

## The complaint

Miss H and Mr S complain that AXA Insurance UK Plc (“AXA”) offered a reduced settlement amount for a claim they made on their home insurance policy.

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

## What happened

The background to this complaint is well known to the parties, so I won’t go into too much detail but will summarise the key points. Mr S says, following a period of torrential rain, the cellar in his property flooded. He says this was due to an increase in the water table and the redirection of water from an adjacent farmer’s field. Mr S made a claim under his policy and AXA appointed a loss adjuster to investigate the claim. The loss adjuster calculated the rebuild cost and found this was more than what Mr S had declared. AXA also said Mr S hadn’t declared there was a cellar and hadn’t provided correct information about the distance between his property and a watercourse. So, AXA calculated what the premium should’ve been and explained that Mr S had paid 73% of this premium so his claim would be settled proportionately in line with this. Mr S then complained.

AXA responded and explained they understand Mr S is concerned the sums insured for his property are considered inadequate and a proportionate settlement is being applied to his claim. AXA said Mr S bought the policy online in 2019. They said Mr S will have seen a page which asked him about the cost to rebuild his property together with information about calculating this. AXA said following this, policy documents were sent to Mr S and it’s for a customer to ensure they read the terms and conditions of the policy to ensure the cover is right for them. AXA said Mr S’ buildings weren’t adequately insured and, had coverage been sufficient, the risk premium would’ve been higher.

AXA said they’d applied The Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”) and, with the correct information, the premium would’ve been higher, and based on this, Mr S had paid 73% of the premium and a proportionate settlement would apply. During our investigation, AXA revisited this calculation and found that Mr S had paid 84% of what the premium should’ve been and offered this as a proportionate settlement. Mr S also raised a concern about his cellar and how any repairs would need to include tanking to prevent any recurrence of the issue.

After considering all of the evidence, I initially issued a provisional decision on this complaint to Mr S and AXA on 2 December 2024. Mr S subsequently responded and provided further information which changed my decision. So, I issued a further provisional decision on 6 December 2024. In this provisional decision I said as follows:

*“Underinsurance*

*The first point I've considered is what information did AXA want to know. Mr S first took out the policy online in 2019. AXA have provided a screenshot from the sale journey which shows Mr S will have been presented with a question which asked, 'What is the cost of rebuilding the property?'. There's a note underneath this with additional information about the question being asked. This says, "This is the cost to rebuild the property if destroyed or damaged beyond repair. The rebuild cost is different to market value as it does not include the cost of the land itself...If you don't know the rebuild cost you should be able to find it if you have a recent surveyor's report, mortgage valuation report..." It then referred to an industry recognised calculator "...which may help you decide how much to insure your property for." So, I think AXA's question here was clear and specific.*

*The information shows Mr S answered this question as '£940,000' which he says was based on a building survey which was carried out when he bought his property and moved into the property in 2019. I've seen this survey and it refers to the reinstatement cost of the property as £940,000. Given that the additional information section in the sale journey suggested a surveyor or mortgage valuation report to help identify the rebuild cost, I don't think Mr S' answer here was unreasonable.*

*After Mr S took out the policy, he renewed it each year - and the information shows the renewals were arranged by a broker, who I'll refer to as company H. I can see our investigator asked AXA whether company H acted independently when selling the policy or whether they were acting as AXA's agent. AXA have said company H is an insurance intermediary and the policies are underwritten by AXA. So, AXA haven't confirmed that company H acted independently. And I can see the policy documents say that, in respect of the buildings and contents cover, company H are "...acting on behalf of...[AXA]." That being the case, I've thought about what information, if any, AXA asked company H to gather for them. It's clear AXA wanted to know about the rebuild cost, but AXA haven't provided any information which demonstrates they were clear with company H about this.*

*When asked by our investigator to provide any information they told company H to obtain from Mr S at renewal and whether the screenshot which AXA provided from the sale journey is something which Mr S would've seen each year at renewal, AXA provided the renewal documents sent by company H to Mr S. AXA have said each year company H sent renewal documents for Mr S to review. They provided a copy of the renewal invites between 2020 and 2023 and referred to the policy schedule setting out the different sums insured. So, I've looked at these to see what information Mr S was presented with. The policy schedule for the 2023 renewal shows a table setting out the different types of cover and the sum insured amount. For the buildings cover, the 'sum insured' amount is recorded as £940,000.*

*Our investigator has asked AXA if there's any other information which suggested to Mr S that he would need to consider the rebuild cost. AXA referred to the 2023 renewal invite which said Mr S should review his policy each year to make sure it meets his needs. They also referred to a section headed 'Changes to your policy' which said, "Our definition of buildings and contents cover has changed. Check your sums insured in section 1 are sufficient to avoid being underinsured." Section 1 then shows the schedule of sums insured I've mentioned above. Under the section which notes 'Buildings Cover', it says, "See Section 1 in your [company H] policy booklet." Also, the renewal invite says, "Make sure all the sums insured are sufficient to avoid the risk of being underinsured. Sums insured and the concept of underinsurance are explained in the home insurance policy booklet on pages 6 & 7." It then provided the website address where Mr S could find the policy booklet. I can't see there is any information or guidance within the renewal invite to help Mr S understand the*

importance of the rebuild cost to AXA and also helpful steps to assist Mr S in calculating this.

