

The complaint

Mr C complains that AXA insurance UK Plc (“AXA”) has unfairly settled a claim under his buildings insurance policy.

Any reference to Mr C or AXA includes respective agents or representatives.

What happened

The background of this complaint is well known between parties, so I’ve summarised events.

- In May 2021 Mr C took out his AXA buildings insurance policy online for his property which has a garage detached from his main property.
- AXA says during this sale Mr C agreed that £7,500 would be a high enough sum to cover the rebuild costs of all of his detached outbuildings. And that its sales process included specific guidance and relevant tools to assist with calculating the property rebuild sum.
- In October 2022 Mr C’s garage was damaged by fire. He contacted AXA shortly after to notify it of the event but didn’t want to make a claim at this time while he looked into potential repair costs.
- In February 2023 Mr C made a claim under his AXA policy following investigations that he says established the fire had caused damage to a retaining wall. Mr C submitted a quote to AXA for repair costs of £20,625.
- AXA appointed an agent, and following their visit in March 2023 they produced a report which said:
 - The garage was underinsured, saying the rebuild cost for outbuildings should have been input as £35,000 (not the £7,500 it was insured for).
 - The cracking to the boundary wall was not as a result of the fire and predated it. It said this was a result of gradual deterioration and not covered.
 - Mr C’s quote for repairs was excessive and in its own surveyor’s view the necessary insured works could be completed for £5,877.86.
 - In light of the underinsurance of the outbuilding AXA calculated Mr C’s settlement on the following “average” basis:
 “Settlement x (Sum Insured / Value at Risk) = Settlement Payable less Policy Excess
 $\text{£5,877.86} \times (\text{£7,500.00} / \text{£35,000.00}) = \text{£1,259.54 less Policy Excess.}$ ”
- AXA concluded that Mr C’s garage was underinsured. But it said it would consider any evidence that disputed its calculations.
- Mr C complained about AXA’s settlement. He said it was never clearly communicated to him that his outbuildings fell under a separate insured sum under his policy, nor was there any advice to make this clear at renewal. Mr C said he was never advised of the importance of obtaining a rebuild survey and believed his one million pound limit on his main building should cover the claim. He also reiterated the retaining wall

was damaged by the fire, and said any settlement paid should reflect true reinstatement costs (recognising rising building costs and inflation since the fire).

- One of our Investigators looked into the complaint and upheld it, saying:
 - Under mis-representation principles he needed to be satisfied the questions that AXA asked were clear, and in turn that Mr C took reasonable care. And if any unreasonable answers were given, that this had impacted AXA.
 - The question Mr C was asked at the point of sale had no explanation as to what AXA considered to be an outbuilding. While AXA had pointed to its policy and other documentation that came after the sale to clarify this, the Investigator said this came too late. And AXA's suggestion that Mr C could've cancelled his policy after the sale was not a fair expectation.
 - As the question about outbuildings was unclear, the Investigator said it was difficult to say Mr C had given an unreasonable answer. And he said he'd been given no evidence to show what AXA would've done had the correct sum for the outbuildings been input.
 - So, he said AXA could not fairly reduce Mr C's settlement. He directed AXA to pay £200 in compensation and reconsider the claim.

AXA didn't respond to the view, so the complaint was passed to me for an Ombudsman's decision. I issued a provisional decision on 4 September 2024 outlining why I intended on upholding the complaint. I've included an extract of this below.

"This complaint concerns two main issues that I'll address in turn:

- *Mr C says AXA has unfairly declined to cover the retaining wall crack damage.*
- *Mr C disagrees that AXA can fairly rely on its average settlement as he didn't realise the significance of the sum he was inputting for the garage rebuild cost.*

The retaining wall

It's not in dispute that Mr C's garage suffered damage as a result of a fire. AXA has accepted a claim under the policy and offered to settle it – but AXA says not all of the damage claimed for was caused by the fire. AXA has reviewed the site and photos and said the crack in the wall is not as a result of the fire, and instead was gradual and pre-dated the fire. Its experts said: "...this was repudiated onsite as it is our opinion that these predate the incident and are as a result of gradual deterioration."

