

## **The complaint**

Mr H complains about the settlement AXA Insurance UK Plc has offered for a claim he made on his buildings insurance policy.

Reference to Mr H or AXA includes their respective agents and representatives.

## **What happened**

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

- Mr H took out a buildings insurance policy for four rental properties, through B, an independent intermediary. It was underwritten by AXA.
- After the 2023 renewal, Mr H got in touch with AXA following water damage to the boundary wall of the property. AXA accepted the claim.
- AXA said Mr H had insured the buildings for around £670,000 collectively – but it thought he should have insured them for just over £1,000,000. AXA proportionately settled the claim at 80% of its value. It also treated the claim as one for flood, which meant it applied a £15,000 excess to the claim settlement.
- Mr H complained about the claim settlement reductions for underinsurance and the flood excess. He also noted AXA initially told him he wasn't underinsured.
- AXA apologised for initially reassuring Mr N his cover was adequate, when it wasn't. But it maintained it acted fairly when reducing the claim settlement for both reasons.
- The final position reached by our investigator was as follows:
  - It was fair and reasonable overall for AXA to settle at 80% of the claim.
  - It was also fair and reasonable for AXA to apply the flood excess.
  - AXA should pay £250 compensation for misleading Mr N.
- AXA agreed to pay the compensation. Mr H didn't agree with our investigator's position. As an agreement wasn't reached, the complaint has been passed to me.

## **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.

- When considering what's fair and reasonable in the circumstances I've taken into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time. Whilst I've read and taken into account everything said by both parties, I'll only comment on the points I think are relevant when reaching a fair outcome to this dispute. That's a reflection of the informal nature of this Service.

- The scope of this complaint is limited. I can only consider any activities AXA is responsible for, such as the claim settlement it offered.
- AXA isn't responsible for B or the activities B carried out. So I can't consider them in this decision. Mr N is entitled to make a separate complaint if he would like to.
- There are a number of points for me to consider, so I'll take each in turn. I'll start by summarising what AXA was responsible for. I'll then go on to consider the two points which impacted the claim settlement – underinsurance and the excess – and finally the claim handling.

#### *What was AXA responsible for?*

- The policy was sold and renewed by B, an independent intermediary. As a result, AXA isn't responsible for B, or B's sales process and communication.
- AXA was responsible for letting B know what information needed to be gathered from Mr N in order to renew the policy in 2023. AXA was also responsible for handling the claim promptly and fairly. As part of that, if it considered Mr N provided unreasonable information at the renewal, it should act in line with the relevant law.
- That law is the Insurance Act 2015 ("the Act"). The Act says, in summary, that Mr N was responsible for making a 'fair presentation' of the risk, via B. If Mr N fulfilled that duty, AXA can take no action. If AXA can show he didn't fulfil that duty, and AXA can show that it would have acted differently if he had fulfilled that duty, the Act sets out the remedies available to AXA. Depending on the circumstances, that can include settling the claim proportionately.

#### *Underinsurance*

- To renew the policy, AXA wanted to know how much it would cost to reinstate the four buildings. Through B, AXA was told Mr N estimated the cost to be around £670,000 at the 2023 renewal. That figure was set as the 'declared value'.
- The question for me is whether that amounted to a reasonable estimate of the rebuild cost of these buildings, based on what Mr N knew, or ought reasonably have known, at the time of the renewal in 2023.
- AXA estimated the rebuild cost at just over £1,000,000. I can see a surveyor considered the size, construction and location of the buildings in detail, together with the likely cost of demolition, professional fees, and rebuilding the boundary wall, to reach this estimate. It was based on costs at the renewal date, rather than the later claim or survey dates. I'm satisfied this shows AXA carried out a sufficiently comprehensive estimate of the likely rebuild cost at the relevant time.
- I haven't seen another estimate to challenge AXA's or to support Mr N's. I understand he had a valuation carried out when he bought the properties, and that gave him a surveyor's estimate of the rebuild cost. He used that estimate to set the initial declared value and relied on index linking thereafter to maintain an estimate.
- It may have been reasonable for Mr N to rely on that estimate at the time he took out the policy. But that was many years prior to the 2023 renewal. Whilst index linking provides an estimate of the likely increase in rebuild cost, it is still only an estimate and is therefore naturally of limited accuracy. Relying on index linking for many

consecutive years means relying on a series of compounded estimates. That makes the resulting estimated rebuild cost less likely to be accurate and reliable.

