

## **The complaint**

Mr and Mrs L complain about the settlement offered by AXA Insurance UK Plc ('AXA') following a claim they made on their landlord's insurance policy. They also complain about the service provided when AXA were responding to the claim.

Some of Mr and Mrs L's dissatisfaction is with actions of agents that were acting on behalf of AXA. As AXA have accepted responsibility for their agent's actions, any reference to AXA in this decision should be interpreted as covering the actions of their agents.

## **What happened**

The background to this complaint is well known to both parties. I won't repeat in detail what's already known to both parties, instead, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr and Mrs L own several properties that are let out to tenants. They had a landlord's insurance policy, underwritten by AXA. In November 2024 Mr and Mrs L registered a claim against their policy at one of their properties. AXA initially declined the claim and then later accepted it. They offered a cash settlement, but said as Mr and Mrs L were underinsured, they'd only pay 32% of the claim settlement.

Mr and Mrs L raised a complaint. AXA partially upheld the complaint and recognised there were service issues. They offered £200 compensation. Mr and Mrs L remained unhappy and referred their complaint to our Service for an independent review.

Our Investigator considered the complaint and recommended that it be upheld. As neither party fully accepted her recommendations, the complaint was then referred to me for a decision. I recently sent both parties a copy of my provisional, intended findings. As the deadline for responses has now passed, I've considered the complaint for a final decision.

## **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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

### *The scope of this decision*

I'll only be considering the actions of AXA as the underwriters responsible for this policy. I make this point as the policy wasn't initially taken out with AXA as the underwriters.

### *Responses to my provisional decision*

Both parties acknowledged receiving the decision. AXA accepted it and made no further comments.

Mr and Mrs L provided several detailed responses. I won't respond in the same level of detail - as their responses don't materially change the outcome I'd previously set out. In summary:

- I acknowledge their concerns about the sales process used by AXA, but it's not within my remit to direct a business to change the sale process they use or comment on any wider industry concerns Mr and Mrs L have.
- As outlined in the provisional decision, it's not the role of our Service to reach a correct sum insured value: *"it's not my role to determine what the sum insured value should've been. Instead, it's my role to decide if, on balance, AXA have treated Mr and Mrs L fairly and reasonably when responding to this claim"* and I also set out *"I'm not satisfied that AXA have yet fairly shown the sum insured/rebuild value they've chosen to rely on (£641,000) is fair and reasonable... Their response doesn't adequately address this point and **AXA will need to take additional steps outside of this decision** to demonstrate that the increased sum insured value they're seeking to rely on is fair"*.

Mr and Mrs K have referred to being unable to access historic/contemporaneous rebuild figures. This wouldn't be uncommon in this type of dispute. For signposting purposes, the BCIS cost index <https://www.bcis.co.uk/insight/index-bcis-house-rebuilding-cost-index/> may be relevant.

- I accept that Mr and Mrs L may not be 'professional or largescale landlords', but this doesn't absolve them of their responsibilities under the Insurance Act 2015.
- My previous findings in relation loss of rent are unchanged. I can only consider any losses incurred because of failings that AXA are responsible for. Mr and Mrs L's lettings agents' refusal to market the property is not what I'm considering here. They have stated themselves: *"Although the property may have been technically habitable, the letting agents refused to market it in its condition, leaving us financially exposed and entirely dependent on the insurer's progress."*
- Mr and Mrs L argue that only one policy excess should be applicable here for the bathroom related leaks. I find no issue with the approach taken by AXA when letting Mr and Mrs L know two excesses were relevant, but if Mr and Mrs L have further evidence that the bathroom related leaks occurred at the same time *and* have the same proximate cause, they'd need to provide that for AXA's consideration. Our Service would expect AXA to treat Mr and Mrs L fairly when applying any relevant policy excess/es

As the further responses don't materially impact the outcome I'd intended to reach, my provisional findings form the basis of this, my final decision.

### *The sum insured/underinsurance*

As a commercial customer, the relevant legislation here is the Insurance Act 2015. Mr and Mrs L had an obligation to make a fair presentation of the risk they wanted AXA to insure. This, in summary, meant Mr and Mrs L needed to volunteer any information at inception/renewal that a prudent insurer would likely want to know before deciding whether to underwrite a risk, make AXA aware if any of the information they were relying on was inaccurate or any material changes to the risk being insured occurred during the policy term.

In this complaint, AXA say that Mr and Mrs L were insured for a sum of £380,543, but the likely rebuild cost of their property was £641,000. Therefore, it's not in dispute they were underinsured.

We asked AXA and Mr and Mrs L about the sales process here.

- The available records only go back to December 2016, where it's been recorded this policy was underwritten as new business, but "*due to the business changing hands, the proposal form no longer exists and has been generated from the first renewal*".
- AXA say a third party on their behalf took over the administration of the policy in 2018, but Mr and Mrs L didn't take out the policy with that third party and the initial sum insured was index linked.
- AXA took over as underwriter a few years after policy inception and they received data from the previous underwriters. They've also said they didn't ask specific questions related to sum insured when the policy renewed and ultimately the onus rested with Mr and Mrs L to ensure they were adequately insured.
- Any details of the risk at inception were provided via a broker. At each renewal, a broker then sent details of cover to the insured (Mr and Mrs L).

