

## **The complaint**

Miss R complains about the way AXA Insurance UK Plc ("AXA") proportionately settled her claim following a fire at her property, and the distress it's caused her through its handling of her claim.

Any reference in this decision to AXA includes its appointed agents and representatives. Miss R has appointed a third party to represent her in this complaint. For ease I'll refer to the representative's comments as Miss R's own.

## **What happened**

In June 2024 there was a fire at Miss R's property. Miss R was a single mother who was expecting her second child at the time. She made a claim to her insurer, AXA, under her Homeprotect building insurance policy.

Following a visit from loss adjusters, AXA made the decision to proportionately settle the claim, instead of paying Miss R the full claim value. It said this was because Miss R had misrepresented the number of occupants at the property and the use of the property when she took out the policy. Because of this, as Miss R had only paid 84% of the premium she would've paid had she provided the correct information, AXA said it would only be covering 84% of the claim.

Miss R complained. She said she had answered AXA's questions honestly and as fully as she could when she said there were four adult occupants and the property wasn't used for business. And that if she had said there was one adult occupant and occasional use as a B&B, this actually would've resulted in a premium decrease.

In its response to her complaint, AXA said that in addition to the information about the occupants and use of the property being incorrect, the sum insured for her property was also inadequate. It said that as Miss R's property was underinsured, and her premium would've increased had she provided the correct information, a proportionate settlement would apply.

Miss R didn't accept AXA's response. She said it had only raised the issue of underinsurance in its final response letter, and prior to this it had only told her she had provided incorrect information about the number of occupants and the use of the property. She also said the online rebuild cost calculator didn't provide a figure for her property due to the roof material and the construction type.

She didn't think it was fair for AXA not to settle her claim in full. So she referred her complaint to this service and instructed a surveyor to provide a bespoke rebuild calculation. Our Investigator considered the complaint, and AXA increased its offer following a review of Miss R's surveyor's calculations. It said that based on those calculations, it would offer a 91% proportionate settlement to her claim. Our Investigator thought this was fair as there had been a misrepresentation at inception which entitled AXA to proportionately settle the claim.

Miss R didn't accept our Investigator's opinion and said that given the unnecessary distress she had been put through by AXA raising one issue initially and then another in its final response, AXA shouldn't reduce the claim and should offer her compensation. As Miss R wanted to escalate the matter to an Ombudsman, the complaint was passed to me for a decision.

I issued my provisional decision in this case on 10 April 2025. I've included an extract of my provisional decision below.

*"I can see from the information provided that Miss R took out her policy online in 2020. So I've looked at how the questions she answered were put to her and the answers she gave, to determine whether she made a misrepresentation which would allow AXA to settle the claim proportionately.*

### *Use of the property*

*AXA has provided screenshots to show that Miss R was asked at inception if "any part of the property is used for business purposes" and she selected "No". The guidance on the website informed prospective customers that they should answer "Yes" to this question "if you have business visitors to the property in any month, if you or anyone else run a business from the property, or you have paying guests staying there (e.g. a B&B)."*

*Miss R has said she declared that she had lodgers, and says this did not make her a commercial landlord. She's referenced the government's rent-a-room scheme, and said she remained resident at the property when she had paying guests there. I don't currently think it's unreasonable for her to consider her situation different to that of a traditional B&B, like the example given by AXA in its application wording, because she only rented out a room, and didn't provide a typical B&B service.*

*However, I've looked at the government's rent-a-room scheme website. This does describe people who rent out a room in their home as "residential landlords". The implication therefore is that there is some business use.*

*If we were to treat Miss R as a commercial customer, then the relevant legislation for me to consider is the Insurance Act 2015. Under the Act, commercial policyholders have an obligation to volunteer the right information to an insurer when taking out a policy, i.e. they have a duty to make a fair presentation of the risk. This means a commercial customer must disclose either:*

- Everything they know, or ought to know that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or*
- Enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.*

*Under the Act, in order to find that Miss R did not make a misrepresentation, I have to be satisfied that she complied with her duty of fair presentation, and in doing so, I've considered whether she provided enough information to put AXA on notice that it would need to ask further questions.*

*I've checked the original statement of fact, and I can see Miss R disclosed that there were "lodgers" at the property when asked "Who lives at the property?" So it's clear she never attempted to conceal the fact that she rented out a room. I also think this means she disclosed enough information to AXA, to enable it to make further enquiries.*