- I think this is recognised by AXA in its policy. It says, in summary, it won't proportionately settle claims where the rebuild cost is based on a RICS valuation within the preceding three years. In this case, I understand Mr N's valuation may be as much as twenty years old.
- Taking all of this into account, I'm satisfied Mr N's estimate was unreasonable. So I don't think it amounted to a fair presentation of the risk, in line with the Act.
- AXA has shown it would have charged a higher premium had it been told the rebuild cost was just over £1,000,000. That meant Mr N paid around 65% of the premium he ought to have done for the policy. In line with the Act, that means AXA was entitled to proportionately settle the claim at that percentage.
- AXA settled the claim at 80%, so it paid more than the 65% it was required to under the Act. This is also more than the proportion it would have paid if it had relied on the 'average' policy term to make the reduction.
- So, overall, AXA has paid a settlement that is more favourable to Mr N than required by the Act or the policy terms. As a result, I'm satisfied it acted fairly and reasonably.

#### *Policy excess*

- The policy sets out different excesses for different causes of damage. When AXA settled the claim, it applied the flood excess of £15,000. Mr N says the storm excess should have been applied instead, which is £400.
- The policy defines flood, in summary, to mean 'the escape of water from the normal confines of any natural or artificial water course... rain induced run off, whether resulting from storm or not'. It doesn't define storm. In my view, the ordinary, everyday meaning of storm is weather of unusual intensity.
- Both parties seem to agree on the events leading to the damage. In short, during a named storm, a significant amount of rain fell in the area. As a result, the river adjacent to the property swelled and damaged the boundary wall. As the wall partially collapsed, the river water washed behind the wall, damaging it further and washing away the ground. I understand tree trunks flowed downstream and struck the wall, exacerbating the problem.
- AXA thought these circumstances meant the damage was caused by flood. On the other hand, Mr N said the river didn't 'escape its normal confines' as required by the flood definition in the policy. So he questioned whether it was fair to describe the cause as flood – especially given the rainfall caused by the named storm.
- I haven't seen any engineering, surveying, or similar relevant professional opinion to support either cause of damage.
- In my view, were it not for the unusually intense rainfall, it's unlikely the river would have swollen to such an extent. Or that tree trunks would be flowing down the river rapidly enough to cause damage. And I agree with Mr N that the damage, at least initially, wasn't the result of water escaping its normal confines. So this supports his view that storm is the primary cause of the damage.

- However, I note the policy definition of flood *includes* 'rain induced run off' resulting from storm. That effectively means damage caused in such a way must be considered flood rather than storm, under the policy. I think it's likely the majority of the water which caused the river to swell and take the tree trunks with it was the result of 'rain induced run off' or similar.
- Overall, I'm persuaded flood was likely the primary cause of the damage. So I'm satisfied AXA acted fairly and reasonably in relation to the excess.

#### *Claim handling*

- AXA accepts it told Mr N his cover was adequate, when it actually thought he was underinsured. So it's clear AXA made a mistake. The appropriate remedy isn't for AXA to act as if its mistake were accurate. It's to consider what position Mr N would likely have been in were it not for the mistake and for AXA to take steps to put him in that position – or as close as is possible now.
- Were it not for the mistake, Mr N would have known throughout that AXA thought he was underinsured and he'd likely lose out on a degree of the claim settlement value. That wouldn't have changed the claim settlement and financial position, but he wouldn't have been as surprised and disappointed to find out the position had changed in a way less favourable to him.
- AXA has agreed to pay £250 compensation to reflect the loss of expectation and disappointment it caused Mr N. I'm satisfied that's a fair and reasonable amount, particularly when I bear in mind that AXA's settlement offer was considerably more favourable to Mr N than it was required to be.

#### **My final decision**

I uphold this complaint. I require AXA Insurance UK Plc to pay £250 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 9 February 2026.

James Neville  
**Ombudsman**