

## **The complaint**

Mr K complains about AXA Insurance UK Plc's handling and settlement of his home insurance claim.

## **What happened**

The background to this complaint is complex and is well known to both parties, so I'll provide only a brief summary here. I'll concentrate on the issues and information which I think are key to the case.

Mr K has home insurance underwritten by AXA to cover his home and its contents, amongst other things. He bought the policy in 2018 and has renewed it each year since then.

He made a claim in early March 2023 after a fire in the basement caused extensive damage to the property.

The claim was initially handled, on delegated authority from AXA, by the broker and administrator for the policy (who I'll refer to as "H").

The claim was accepted. Reports showed the cause of the fire was accidental. H appointed loss adjusters (who I'll refer to as "G") who inspected the property and assessed the necessary repairs. They then put the repair work out to tender and received three bids.

At around this point, H referred the matter back to AXA themselves, seemingly because it had become apparent that the financial limit on their delegated authority would be exceeded.

AXA had concerns about the sum insured for the buildings section of the policy – which was £750,000. G had thought the sum insured (the total rebuild cost) should be £765,297. But they'd assumed (not unreasonably) that the degree of underinsurance implied by that wouldn't affect the outcome of the claim.

AXA commissioned an assessment from another surveyor (I'll refer to them as "X"). They said the total rebuild costs – for the main building itself - were in fact around £1.76m.

To cut to the chase, AXA told Mr K he was underinsured. And they would in fact cover only 42.76% of the building repair costs. This left Mr K to find a further £140,074 to pay for the repairs in full.

Mr K had already made complaints to AXA and to H about delays and poor service in their handling of the claim. They had both admitted failings and Mr K received a total of £600 in compensation for his trouble and upset.

Mr K now complained again to AXA. In essence, about the on-going delays and about their proposed settlement of claim. And when AXA maintained their position, Mr K brought his complaint to us.

Our investigator looked into it. She thought the compensation already paid to Mr K was sufficient. But she thought AXA should settle the claim in full – and add interest at 8% simple

to any additional payments they now made to Mr K.

This was primarily because AXA had been unable to provide evidence about the total rebuild cost for the property at the time the policy was last renewed, rather than at the date of the assessment following the claim.

AXA disagreed and asked for a final decision from an ombudsman.

I agreed with our investigator that Mr K's complaint should be upheld. But my reasoning was different. And I took a slightly different view about what AXA should do to put things right for Mr K.

So, I issued a provisional decision. This allowed both Mr K and AXA an opportunity to provide further information or evidence and/or to comment on my thinking before I made my final decision in this case.

### **My provisional decision**

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'm minded to ask AXA to settle the claim in full – and to pay further compensation for Mr K's trouble and upset. I'll explain why below.

However, it's also important that I first set out our approach to underinsurance in cases like this. This may affect the outcome of this case if I'm persuaded to alter my current view by any further information or evidence provided by AXA.

#### *Our approach to underinsurance*

AXA know that our approach to the remedies for underinsurance follows the line set out in the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

In other words, where a policyholder is underinsured due to a misrepresentation they made when taking out a policy, the insurer is allowed to settle any claim proportionately by comparing the premium the policyholder actually paid to the premium they should have paid (had the facts been known to the insurer at the time of purchase).

AXA proposed to settle Mr K's claim proportionately by comparing the policy sum insured to the actual total rebuild cost of the property. AXA are aware that we regard that approach as unfair and unreasonable.

I know AXA are aware of that because: (a) we've told them; (b) they've seen that approach set out in previous decisions issued by our service; and (c) their internal communications relating to this claim clearly show that they're aware of what our approach would be if Mr K brought his complaint to us.

So, I'm not minded at present to say that AXA can fairly settle this claim proportionately (and I'll explain why). But if I receive further information which changes my mind, AXA should be aware that I'll be saying that any proportional settlement would be calculated by comparing the premium Mr K paid at the last renewal prior to the claim and the premium he should have paid assuming an

accurate sum insured / rebuild cost.

At present, AXA haven't given us any clear information about the premium Mr K paid. His renewal documents seem to suggest he'd be paying £1,242.24. But AXA later told us he'd paid £639.74. Any clarity on this – from either party – in response to this provisional decision would be very welcome.

As would any further explanation AXA can provide about the premium they believe Mr K should have paid, had the sum insured been at the level they think it should. They've suggested the premium should have been £1,187.46 – which I note is less than the renewal quote Mr K actually received – but we've had no full and/or easily understood confirmation of how that has been calculated.

#### *Underinsurance in this case?*

I'll turn now to my reasons for saying that the claim should be paid in full.