AXA haven't provided details of the information they asked company H to gather, and the information I've seen shows the renewal invites only made reference to the 'sum insured' with no other information or supporting guidance. I accept the renewal invites did make reference to the policy booklet and where this could be found, but I don't believe it's reasonable in the circumstances to expect Mr S to search around different documents for information on a point which is clearly very important to AXA. That being the case, I've thought about whether Mr S gave a reasonable answer when the renewal documents and schedule of sums insured, only made reference to the sum insured. And I think Mr S did. I say this because, he originally relied on a survey carried out when he originally bought the property – which I think is reasonable. Mr S says he isn't an expert in the cost of rebuilding a property, so I think any information or supportive guidance in the renewal invites would've helped Mr S understand the significance of a rebuild value and how to go about estimating this to the best of his ability. As that hasn't happened here, I don't believe Mr S has given an unreasonable answer.

#### Non-disclosure

AXA say the proportionate settlement in line with CIDRA was also based on non-disclosure of a cellar and inaccurate information about the distance between Mr S' property from a watercourse. AXA have provided the Statement of Fact issued to Mr S at renewal for 2019 through to 2023. And this shows a question asking, 'Is there a cellar, basement or area below ground level?' and this has been answered 'Unknown'. There's another question asking, 'Is the property within 200m of tidal water, rivers, streams or watercourses?' and this has been answered '149.00'. Following the loss adjuster's report, AXA issued an amended Statement of Fact in November 2023 in which the answer to the question about a cellar has been answered 'Yes' and the question about a watercourse has been answered '90.00'.

However, Mr S has provided policy documents which were issued to him on 18 October 2019 - the date Mr S' policy started - and the Statement of Fact shows the question about a cellar has been answered 'Yes' and the question about a watercourse has been answered '87.00'. The policy document for 2019 which AXA have provided was issued on 21 October 2019 but the answer to the two questions on the Statement of Fact, as I've mentioned, is 'Unknown' and '149.00', respectively. Mr S says the version he received on 18 October 2019 contains the accurate information he entered, but when he asked AXA about the different answers in the two documents, AXA were unable to explain who altered the information.

Mr S says AXA said they can't guarantee the accuracy of the information in the policy documents and the onus was on Mr S to correct any inaccuracies. I can see the Statement of Fact also asks Mr S to make sure the information is true and factually correct. Generally, I think it's important for consumers to check their policy documents to make sure everything is correct and to ensure cover is in place for everything they want insured.

While I don't think it was unreasonable for AXA to invite Mr S to do this, in the circumstances of this case, I don't think it was unreasonable for Mr S not to have checked the Statement of Fact issued on 21 October 2019. I say this because the one issued to him three days earlier contained the correct information Mr S had entered. And after Mr S had reviewed this, I'm not persuaded there was any reason Mr S should've had any suspicion that the Statement of Fact issued three days later would contain any details different to the one he'd already received.

*This takes me to the renewals between 2020 and 2023 – with the 2023 renewal covering the period during which the incident occurred. I've thought carefully about whether the incorrect details should've been picked up by Mr S at some point during the following renewal years. As I've said above, I think it's important for consumers to check their policy documents to make sure they're accurate. And, in the circumstances of this case, I can't say it's unreasonable for AXA to take the view that the incorrect information should've been identified by Mr S. Prior to the incident occurring, Mr S was sent four renewal invites – so I don't think it's unreasonable to expect Mr S to have carefully checked these to ensure all the information was accurate. I'm persuaded that's reasonable here as the Statement of Fact does ask Mr S to make sure the information is accurate. I acknowledge AXA haven't been able to provide evidence to show who changed the details on the original Statement of Fact and why this was done. But in the circumstances of this case, there were four renewal invites – that means Mr S was sent the Statement of Fact with the incorrect information on four occasions. So, I'm more persuaded it was reasonable here for Mr S to have identified the incorrect information and informed AXA about this.*

*So, taking into account my decision in relation to the underinsurance and non-disclosure, I don't think it's fair in the circumstances for AXA to apply a proportionate settlement in relation to the underinsurance factor. But I don't think it's unreasonable for AXA to apply a proportionate settlement for the non-disclosure factors. That means the claim Mr S has made under the buildings and contents section of his policy, should be settled without a deduction for underinsurance. So, AXA should recalculate the premium based on the non-disclosure factors alone and apply a proportionate settlement for this only. Given that Mr S has been without these funds for some time now, AXA should add 8% simple interest per year to this amount from the date of the first interim report dated 28 March 2024, as that is when the loss adjuster assessed the claim value, to the date of settlement.*