*I've also considered whether the information about how Miss R used the property was something the insurer already knew about (or should reasonably have known). And I think from Miss R's disclosure that she had lodgers, AXA should reasonably have known about her use of the property.*

*It's clear that AXA knew about and accepted there were lodgers at the property, as I can see from the policy schedule that it added an endorsement regarding shared occupancy (lodgers) in the original policy from 2020. The everyday meaning of the term "lodger" is "a person who pays money to live in someone else's house". As AXA considered the existence of lodgers to be "business use" it had the opportunity to increase Miss R's premium in light of this information. And if AXA had concerns about Miss R's contradictory answer to the "business use" question, then it could've raised this with Miss R at the time, given that I consider it had enough information to do so.*

*Ultimately, I think Miss R answered the questions in good faith. I accept that she felt there was a difference between having lodgers who simply rented out a room, and running a full B&B with a breakfast and cleaning service, for example – even if AXA doesn't agree with this distinction. It's clear that Miss R did not answer the questions in a dishonest manner, or seek to deceive AXA. If she had planned on doing so, she wouldn't have included "lodgers" in her answer or included those lodgers in the total number of occupants.*

*Whilst Miss R could've answered "Yes" to the question about whether a part of the property was used for business purposes, I don't consider she failed in her duty to make a fair presentation of the risk, because she had clearly and unambiguously disclosed that she had lodgers at the property – thereby giving AXA enough information to make further enquiries and apply an additional premium for business use if it wanted to.*

#### Number of occupants

*Miss R's 2020 statement of fact shows that she disclosed that there were four adults and one child living at the property. I've not seen evidence to show how this question was asked and whether there was any guidance available to Miss R on how to answer that question – for example, whether the figure was to include lodgers.*

*Miss R has said that her answer that four adults were living at the property was true to the best of her knowledge at the time – as this included two lodgers renting her spare room and her mother who would also visit and stay there regularly. So I don't think it's fair to conclude that Miss R breached her duty of fair presentation here.*

*Miss R has also said when she input that there were fewer occupants, this actually resulted in a premium decrease. And I've not seen any supporting evidence from AXA that shows how the change in occupants would've affected Miss R's premiums. I think it's likely that disclosing a higher number of occupants was a fundamental change in the risk, but one which actually led to Miss R paying more for her policy due to the increased potential for damage, accidents and claims.*

*AXA was asked by our Investigator on 17 December 2024 to provide evidence to support its new offer, and it responded providing figures to show the calculations it made, but didn't provide any evidence to support the premium increases – simply stating that the undeclared business use and number of occupants factored into the overall calculation for proportional settlement. I'm not persuaded by the information it's provided. I haven't been given any supporting evidence to demonstrate that if Miss R had said there was only one adult occupant when she took out the policy, then AXA would've charged a higher premium.*

#### The building sum insured (BSI)

*The Insurance Act also says that a policyholder ought to know information that should reasonably have been revealed by a reasonable search of information available to them.*

*I've checked the policy schedule to see what the building sum insured (BSI) was when the policy commenced. And I can see that a figure of £152,000 was produced. This was then queried by the forensic examiner when they visited the property as he considered this too low. But the statement of fact doesn't tell me what figure Miss R actually input when she was asked about the total rebuild cost of the property.*

*In contrast to this, the subsequent statements of fact at each renewal all mention the estimated rebuild cost, as well as the BSI. Because I don't have any evidence to show what Miss R actually disclosed – as it's not on the 2020 statement of fact (only the BSI is), I'm not satisfied AXA has demonstrated that Miss R gave unreasonable information.*

*In addition to this, I've seen the further evidence Miss R has provided to this service and to AXA to show the rebuild cost of her property following a bespoke calculation by a surveyor. AXA has considered this and having added VAT to the rebuild cost, has concluded that a fair BSI is £183,600. It says it has reworked the policy premium around the correct information, including the BSI, the occupancy and the use of the property.*

*But AXA has accepted the £153,000 rebuild cost which Miss R's surveyor has put forward. And so I don't currently agree with its position that Miss R's estimated rebuild cost of £152,000 for her property at inception was inaccurate. Her estimate was clearly a reasonable one given the new evidence from the surveyor. So I'm not satisfied there's sufficient evidence that Miss R misrepresented the rebuild cost or gave an unreasonable answer to that question.*