I've then looked at what Mr C has provided. He's been clear he disagrees. He's provided a quote from an engineer for repairs, but this doesn't comment on the cause of the crack. So, there's no expert evidence to show this damage has been caused by the fire. Nor have I been given any photos or evidence to support its pre-loss condition that would support the fire being the proximate cause of the crack damage.

I've seen the photos and reports that show the damage and cracking to the garage building wall. I wouldn't dispute that cracking can be caused as a result of fire. But I'm not an expert in these matters and would take my lead from the expert opinions that have been provided unless there's something I consider to be obviously wrong or missed. And looking at the photos provided, I'm minded to agree with AXA's conclusions that this was most likely existing damage that has occurred over time.

So, in the circumstances I'm satisfied that AXA acted fairly by limiting the claim in the way that it did, and not extending cover to the cracking to the retaining wall. This means

simply

that I'm satisfied the work established by AXA's surveyor as necessary repairs was fair based on the available evidence. Next I have to consider whether it can reduce that amount in light of its underinsurance concerns.

Underinsurance and "average" settlement

AXA has sought to rely on the 'average' clause within its terms. It has done so because it doesn't think Mr C provided the information he should have done when he took out and renewed the policy.

There are laws and industry wide best practice about the responsibilities on insurers and consumers when starting or renewing a policy, so we think it's in line with those laws, best practice, and fair and reasonable in the circumstances to consider those responsibilities.

AXA says it sold this policy on a non-advised basis in 2021 and gave Mr C all of the information he needed to reasonably answer the questions it put to him.

Within its response it has focused on a screenshot of the webpage that it says Mr C would've seen. Under the heading "About your property" this says "What is the cost of rebuilding the property?". To the right of this question is a box that it appears would be free-text for Mr C to enter his sum.

Below this it says "Note: not the market value! Use online guide" which the last word includes a link you could click on that would provide more information. AXA says this provided an explanation around the distinction between the market value and rebuild value and that it would need to include the cost of rebuilding the property if it was destroyed or damaged beyond repair.

On its face, it seems to me these questions and note around it would clearly indicate a distinction between the market value of a property and its rebuild value. However here, AXA hasn't said Mr C input this incorrectly or disputed the property value he input. From what his schedule says, he input £1,000,000.

The dispute in this case comes from the question below this. This said:

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

This then gave a binary option of either yes or no. It doesn't seem disputed that Mr C clicked yes. Nor that this sum was not sufficient for the rebuild or repair of the detached outbuildings that he owns. But I have to consider whether Mr C answered this reasonably based on the question he was asked and the information available to him.

AXA has said the definition of an outbuilding is within its policy. This says:

"Fixed structures or buildings detached from the Home located within the Boundary that You are legally responsible for. Outbuildings include but are not limited to:

Detached garages, sheds, boundary or garden walls, fences, tennis courts, swimming pools, external carports, driveways, patios, artificial lawns, septic tanks, soakaways, or sewage treatment centres."

I can't see this definition was shown to Mr C prior to him receiving his policy documents and after the policy was taken out. So, while I don't think it would be fair for AXA to rely on terms that came after the sale, in these particular circumstances I'm satisfied Mr C ought to have reasonably concluded that his detached garage amounted to a detached outbuilding when he was asked the above question. So, it follows he should have thought about how much it would likely cost to rebuild it.

I have to then consider whether Mr C had the tools and information available to him to allow him to provide a reasonable answer.

The tools and guide that AXA referenced as helping calculate the rebuild cost appear to me as only useful towards calculating the rebuild value of a property and not an "outbuilding".

This guide also says you could find this information from a mortgage valuation report, surveyor's report, or insurance renewal.

I've not been given any information from AXA to support that such information about an outbuilding's rebuild value would necessarily be included in any of the above three places. On the subject of the insurance renewal specifically – as I've said above – this can differ greatly between insurance providers and how their policies work.