#### *Repairs to cellar and tanking*

*AXA appointed a loss adjuster to inspect the property and prepare a report. This only makes reference to the boiler being damaged as well as other contents which were in Mr S' cellar, as a result of them becoming submerged in water. Mr S says he's concerned about any arrangements being made to replace his boiler as a recurrence of the same issue would likely lead to his new boiler also becoming damaged. Mr S says to prevent this, his cellar would need to be tanked. AXA say, "The basement probably does need to be tanked to prevent future incidents, the adjuster was of the understanding that it is not presently tanked – any works of this nature would be betterment and beyond the scope of the policy."*

*The intention of an insurance policy is to put a consumer back in the position they were in, before the loss occurred. So I do acknowledge AXA's point about putting Mr S' property back into a better position than it was in previously or to add preventative measures to protect Mr S' property from further damage, which Mr S didn't have previously.*

*We expect any repairs an insurer carries out to be effective and lasting. So, if there is a significant risk that a property will flood again if preventive measures aren't put in place, then we might say that any repair wouldn't be effective and lasting, as it may require redoing after a short period of time or on a regular basis.*

*The loss adjuster's report doesn't make any reference to repairs needing to be carried out to Mr S' cellar. So, it was on this basis that, in my original provisional decision, I concluded that I didn't think it was reasonable in the circumstances for*

*AXA to carry out tanking as, strictly, the principle of an effective and lasting repair didn't apply if AXA weren't carrying out any repairs. But Mr S has responded and says, due to the volume of water that accumulated in his cellar, the mortar in many areas was damaged and caused a number of cracks in the brickwork. Mr S has provided our service with photos showing the walls in his cellar – and this does show a number of areas of damage to the mortar and brickwork.*

*So, when considering the loss adjuster's report, which makes no reference to the damage to the cellar walls and comparing this with the photos provided by Mr S, I'm not persuaded the loss adjuster has carried out a thorough assessment of the damage to Mr S' cellar. Given the nature of the incident which occurred here, and then taking into account the damage shown in the photos, I can't say such damage is inconsistent with the type of damage likely to have been caused by water entering the cellar.*

*So, AXA should arrange for the loss adjuster or another suitable expert to carry out an inspection of Mr S' cellar to assess the damage. If AXA then determine repairs are required, then a claim for this should be considered under the policy terms and conditions. Given that AXA will first need to assess whether any repairs are required, I haven't addressed whether I believe AXA should install tanking, but I would remind AXA though that any repairs covered by the policy would need to be effective and lasting.*

*The information shows it was clearly upsetting and frustrating for Mr S to receive a claim decision along the lines of a proportionate settlement. So I can't say AXA have dealt with the claim fairly given the approach they've taken to underinsurance. In the circumstances, I think it's reasonable for AXA to pay Miss H and Mr S compensation of £250.*

*I can see Mr S has raised further points about having to make his own arrangements for heating, costs incurred in having to arrange a temporary pump and having to purchase a dehumidifier himself as AXA offered no assistance. My decision has only focused on the complaint addressed by AXA in their response dated 29 February 2024. Any additional complaints will need to be raised by Mr S with AXA directly before our service can consider them."*

So, subject to any further comments from Mr S or AXA, my provisional decision was that I was minded to uphold this complaint and require AXA to put things right.

Following my provisional decision, AXA haven't responded with any comments. Mr S has asked whether he's able to obtain his own independent loss adjuster's report and claim the cost of this from AXA. Mr S says AXA's loss adjuster made no attempt to fully assess the damage and he's also concerned any report won't be shared with him as well as a conflict of interest should AXA appoint one of their own approved service providers.

### **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 see no reason to depart from my provisional decision. So, I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

I do acknowledge Mr S' points, but I think it would be fair in the circumstances for AXA to appoint a loss adjuster with the relevant expertise to assess the damage. I agree the loss

adjuster's report doesn't suggest a thorough assessment took place initially, but I think it would be fair for AXA to be given another opportunity to address this. I acknowledge Mr S' concerns about the report not being shared with him and about any conflict of interest, but if Mr S does have any concerns following the loss adjuster's assessment or about the claim decision which follows, then he can make a separate complaint about this. This complaint would need to be made direct to AXA first before our service can look into it.

### **Putting things right**

I've taken the view that AXA haven't acted fairly in offering a proportionate settlement for Miss H and Mr S' claim based on underinsurance, and they also haven't assessed any repairs to the cellar. So, AXA should:

- Recalculate the premium based on the non-disclosure factors alone – and not underinsurance. Then calculate the proportion of this premium paid by Miss H and Mr S and settle the claim on this basis, subject to the remaining terms and conditions of the policy.
- Add 8% simple interest per year on this amount from 28 March 2024 to the date of settlement. AXA should provide Miss H and Mr S with a certificate showing any taxation deducted.
- Arrange for a suitable expert to assess the damage to the cellar and, if it is determined that repairs are required, then to consider a claim for this, subject to the policy terms and conditions.
- Pay £250 compensation.

### **My final decision**

My final decision is that I uphold the complaint. AXA Insurance UK Plc must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Mr S to accept or reject my decision before 26 January 2025.

Paviter Dhaddy  
**Ombudsman**