Mr K bought the policy in 2018. And said the total rebuild cost of his property should be £750,000.

I note H has confirmed for AXA that they offer no advice to potential customers about rebuild costs, other than to refer them to an industry-recognised rebuild cost calculator.

I also note that H do not increase the sum insured each year in line with inflation (in building costs). Nor do they specifically remind customers, at renewal, that inflation may have impacted their sum insured.

Those are matters for H. And I'm aware that Mr K has also made a complaint about them, which is currently on-going.

Rebuild costs – which dictate the sum insured – are to an extent subjective. Experts in the field can and will come up with different estimates for the same property. And potential customers for domestic insurance policies aren't experts.

So, when we look at alleged underinsurance resulting from a supposed misrepresentation by the policyholder at the time of purchase, the key question for us is whether the estimate of rebuild costs made by the policyholder was in fact reasonable in all the circumstances. And the circumstances will include what level of guidance and support the policyholder may have been given.

In other words, we're not asking whether the policyholder's estimate was – as it turns out – absolutely accurate. We're asking whether it was a reasonable estimate. And relevant to that, how the policyholder came to arrive at it.

H say they provided no other guidance than to refer Mr K to the rebuild cost calculator. Understandably, given the passage of time, Mr K can't recall how he came to the £750,000 figure. He told AXA he thought it might have been recommended by H.

I agree with H, who say that's unlikely. The policy was bought on-line, it wasn't an advised sale and, bluntly, H would usually steer well clear of giving that kind of guidance.

So, I think it's likely Mr K thinks he took advice from H because he followed their

guidance and used the calculator. And that he arrived at the £750,00 rebuild cost from using the calculator (whether expertly or not).

There are three later valuations of the rebuild cost. In spring 2023 (five years after Mr K's original estimate), G say it ought to be just above Mr K's £750,000. G are a loss adjuster.

Later, X put the cost at £1.76m. They appear to have used the same calculator as a base line. They've then added varying amounts for sound systems, alarms, a sauna, and kitchen appliances, amongst other things.

Whilst I can why they've made some of those additions, I'm not sure you could accuse Mr K of making an unreasonable estimate when he didn't add all of those into his own figure when using the calculator.

There's also a further calculation on AXA's case file – though it's not clear who carried it out – using the same rebuild costs calculator, which arrives at a figure of around £1.2m. That squares with a recent calculation undertaken by Mr K, who provided us with a screenshot of the outcome.

The key point for me is that Mr K was asked to estimate the rebuild cost of his property, without any further guidance or support. I'm satisfied he most likely used the recommended calculator. And that wasn't an unreasonable thing to do.

I don't think it's fair for AXA to then suggest Mr K didn't take care in coming to his estimate (£750,000) when in fact, some five years later, a professional loss adjuster (G) – who would know full well how to calculate rebuild costs – came to a very similar conclusion as Mr K.

The experts in this case have estimated rebuild costs which vary massively and run from very close to Mr K's estimate up to more than twice as much.

Mr K isn't an expert. But bearing in mind the range of the other valuations (and the five years that had passed between inception and the claim), I don't think AXA can fairly or reasonably reduce the payment on Mr K's claim on the basis that he made an unreasonable estimate and so, misrepresented the rebuild cost when he bought the policy.

It follows that AXA should pay Mr K's claim in full, in line with the remaining terms of the policy.

And it also follows that AXA should pay interest on the money Mr K has been deprived of during that time, as our investigator suggested.

### *The delays and compensation*

Mr K and his family were unable to live in their home after the fire. AXA have paid for alternative accommodation, but no-one would want to be out of their own home for longer than necessary even if their rental costs were being met.

The reports on the case file provided by AXA show that by mid-July 2023 (around four months after the claim), H and/or their agents had assessed the claim and the damage, scoped the repairs, put out a tender and recommended a contractor.

H and/or AXA have admitted to some failings in communication and minor delays up

to that point – and paid what I'm satisfied is fair compensation for Mr K's trouble and upset up to that point.

In mid-July, H's agents (ultimately, AXA's agents) were confident that the repairs would take between 16 and 20 weeks - and that there was a lead-in time for the contractors of 4-6 weeks.

Assuming things had progressed at a reasonable pace from that time onwards, then, Mr K would have been back in his house (fully repaired) by around the turn of the year, if not sooner.

Because of the delays caused by AXA wishing to question the sum insured, I understand Mr K was close to completing the repair works in April 2024.

I'm willing to estimate then that the hiatus caused by AXA addressing the question of underinsurance meant delays of around four months in the repair works being completed.

