

## **The complaint**

Mr G and Mrs G complain about AXA Insurance UK Plc (“AXA”) and the reduced payment made to them to settle the claim they made on their home insurance policy.

Mr G has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any comments made, or actions taken by either Mr G or Mrs G as “Mr G” throughout the decision where appropriate.

## **What happened**

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Mr G held a home insurance policy, underwritten by AXA, when his property was damaged by a flood. So, he contacted AXA to make a claim.

Mr G’s claim was accepted by AXA. But when AXA were validating the claim, they discovered that Mr G was underinsured, as the reinstatement value of his home provided at the policy inception was less than the actual reinstatement value. So, AXA settled Mr G’s claim proportionately, at around 36% of what the claim itself was worth. Mr G was unhappy about this, so he raised a complaint.

Mr G set out why he felt AXA’s settlement was too low, raising concerns about the reinstatement value provided by the surveyor, who I’ll refer to as “S”. So, he wanted the claim settlement to be increased to what he felt was a fairer and more reasonable sum.

AXA responded to the complaint and didn’t uphold it. They made it clear that any concerns Mr G had about the sale of the policy would need to be directed to the broker of the policy, who I’ll refer to as “H”. And they thought the reinstatement value they had used when calculating Mr G’s settlement was fair, and that it had been calculated fairly and in line with the policy terms and conditions. So, they didn’t think they needed to do anything more. Mr G remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They noted it was accepted that Mr G’s property was underinsured. And they felt AXA were fair to rely on the actual reinstatement value provided by S, who were the qualified expert. But while they noted AXA had an average clause policy that they relied upon, they didn’t think AXA were fair to do so. They set out our service’s most recent approach to complaints such as this one, explaining why we felt any proportionate settlement should be based on the difference between the premium Mr G paid, compared to the premium he would’ve paid had he not been underinsured.

And as AXA confirmed Mr G had paid 90% of the premium he would’ve done had he correctly disclosed his property reinstatement value, our investigator recommended AXA pay Mr G and Mrs G 90% of the claim value, plus 8% simple interest from the date the initial settlement amount was paid, to the date of payment. And they recommended AXA pay Mr G and Mrs G £300 compensation to recognise the distress and inconvenience they were caused by receiving a lesser settlement amount than they should have.

Mr G accepted this recommendation. But AXA didn't. While AXA recognised they were aware of our service's most recent approach, and they didn't dispute our investigators recommendation followed this, they explained they were still in the process of reviewing this approach internally, and with other insurers, as they had reservations about how our service were interpreting the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). So, as they hadn't concluded this review, they didn't feel they were in a position to accept the recommendations and asked for an Ombudsman review. As AXA didn't agree, the complaint has been passed to me for a 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.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, I think it would be useful for me to set out what I've been able to consider, and how. I note Mr G holds concerns about the sale of his policy. As he purchased his policy through H, who were performing their role as a broker, any complaint about the policy sale would need to be directed, and considered against, H directly. So, this isn't something I've commented on further within this decision.

And while I note Mr G did raise an earlier complaint to AXA about delays in reaching a claim settlement, I note our investigator confirmed with Mr G that our investigation would be focusing on the settlement value solely and I've seen nothing to show Mr G disputed this. So, I think it's reasonable for me to assume the issues raised within his previous complaint, that AXA paid a £200 compensatory payment for, have been adequately addressed and so, they haven't formed part of the decision I've reached.

Instead, this decision focuses solely on AXA's claim settlement. And I note that it's not disputed by Mr G, or AXA, that Mr G was underinsured based on the reinstatement value provided at the inception of the policy, compared to the actual reinstatement value of his property. So, in line with our service's approach, I do think AXA were entitled to take action to recognise the above.

AXA have set out why they think their reduction of the claim settlement to 36% was fair, based on the average clause contained within their policy documentation. And I don't dispute that this action fell in line with their policy terms and conditions. But crucially, as well as considering whether AXA have acted within the terms and conditions of the policy, I must also be satisfied they were fair to do so. And I don't think that's the case here.

AXA have confirmed to our service that, had Mr G provided the correct reinstatement value of his property, the premium he would've paid would've been 10% more than the premium he did pay, based on the incorrect reinstatement value initially given.

So, Mr G essentially paid 90% of the policy premium he should've done.

But AXA have reduced the settlement payment to 36% of what it would've been, had Mr G not been underinsured. So essentially, Mr G has paid 90% of his policy premium, only to receive 36% of a claim settlement. And in line with our service's most recent approach, I don't think this is fair nor reasonable, as Mr G has been disproportionately financially disadvantaged, when comparing the financial impact on him to the 10% loss of premium

AXA encountered. So, as I think AXA have acted unfairly here, I've then turned to what I think AXA should do to put things right.

### **Putting things right**

Any award or direction I make is intended to place Mr G and Mrs G back in the position they would've been in, had AXA acted fairly in the first place. In this situation, had AXA acted fairly, I think they would've reduced Mr G's claim in line with the premium proportion, rather than the proportion of the reinstatement value. I think this then fairly reflects the impact Mr G's error had on AXA, as I've nothing to show AXA were impacted in any other way than the 10% loss of the additional premium they would've charged.

So, to place Mr G and Mrs G back in this position, I think they should pay Mr G and Mrs G 90% of the total claim settlement. And I think they should pay an additional 8% simple interest on this amount, from the date they paid the initial settlement payment to the date of payment, to recognise the length of time Mr G and Mrs G have been without access to these funds.

I note our investigator also recommended AXA pay Mr G and Mrs G an additional compensatory payment of £300, to recognise the distress and inconvenience they've been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think it is significant enough to recognise the worry and upset Mr G and Mrs G would've felt when they discovered they would receive a significantly reduced settlement payment that wouldn't allow them to complete the necessary repair works to their property without them incurring a significant financial cost to themselves. And I think it also fairly reflects the fact that Mr G and Mrs G's property was damaged to an extent where the inability to complete the majority of the repairs, which they would've been able to do had AXA offered a fairer settlement, would have been impactful for their day to day lives. So, this is a payment I'm directing AXA to make.

I understand AXA are unlikely to be happy with this outcome and I want to reassure AXA I have taken on board their comments regarding their service's approach, and the steps they are taking to review this approach both internally and externally. But I don't think this means my decision should deviate from our approach, which AXA confirm they are already aware of. Because of this, I think they have had an opportunity to implement this approach, including in response to any complaints made to them surrounding this issue. It is AXA's own decision to conduct internal or external reviews before taking this action and I don't think this should impact the decision I've reached on this occasion.

### **My final decision**

For the reasons outlined above, I uphold Mr G and Mrs G's complaint about AXA Insurance UK Plc and I direct them to take the following action:

- Pay Mr G and Mrs G 90% of the total claim settlement, including an additional 8% simple interest on any amount not yet paid, from the date the first settlement payment was made until the date of the directed payment; and
- Pay Mr G and Mrs G £300 compensation to adequately address the distress and inconvenience they have been caused.

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

Josh Haskey  
**Ombudsman**