*Miss R's policy with AXA says:*

*"To receive a full claim amount (up to any claim limits and application of excesses), you'll need to be insured for the full replacement value of your Buildings, Outbuildings and Contents. If you're insured for less than this amount, you'll be underinsured and you may not receive the full claim amount. Instead, you'll get a portion of the claim amount. This will be equal to the percentage of the full replacement value that you were insured for. As such, it's very important to choose a cover level equal to or higher than the actual replacement value."*

*So whilst I'm satisfied that the importance of providing an accurate rebuild cost was made clear in the policy terms, I'm not persuaded that Miss R failed in her duty to make a fair presentation here.*

*And because I don't agree that Miss R breached her duty of fair presentation in relation to the rebuild cost, the number of occupants or the use of the property, I don't currently need to consider whether the alleged breaches were careless or reckless. It follows therefore, that I don't currently consider AXA to have acted fairly by only offering to proportionately settle the claim.*

*I think it's fair for AXA to charge Miss R a higher premium going forward, provided it can sufficiently demonstrate to this service that it would've done so based on all the information it would've expected Miss R to disclose.*

*But since I'm satisfied Miss R acted in good faith and disclosed enough information for AXA to be put on notice that it would need to make further enquiries, (and that some of this was information AXA should reasonably have known from Miss R's answers), I'm not satisfied*

*AXA can take any action to reduce the settlement due under the claim. So I intend to require it to pay the full claim in line with the policy terms.*

### *Distress and inconvenience*

*Regarding the issue of compensation, I recognise that the claim journey and the circumstances which led to the claim have been extremely distressing for Miss R. I don't doubt that it's all caused her substantial difficulty at a time when she's been particularly vulnerable, as a single parent and with a newborn baby at the time of the fire.*

*But I've had to consider whether Miss R's distress was in large part due to AXA's actions or predominantly due to the fact that there was a fire at her home, which in itself is an extremely distressing event. Miss R also had the added inconvenience and upheaval of being away from her home after her baby was born. I've thought about whether it would've made much difference to her circumstances if AXA had told Miss R sooner that it thought her property was underinsured.*

*AXA made the decision to apply a proportionate settlement of 84% to the claim on 5 July 2024, communicating this to Miss R around that time. Miss R complained about this on 9 July and received AXA's final response letter on 17 July. In the final response letter, the underinsurance issue was brought to Miss R's attention, and as this was less than two weeks since AXA had told her it would be making a proportionate settlement, I don't consider that failing to mention that issue previously made a significant difference.*

*Miss R referred her complaint to this service on 18 July but it wasn't until 7 November that she obtained her own surveyor's report. AXA offered to increase the proportionate settlement to 91% of the claim costs on 27 November so I think it acted within a reasonable amount of time having considered Miss R's new evidence.*

*However, I don't currently think AXA's offer to proportionately settle the claim is fair, for the reasons I've explained. Ultimately, I'm not satisfied Miss R's intention was to misrepresent any of the information she was asked for and I think she made a fair presentation of the risk by disclosing enough information to AXA from the outset. I think that realising her full claim wouldn't be paid, despite the fact she hadn't withheld any information, caused Miss R considerable distress at a time when she was already vulnerable, as a single mother with a newborn baby, whose home had been destroyed. The added hassle of obtaining her own report also caused Miss R some inconvenience, and the report confirmed that the rebuild value AXA says Miss R gave initially, was reasonable.*

*I can see from the internal emails provided by AXA that it was discussing Miss R's specific circumstances to try to ensure Miss R experienced as little disruption as possible, particularly in relation to her alternative accommodation. However, for the reasons I've given above, I think the overall decision reached by AXA did cause Miss R added worry, so I intend to require AXA to pay Miss R £500 compensation for making a decision that I don't currently consider to have been fair.*

*This amount of compensation reflects my current view that Miss R was caused distress and inconvenience through AXA's handling of her claim, the impact of which lasted a few months. Miss R had to go to considerable effort to try to sort things out, at a time when she could've been focusing on spending time with her new baby. I've also considered the FCA's Guidance for firms on the fair treatment of vulnerable customers and the Consumer Duty, when considering an appropriate compensation award."*

*I therefore told both parties I intended to uphold this complaint. I provisionally determined that AXA should settle Miss R's claim in full, without applying a proportionate settlement, add*

8% simple interest per annum on to any funds owed to Miss R which have not yet been paid from the date they ought to have been paid until the date they are paid to her, pay for Miss R's surveyor's report with interest at the same rate, and pay Miss R £500 compensation for the distress and inconvenience caused to her.

