

The complaint

Mr D has complained about his let property insurer AXA Insurance UK Plc regarding a claim he made when his property was damaged by fire.

AXA has used agents to handle the claim and complaint on its behalf. The agents act on behalf of AXA and AXA's responsible for its actions. For ease of reference in this decision I'll only refer to AXA.

What happened

Mr D's property was damaged by a fire in April 2023. He made a claim to AXA. AXA said he was underinsured as the rebuild sum on the policy was incorrect. It said it would, therefore, apply the policy's averaging clause when settling the claim. Meaning Mr D would only get a proportion of the funds needed to repair the property. It was January 2024 when AXA issued settlement for the buildings damage.

The policy also covered loss of rent for twelve months. AXA agreed to cover the full twelve months – but applied the same averaging clause to the rent settlement. Meaning Mr D only received a percentage of the loss for the total twelve-month period.

Mr D wasn't happy about the allegation of underinsurance and AXA's application of the averaging clause. He also didn't agree that clause should apply equally to loss of rent as well as the buildings settlement. He was further unhappy that the claim had taken so long to settle – that had meant the loss of rent period covered by the policy had nearly expired. He asked AXA to consider an additional six-month period for loss of rent, on top of the twelve allowed for by the policy, on account of the delays.

AXA issued its final response on Mr D's complaint. The final response did not comment on Mr D's concerns about underinsurance and the averaging clause. AXA said it couldn't extend the indemnity period on the policy for loss of rent. But it did accept the claim had been delayed and offered £550 compensation.

When Mr D complained to the Financial Ombudsman Service, our Investigator asked AXA for additional detail. She asked to see AXA's evidence regarding what it would have done if, when the policy was arranged, it had been given what it felt to be the correct rebuild sum by Mr D. AXA did not provide this detail.

Our Investigator considered the complaint based on the available evidence. In that respect she said that AXA had not shown that it would have charged Mr D a different price if he'd told it of what it thought to be the correct rebuild sum. So she said it couldn't rely on underinsurance to restrict its settlement for the claim. She said its compensation offer of £550 for upset caused by delays was fair and reasonable.

AXA asked for additional time to reply to our Investigator's findings. It was granted that extension, with the new deadline being 26 September 2024. On 7 November 2024 AXA provided a reply in the form of three bullet points. It said it can't show what question Mr D was asked about rebuild sums, the rebuild sum was uplifted in 2019, the sum hadn't been

indexed linked since but even if it had the property would still have been underinsured. As AXA didn't accept the view, the complaint was referred to me for an Ombudsman's decision.

Having reviewed the complaint, I decided to issue a provisional decision. In summary, I found I agreed with our Investigator regarding the points she'd made and given AXA's limited reply, I wasn't minded to say much more. But I confirmed that I didn't think it could reasonably say Mr D was underinsured and I felt it should pay him the sums it had previously deducted from its claim settlements on account of underinsurance, plus interest. I also made some further comments regarding Mr D's request for AXA to pay additional lost rent due to delays. I felt it should be making a further payment in this respect to cover a six-month period post April 2024. So I issued a provisional decision, allowing both parties a chance to respond to my views.

Mr D responded the same day my provisional decision was issued. He provided an update which materially affected the findings I'd made provisionally. Therefore, and without waiting for AXA to provide any reply, I issued a further provisional decision.

In his response Mr D had said that he was no longer requesting compensation for rent lost after April 2024. He explained that he had sold the property in February 2024 without having completed any repairs. Because the property was significantly damaged by fire, Mr D said, the property was sold at a significant loss compared to that which would have been achieved if it hadn't been suffering fire damage (£11,000 against £95,000).

Following Mr D's update I reviewed my provisional findings. I was particularly mindful that, having decided that AXA couldn't fairly reduce the claim settlement due to underinsurance, my redress focussed on repair costs – but Mr D's reply had highlighted that he had not had any loss regarding repairs. Rather his loss was in respect of the value of the property. During my review, I was still satisfied that AXA had acted unfairly when saying Mr D was underinsured and, accordingly, that it couldn't reasonably reduce its settlement. However, given the sale of the property, on 22 November 2024, I issued a further provisional decision to set out my revised views on what AXA would reasonably need to do to put things right.

Provisional findings issued 22 November 2024

Underinsurance

I said provisionally: *"Our Investigator explained that we don't usually find it fair for an insurer to apply an averaging clause in this type of situation. Rather we consider misrepresentation principles to see if its fair for an insurer to pay only a reduced settlement on the basis of the policyholder likely being underinsured."*

One of the principles that we apply in this respect is requiring the insurer to show, if it wants to reduce a settlement, that it would have charged more for a policy based on what it views as the correct rebuild sum. AXA was asked if it had evidence to show that is likely what would have happened between it and Mr D – it didn't provide and still hasn't provided anything in this respect.

I'm satisfied that AXA has not shown it would have charged Mr D more (if he'd given it a higher rebuild value). As such it can't reasonably reduce the claims settlement for buildings, or loss of rent, based on Mr D likely being underinsured."

