

## **The complaint**

Mr and Mrs A complain about the amount AXA Insurance UK Plc has offered to settle a claim made on their buildings insurance policy.

Reference to AXA includes its agents and representatives.

## **What happened**

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mr and Mrs A took out buildings insurance for a rental property, through an independent intermediary I'll call C, in 2012. It renewed annually and was underwritten by a variety of insurers over the years.
- At the 2022 renewal, the policy became underwritten by AXA. The buildings sum insured was around £240,000. I understand the underwriter changed to another insurer at the 2023 renewal, so AXA only provided cover for one year.
- During that year, Mr and Mrs A got in touch with AXA to make a claim for damage to their conservatory. AXA said the damage was caused by subsidence and covered by the policy. However, it said Mr and Mrs A were underinsured, and that meant the claim wouldn't be covered in full. In summary, AXA offered to pay 80% of the claim. That meant Mr and Mrs A would be left to pay the remaining 20%, as well as the £1,000 policy excess.
- Mr and Mrs A complained about this. They said they used a reputable online rebuild calculator at the 2022 renewal – and the sum insured reflected the figures it provided. They also questioned whether the estimate AXA used was calculated at the 2022 renewal, or at the time of the claim many months later. Given the rise in building costs around that time, they thought this could have an impact. And they said AXA's estimate was based on a more detailed survey than Mr and Mrs A could have carried out. For example, it included external drainage, garden walls and paving.
- AXA's complaint response was provided by an agent in June 2024. It conceded there had been poor communication about the underinsurance problem and apologised. It said it would ask another department to provide underinsurance calculations. But it didn't comment directly on the underinsurance at all.
- Our investigator thought AXA had acted fairly overall. An agreement wasn't reached, so the complaint has been passed to me.

## **My provisional decision**

I recently shared my provisional decision, in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- The scope of this complaint is limited. I can only consider any activities AXA is responsible for. That means I can't consider in this decision how the policy was sold or renewed by C in any year, or anything any other insurer is responsible for – for example, the sum insured set or premiums charged in any year other than 2022, when AXA was the underwriter.
- The key complaint point is the claim reduction proposed by AXA. So that's what I'll focus on.
- AXA didn't offer to pay the claim in full because a policy term says the sum insured must represent the full cost of rebuilding the property, including outbuildings. And, if it doesn't, the claim will be paid at the proportion of the sum insured to the full rebuild cost. AXA thought the sum insured was only 80% of the rebuild cost.
- However, I think it's relevant to consider the Insurance Act. AXA is proposing to reduce the claim because it says Mr and Mrs A didn't provide an accurate sum insured at the 2022 renewal. The provision of information at a sale or renewal by a commercial customer – and the remedies available to an insurer if it considers that provision was insufficient – are governed by the Insurance Act. As Mr and Mrs A took this policy out to cover their rental property, they are commercial customers.
- The Act says, in summary, that Mr and Mrs A are responsible for making a 'fair presentation' of the risk. In my view, that would include a reasonable estimate of the full rebuild cost, based on what Mr and Mrs A knew, or ought reasonably have known, at the time of the renewal in August 2022.
- AXA has effectively said Mr and Mrs A didn't make a fair presentation. They estimated the rebuild cost at £240,000, whilst AXA thought £298,000 was more accurate. Mr and Mrs A don't have evidence to show their estimate was based on the figures provided by the rebuild calculator. That doesn't necessarily mean they didn't use the calculator. But it means I can't see how they used it – what information they provided and what estimate range it suggested in return.
- AXA's estimate was carried out in February 2023, based on costs as of January 2023. But they should have been based on costs as of August 2022, when the policy renewed. Mr and Mrs A couldn't reasonably have been expected to know at the August 2022 renewal what the likely rebuild cost would be at a later time. And the Act doesn't require them to.
- I've asked AXA to revisit its estimate, based on costs as of August 2022. Having done so, it's shown the estimate for the relevant time is £285,000.
- The estimate AXA carried out relied on broadly similar information to the rebuild calculator available to Mr and Mrs A. Both take into account the property's location, size, age, and key features, such as number of bedrooms and garages. And the underlying costs are provided by the same source. Because of this, I'm satisfied AXA's estimate was consistent with the kind of information available to Mr and Mrs A at the 2022 renewal, so it's a comparable method of estimation. Mr and Mrs A haven't pointed out any errors in the information used by AXA, for example the age of the property, so I'm satisfied the information is accurate.
- As a result, I'm not satisfied Mr and Mrs A's estimate was reasonable. It was over 15% less than AXA's estimate, using a similar method of estimation. This may be

because AXA's estimate included external features, such as external drainage, garden walls and paving. As AXA wanted the sum insured to reflect the full rebuilding cost of the property, it was entitled to expect that to include such features. As Mr and Mrs A's estimate was unreasonable, I'm not satisfied they made a fair presentation of the risk in line with the Act. And that means AXA has a remedy under the Act.