### Responses to my provisional decision

Miss R accepted my provisional decision. AXA also responded but didn't agree with my provisional findings. It said whilst it appreciates Miss R didn't intentionally mislead AXA, it still believed the incorrect information provided affected the premium and as a result the claim should be proportionately settled.

It also said that the correct premium would've been higher based on the accurate information, and that under the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"), insurers are entitled to apply a proportionate remedy in cases where the information provided wasn't accurate, even if the misrepresentation wasn't intentional. In light of this, it maintained that the proportionate settlement was fair and in line with the principles of CIDRA.

### **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 satisfied my provisional findings are fair and reasonable and I've decided to uphold this complaint in line with those findings. I'll explain why.

I appreciate AXA's comments in response to my provisional findings, and I'd agree with AXA's position and the actions it took if I was persuaded that Miss R had indeed made a misrepresentation. But I don't consider AXA has sufficiently demonstrated that she did. Whilst Miss R's answer to the question of whether any part of the property was used for business purposes was "No", I don't consider it fair for this to be read in isolation and considered a misrepresentation for two reasons.

Firstly, the examples given to customers in the guidance notes alongside this question, included the phrase "*you have paying guests staying there (e.g. a B&B)*" and I'm persuaded by Miss R's testimony that she considered having lodgers to be significantly different to running a business from her property such as a full bed and breakfast service. AXA's own guidance wasn't therefore particularly clear, so I have to consider whether the question itself was clear. I don't think it was as clear as it could've been, and so even if AXA considers Miss R made a misrepresentation, I don't think it can fairly say she didn't take reasonable care not to make a misrepresentation as I think she followed the explanatory guidance.

Secondly, Miss R had clearly disclosed at the time that she had lodgers at the property. And as I explained in my provisional decision, the definition of a lodger is clear – it's someone who pays money to live in someone else's house. So I think if AXA were to treat Miss R as a commercial customer because it thinks the property was used for business purposes, then the principles of the Insurance Act 2015 would apply. And as I previously stated, I'm satisfied Miss R gave enough information when taking out the policy, for AXA to be put on notice that it would need to make further enquiries. So I don't think Miss R breached her duty to make a fair presentation of the risk here.

In response to the question about the number of occupants at the property, AXA hasn't shown how this question was asked or whether there was any guidance available to customers about what the definition of an "occupant" was. AXA also hasn't demonstrated

how Miss R made a qualifying misrepresentation by stating that there were *more* occupants than she had to disclose. Generally, I'd expect the premium to have increased if a higher number of occupants was disclosed, and I've not seen any evidence that the premium would've increased had Miss R said there was only one adult occupant, instead of four.

AXA hasn't addressed my provisional findings in relation to the BSI. It accepted the £153,000 rebuild cost given by Miss R's surveyor – and I've not seen sufficient evidence that Miss R misrepresented the rebuild cost or gave an unreasonable answer to that question.

Although AXA has said the correct premium would've been higher if it had been given different information, it hasn't provided evidence of this. So I don't agree that it's entitled to apply a proportionate remedy here.

I'm also satisfied that my findings in relation to the distress and inconvenience Miss R has experienced, are fair and reasonable, and so I still consider AXA should pay compensation to Miss R for the reasons I've given in my provisional decision and as outlined therein.

It follows therefore, that having reconsidered all the evidence in this case, as well as AXA's response to my provisional decision, my views remain as those previously stated. As such, and for the reasons I've given here and in my provisional decision, I'm upholding this complaint and will require AXA to do the following.

### **Putting things right**

To put things right for Miss R, AXA Insurance UK Plc should:

- Settle the claim in full without applying a proportionate settlement.
- If no interim payment has been made, AXA should add 8% simple interest per annum from the date of its first offer to proportionately settle the claim, until the date of settlement. If an interim payment has been made to Miss R, then AXA must add 8% simple interest per annum, on the increased amount due to Miss R from the date the payment was made until the date of settlement.
- Pay for Miss R's surveyor's report, plus interest at a rate of 8% simple per annum, from the date Miss R paid for the report until the date of settlement.
- Pay Miss R £500 compensation for distress and inconvenience.

### **My final decision**

My final decision is that I uphold this complaint and I direct AXA Insurance UK Plc to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 29 May 2025.

Ifrah Malik  
**Ombudsman**