My initial conclusion then was to make AXA pay Mr D the sums it had deducted from the claim settlements, with the calculation for loss of rent having been based on a percentage of what it would have paid for the full twelve months of cover (through to April 2024). But it has now been clarified by Mr D that the property was sold in February 2024, without him

completing repairs. So requiring AXA to make an additional settlement for a loss Mr D has not incurred – in respect of repairs not completed at least – is not fair and reasonable.

Instead, I need to require AXA to consider what diminution in value occurred because the property was sold in its damaged state – that's because I'm satisfied that M D sold it in its damaged state only because of its unfair and unreasonable, proportional claim settlement. From that sum, AXA can deduct the £45,903.92 which was the settlement sum for repairs (with the £300 policy excess being deducted before payment was made to Mr D), and then pay the difference outstanding to Mr D, plus interest from the date the property was sold until settlement is made.

The above doesn't make any allowance for loss of rent. I'm going to deal with that separately. Based on what I've seen I think AXA reasonably still owes Mr D an additional payment for loss of rent. AXA paid Mr D £2,713.09 as a proportion of rent lost over a twelve-month period. I'm currently still satisfied it can't reasonably pay only a proportional settlement – and I think with the property being sold in early February 2024, it will still have liability for nine out of twelve months rent loss. With rent at £435 per calendar month, that would come to £3,915, leaving AXA to pay a difference of £1,202 to Mr D. To that sum it should add interest applied from 14 February 2024 until settlement is made (that being the date the unreasonable proportional settlement was paid).

Compensation for distress and inconvenience

I still think what I said about compensation is reasonable. I said: *"AXA acknowledged delays in the eight or nine month course of the claim. It wasn't specific about how much of that period was made up of delays caused by it. It offered £550 for distress and inconvenience.*

This Service will award compensation of around £550 when errors by the insurer have caused considerable distress and/or significant inconvenience over a period of months. Given the whole claim period in question here is less than a year, and this was a significant claim with substantial damage occurring, I think it's reasonable to think of any delay as occurring, at most, over a period of months. So I'm satisfied that £550 compensation is fair and reasonable. As AXA has not paid this sum I'll require it to do so. But I won't require AXA to pay anything more in this respect."

Additional loss of rent

Given the update provided by Mr D, I'm no longer making an award against AXA in this respect. I'm satisfied that, despite AXA's unfair actions in handling and settling the claim, Mr D didn't incur a loss of rent after April 2024 which AXA reasonably needs to make-up for.

Response from the parties

Mr D did not offer a further reply.

AXA said the policy didn't offer cover for diminution in value. It said if it considered diminution in value, it would restrict any settlement to what its liability for repairs was. AXA said it wasn't sure what the market value for Mr D's property had been. But it said even if it accepted it was in the region of what Mr D had reported, once it applies a deduction for underinsurance to any difference in price (between the property's value and what it sold for), that would still give a figure less than what it had already paid Mr D for repairs. AXA said that as loss of rent was part of the buildings cover, it was reasonable that it had applied a reduced settlement to that too.

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've considered AXA's response to my provisional findings. The policy does not offer cover for diminution in value – but as I explained, I am making a redress award in this respect because I'm satisfied that Mr D had to sell the property in its damaged state because of AXA's unfair claim settlement. So any loss suffered is a consequence of AXA's mistake and reasonably needs compensating for, rather than being something which it needs to resolve under the policy.

AXA has still not provided any evidence which supports its decision to view Mr D as underinsured. And despite that, *and my findings that it had acted unfairly in seeking to reduce the claim settlements on the basis of underinsurance*, it is still seeking to have my redress awards reduced on account of underinsurance.

AXA has had the opportunity to evidence that its position on underinsurance was fair and reasonable. It has not done so.

To be clear. AXA has not satisfied me that its stance on Mr D being underinsured was reasonable. As a result, I find its decision that he was, and its resultant application of reduced claim settlements, were unfair and unreasonable. Both in respect of the buildings and loss of rent claims. Moving forwards AXA will not be able reduce or limit any redress I've awarded, or which stems from this decision, on account of underinsurance, or to what it would have paid for the repairs.

Having reviewed matters, I can confirm that my view on this complaint, as set out in my provisional findings of 22 November 2024, reproduced above, has not changed. Those findings, along with my comments here, are now the findings of this, my final decision.

Putting things right

I require AXA to:

- Consider what, if any, diminution in value occurred to the property on account of the fire damage and settle with Mr D for that loss caused, ie the difference in value between what the property would have sold for fully repaired and the sum Mr D sold it for in February 2024, but less the original settlement sum (before the excess was applied) of £45,903.92. With any sum to be paid to Mr D having interest* added, applied from the date of sale of the property until settlement is made.
- Pay Mr D £1,202, on the loss of rent claim, plus interest* applied from 14 February 2024 until settlement is made.
- £550 compensation for distress and inconvenience.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require AXA to take off tax from this interest. If asked, it must give Mr D a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require AXA Insurance UK Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 January 2025.

Fiona Robinson
Ombudsman