- In short, in this case, the Act gives AXA the remedy to proportionately settle. And that proportion should reflect the amount of premium paid compared to that which would have been paid had a fair presentation been made.
- Earlier in the investigation, AXA said Mr and Mrs A paid £198.76 for a sum insured of £240,000. And they would have paid £244.99 for a sum insured of £298,000. But it's now unable to calculate what they would have paid for a sum insured of £285,000 due to system limitations changing over time.
- That means I can't be sure exactly what AXA would have charged for a reasonable estimate of the sum insured. But it's quite clear a higher sum insured generates a higher premium and, as I know what AXA what have charged for a higher and a lower sum insured, I think it's fair to both parties for me to estimate the premium it would have charged by assuming the premium increases directly in line with the sum insured. Doing so means I estimate AXA would have charged £234.63 for a reasonable estimate of the sum insured.
- So, Mr and Mrs A paid £198.76 and should have paid £234.63. That means they paid around 85% of the premium – and, in line with the Act, that's the proportion at which AXA is entitled to settle.
- Whilst AXA may consider it's entitled to rely on the policy term I noted above, the Act is clear that any term which is disadvantageous to the commercial customer is of no effect unless certain requirements have been met. AXA hasn't suggested it's taken steps to meet such requirements. Put simply, AXA's policy term means settling at 80%, whilst the Act means settling at 85%. So it's clear the policy term is disadvantageous to Mr and Mrs A compared to the position under the Act. And it follows that, according to the Act, AXA can't rely on the policy term. I see no reason why it would be fair and reasonable for AXA to take an approach contrary to the Act which disadvantages Mr and Mrs A.
- As a result, that means AXA should proportionately settle at 85%. The policy excess will still be due and can be deducted from the proportionate settlement. But there's a question mark about what the proportionate settlement should apply to. I've seen AXA apply to it a range of claim costs, including loss adjuster fees.
- The policy term noted above says in the event of a proportionate settlement, AXA would pay a proportion of the loss or damage. This suggests that AXA, even when relying on this policy term, would only apply a proportionate settlement to the damage – not for any investigation costs. In my experience, this is the approach commonly taken by insurers, whether relying on a similar policy term or the Act. And I think that would be a fair and reasonable approach to take in this case. Otherwise, Mr and Mrs A would have to pay 15% of the investigation costs already incurred by AXA, including costs like loss adjuster fees, and effectively receive less than 85% of the repair costs. This is out of step with the usual approach, and I'm not satisfied it would treat Mr and Mrs A fairly.

- I put this point to AXA, and it hasn't challenged it, so I assume it's in agreement. That means the 85% proportionate settlement will apply to the repair costs only.
- I understand repairs are ready to begin but haven't progressed whilst this matter remains unresolved. Unless things have changed, that means the next steps for the claim are for AXA to set out for Mr and Mrs A what impact my decision has on the settlement – how much they would need to contribute, including the excess, if they would like AXA to carry out the repairs.
- When AXA's agent responded to the complaint in June 2024, it accepted there had been poor communication about the underinsurance problem. It apologised, but I'm not satisfied that went far enough to put right the distress and inconvenience this problem has caused Mr and Mrs A.
- Whilst Mr and Mrs A would always have experienced a degree of distress and inconvenience when finding out they wouldn't receive the full claim settlement, that's not something I can hold against AXA, because it wasn't responsible for them being underinsured. But AXA was responsible for approaching the underinsurance problem in line with the Act and being clear with Mr and Mrs A about what that meant for their claim. AXA has accepted the communication was lacking. And I've found it didn't approach the underinsurance fairly. That meant it asked Mr and Mrs A to contribute a significant amount more toward the claim costs than it should have done.
- In these circumstances, I consider AXA should pay £250 compensation to reflect the avoidable distress and inconvenience it caused Mr and Mrs A.

### **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.

- Mr and Mrs A responded to my provisional decision. I understand they accept it.
- AXA didn't respond to my provisional decision.
- As neither party has challenged it, I don't see a need to reconsider my provisional decision in detail. I remain satisfied it provides a fair and reasonable outcome to the complaint, for the reasons given.

### **My final decision**

I uphold this complaint and require AXA Insurance UK Plc to:

- Proportionately settle the repair costs at 85%.
- Pay £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 20 May 2025.

James Neville  
**Ombudsman**