So, for these reasons I'm not satisfied the information or tools it referenced would have served to help Mr C determine whether £7,500 was a reasonable answer to AXA's question. Particularly taking into account the wide scope of what AXA classes as an outbuilding.

I've also thought about the 2022 renewal that followed. In the schedule it listed the cover he'd taken, including "Outbuildings Cover" at a sum insured of £7,500. Underneath it said "See Section 1 in your HomeProtect policy book". From what I've seen, there was no clear communication about this sum being the rebuild value of the garage or outbuildings, or any additional information on how to calculate this within this correspondence. So this hasn't persuaded me that these later communications clarified the matter.

As a result, I'm not satisfied Mr C did answer the question unreasonably when he took out the policy – or at the very least, I'm satisfied he was not given the tools or guidance to allow him to reasonably estimate the rebuild cost of the garage/outbuildings. And within the 2022 renewal there was little to provide Mr C with any support in identifying any issues with the sum that had been input for outbuildings. So, I'm satisfied in this case the settlement AXA previously proposed would be a fair one – in principle – without any average clause reduction.

I am aware of the average clause in AXA's policy terms that it has sought to rely on. AXA will be aware of this Service's approach to underinsurance. For the above reasons I don't think it would be fair or reasonable in this case for AXA to be able to apply such an average clause.

Mr C has said that any revised payment at this time will be subject to inflation. Given the time that has passed I accept this may well be the case, and it seems to me that any rise in costs caused by the delay reaching a reasonable offer should be met by AXA. So, I will direct AXA to recalculate its settlement in light of any up-to-date costs/inflation before making payment to Mr C.

I've also thought about the distress and inconvenience this experience has had on Mr C.

I don't doubt AXA's actions would've made an already challenging experience more difficult and has led to this claim going on for much longer than necessary. So, in the circumstances, I'm minded to direct AXA to pay Mr C a sum of £350 compensation."

I gave both parties until 18 September 2024 to provide anything further. This date has now passed. Mr C said he had no further comments to make. AXA disagreed, asking me to consider the online journey Mr C would've experienced during the initial sale and provided further screenshots around this.

The complaint has been passed back to me for an Ombudsman's 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.

Having done so, I'm still upholding this complaint. I'll explain why.

AXA has put forward evidence of its online sales journey it wants me to consider.

It reiterated the guidance it had given around calculating the rebuild cost of the main property which I touched on within my provisional decision. As I've already considered this it hasn't changed my mind.

AXA also provided further information around its question *"Your policy includes £7,500 cover for rebuilding or repairing all detached outbuildings. Is this sufficient?"* It said there was a question mark box to the right of this question. And if Mr C had clicked or hovered over this question mark he'd have been given further information.

This information box included the definition of outbuildings which included (but not limited to detached garages, sheds, boundary or garden walls etc. as outlined in Mr C's policy) It also specified that the policy automatically included £7,500 for rebuilding or repairing outbuildings. And it said if the applicant wanted more cover they could input their desired sum within the box – which would've appeared had he clicked *"no"*.

From this I accept Mr C may have had information available to him to enable him to understand what the wider scope of *"detached outbuildings"* meant. But I have previously outlined in my provisional decision that even if this had been unclear, I'd have expected Mr C to have recognised that his garage fell within this definition in the particular circumstances. Therefore I said Mr C should've thought about how much his garage would've likely cost to rebuild, and I went on to consider the surrounding guidance and tools AXA provided.

And from what AXA has given me, there were no tools or guidance on how to calculate this for outbuildings. So, I'm still not satisfied the information or tools AXA referenced would have served to help Mr C determine whether £7,500 was a reasonable answer to AXA's question. Particularly taking into account the wide scope of what AXA classes as an outbuilding.

My final decision

For the above reasons, I'm upholding this complaint and directing AXA insurance UK Plc ("AXA") to settle the claim without a reduction for underinsurance, subject to the remaining terms and conditions, based on the work identified by AXA's surveyor – and at current rates. AXA must also pay Mr C £350 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or

reject my decision before 22 October 2024.

Jack Baldry
Ombudsman