.

In the absence of the requested information, the Investigator recommended AXA settle the claim in full, so without applying a proportionate reduction.

Mr and Mrs G accepted the Investigator's view. AXA didn't respond. So the case has been passed to me to decide.

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.

I agree with the Investigator's findings that AXA asked a clear question of Mr and Mrs G when they applied for the policy in relation to the rebuild Sum Insured.

AXA asked; *"What is the cost of rebuilding the property?"* and provided an explanation along with a link to a calculator to assist Mr and Mrs G in submitting an accurate sum. However, Mr and Mrs G said they thought a reasonable sum was approximately a third of the purchase price they paid for their home. This led to Mr and Mrs G being significantly underinsured.

AXA didn't provide any advice as to the suitability of the policy when Mr and Mrs G chose it. So I don't find that AXA misled or mis-sold the policy to Mr and Mrs G.

AXA's policy says the following where the rebuilding sum insured is inadequate:

- *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".*
- *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.*

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation (in other words, did it make a difference) the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

As our Investigator explained, our approach in cases like this is to look at whether applying CIDRA would put Mr and Mrs G in a better position than the terms of AXA's policy. In order to determine a qualifying misrepresentation, we need to see AXA's underwriting evidence of the impact on the premium – had it known the correct information. And, if there is an impact on premium, whether a fairer outcome is to apply a proportionate reduction in settlement based on the difference.

But as AXA hasn't responded to this service's requests for this information, I cannot safely conclude that it has treated Mr and Mrs G fairly. So in the absence of underwriting information, I think AXA should meet Mr and Mrs G's claim in full under the remaining terms and conditions of the policy.

As I think AXA hasn't acted fairly, I think it should pay interest on the difference in the cash settlement it pays at a rate of 8% simple interest a year from one month from the date of claim to the date it pays.

My final decision

My final decision is that I uphold this complaint. I require AXA Insurance UK Plc to pay Mr and Mrs G's buildings claim by way of cash settlement in full, in line with the remaining terms and conditions.

AXA should pay interest on the difference in cash settlement at a rate of 8% simple interest a year from the one month after the date of the claim to the date it pays Mr and Mrs G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 18 September 2024.

Geraldine Newbold
Ombudsman