AXA's final response to Mr K's complaint (which he then brought to us) was issued in late November 2023. Strictly, I can only look into things up to that point. But I'm satisfied the four months or so of delay primarily occurred between AXA taking direct control of the claim – in August 2023 - and the end of November 2023 (four months), so I'm considering that four month period when I look at further compensation to be paid to Mr K.

As I say, the delays caused Mr K to spend those four months or so in alternative accommodation whilst little progress was made on the repairs.

Mr K will also have experienced significant stress during that period because of AXA's (wrongful, in my current view) insistence that they would only pay just over 42% of Mr K's claim. That left Mr K with a significant financial shortfall, which was very worrying.

Mr K has also suffered a degree of inconvenience as a result of the way his complaint has been handled. He has had to raise issues with AXA (sometimes via H), he's often not received full or timely responses and has often had to chase for any response at all.

Bearing all of that in mind, I'm minded to require AXA to pay Mr K a further £1,000 in compensation for the trouble and upset he's experienced as a result of their errors and omissions."

### **The responses to my provisional decision**

Mr K responded to my provisional decision. He confirmed that the premium he paid for 2022-2023 was £1,242.24. Which is higher than the figure AXA told us he ought to have paid had they known the true cost of rebuilding the property.

Mr K pointed out that this made no sense. He also said he'd insured a very similar property in 2023 for a premium of just over £1,000.

Mr K remains very concerned that the premium wasn't increased in line with inflation over the five years he had the policy. He says that was never mentioned to him and he was never

asked at renewal whether the sums insured on the policy ought to be increased.

He also asks why the premiums had increased significantly when the value at risk (as represented by the sums insured) hadn't been increased at all.

Mr K says the delays in the handling of his claim have ultimately caused the costs to rise. The contractor with the lowest original bid for the repair work pulled out due to delays in approval, which increased costs by around £50,000. And Mr K says he was paid late for accommodation costs on occasion and had to pay for the rent himself at the time.

AXA didn't provide any response to my 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.

Because AXA didn't respond to my provisional decision, it remains a mystery as to why the premium Mr K actually paid (based on his original estimate of rebuild costs) is less than the premium AXA have told us he ought to have paid had they known the true rebuild cost.

It's a moot point, because AXA have given me no reason to change my mind about them paying the claim in full, but even if they were allowed to settle this claim proportionately, based on a comparison of the premium paid versus the premium which should have been paid, they'd end up paying the claim in full anyway.

I'm sure AXA's calculations have gone awry somewhere, but I have no idea where and/or how. And as I say, it's of no real consequence when it comes to the outcome of this case.

I understand Mr K's concern about the alleged lack of information or prompting provided to him each year when the policy renewed - and the alleged lack of any warning about inflationary increases in rebuild costs.

I'm going to require AXA to pay the claim in full, in line with the remaining terms of the policy, and to compensate Mr K, so the consequences of that alleged failure to communicate effectively with Mr K have been mitigated.

However, I do note that Mr K's complaint against H remains open. And no doubt that will address H's alleged failure to prompt Mr K to review the sums insured at renewal.

I take Mr K's point about the premiums increasing whilst the value at risk remained the same. It's possible that this was due to external factors, rather than any perceived changes in Mr K's own circumstances. For example, an increase in claims in the area may have caused AXA to reassess the risk.

In any case, we haven't considered that issue as part of Mr K's complaint to us. And so AXA haven't had a chance to comment on it. If Mr K wants to pursue that issue specifically, he can make a further complaint to AXA - and then bring that to us if he's unhappy with their response.

I agree with Mr K that delays in the effective settlement of his claim have led to increased costs. Those additional costs now fall wholly on AXA to bear given that I'm requiring them to pay the claim in full.

As I say, AXA didn't respond to my provisional decision, so I have no reason to change my mind about the outcome.

### **Putting things right**

There's no reason for me to change the outcome I proposed in my provisional decision. That being the case, I'm going to require AXA to pay the claim in full, in line with the remaining terms of the policy – and to add interest at 8% simple on the additional payment they now make to Mr K.

I'm also going to require AXA to pay an additional £1,000 to Mr K in compensation for the trouble and upset caused by their errors or omissions in the handling of Mr K's claim.

### **My final decision**

For the reasons set out above, and in my provisional decision, I uphold Mr K's complaint.

AXA Insurance UK Plc must:

- settle Mr K's claim in full, in line with the remaining terms of the policy;
- add interest at 8% simple to the additional claim payment they are to make to Mr K;
- pay Mr K £1,000 in compensation for his trouble and upset.

If AXA Insurance UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 November 2024.

Neil Marshall  
**Ombudsman**