Whilst the policy inception was the initial entering into the contract of insurance - that was with a different underwriter. I'm not considering the actions of any other insurer or any other third party involved in the sale or renewal of the policy prior to AXA becoming the underwriters. If Mr and Mrs L are unhappy about the actions of any other party involved in arranging or underwriting their insurance policy and the sum insured since policy inception, they'd first need to contact those businesses.

Each policy renewal was a new contract of insurance being entered into for the next policy period. I've primarily considered the policy renewal immediately prior to the claim being made. I acknowledge that there are similarities in the sales process here with an 'automatic renewal'. I say this because it seems details of cover are sent to Mr and Mrs L with an invite for them to renew the policy for another year. I'll return to this point later in the decision.

The four properties Mr and Mrs L own were listed on the renewal invite. The relevant information for this property was on four. It stated the sum insured as £380,543. On page eight, under the heading "DECLARATION", the following information was shown (bold added for my emphasis):

***"You must make a fair presentation of the risk to us. This means that you should tell us any information that may influence us in the acceptance of this insurance and the terms provided. This applies prior to the start of your policy, if any variation is required during the period of insurance and prior to renewal. If you do not do this and fail to advise us of any inaccuracies or omissions your policy may not protect you in the event of a claim...."***

***"If the sums insured that you have selected are not adequate this will result in the amount that we will pay you in the event of a claim being reduced."***

Mr and Mrs L have provided copies of the renewal documents received for several years preceding the claim. The available paperwork suggests that Mr and Mrs L would've been made aware:

*"You should read the information We have included with this letter to decide if the renewal offer meets Your requirements. If You would like advice regarding the suitability of this policy We would encourage You to discuss Your requirements with Your intermediary"*

*"Remember that it is essential to consider the level of Your cover and advise Us*

*of any increases or alterations that are required. The level of cover shown on Your policy schedule **must be adequate to cover the full reinstatement value of Your property.** Failure to ensure Your cover is sufficient would result in **claims payments being reduced proportionally.**"*

AXA have said the policy renewal was ultimately based on information (sum insured) that Mr and Mrs L earlier gave at policy inception and that was index linked afterwards. When AXA became the underwriters, they offered terms based on the information passed to them. I find that this left open the possibility that the sum insured may not be appropriate.

Our Investigator placed heavy emphasis on the sum insured figure being 'pre-populated' on the renewal documents. I do agree with her that the figure on the renewal documents may not have been directly given to AXA by Mr and Mrs L at the relevant renewal (as it carried over from being index linked to the earlier policy inception). But, I've also considered what is fair and reasonable in the overall circumstances of the complaint alongside Mr and Mrs L's obligations under the Insurance Act 2015 and the renewal literature that followed.

I can't overlook that this policy did renew for several years prior to the claim with AXA. In a scenario where Mr and Mrs L were not asked a direct question by AXA about what figure was appropriate for the sum insured, I find this made the documentation sent afterwards even more important. There's no evidence that Mr and Mrs L – as responsible commercial customers, took any reasonable steps at all to question, or ensure the sum insured (for any of the properties within their portfolio) was appropriate for their needs after receiving their renewal documents.

In summary, returning to my point earlier in the decision - it seems there was little to no direct interaction between Mr and Mrs L and AXA at the point of renewal. But I find Mr and Mrs L still had an adequate opportunity (when receiving the renewal documentation) to ensure the sum insured was appropriate and notify AXA if it wasn't. For example, it has been well publicised that world-wide inflation – particularly since 2021, has had a huge impact on rebuild costs. Instead, it seems Mr and Mrs L assumed the sum insured figure was correct. I note Mr and Mrs L's comments about having an earlier claim and the sum insured value not being raised as an issue by AXA, but I'm only considering AXA's actions when responding to this claim in 2024.

I have a great deal of sympathy for the position Mr and Mrs L find themselves in regarding their underinsurance. But as commercial customers, they had an obligation to ensure that they provided AXA with all relevant information (including the appropriate sum needing to be insured) at each policy renewal. This responsibility extended to notifying AXA if there was an issue with the information when they received the renewal invite and I'm satisfied the paperwork sent set this responsibility out sufficiently prominently. I find the figure that AXA based their renewal invitation on doesn't absolve Mr and Mrs L of their obligation to ensure they'd fairly presented the risk/value they wanted insured.

On balance, having considered the overall evidence, in the specific circumstances of this complaint, I don't find that AXA have acted unreasonably when concluding that Mr and Mrs L failed to take reasonable care to make a fair presentation of risk when the policy renewed and I find that Mr and Mrs L have had sufficient opportunity at multiple renewals prior to this loss occurring, to check/question if their sum insured was adequate.

#### *Proportionate settlement of the claim*

AXA offered to proportionately settle the claim. I find that under the Insurance Act 2015 (schedule one) this is an allowed for remedy in the circumstances of this complaint:

*“6(1) In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.*

*(2) In sub-paragraph (1), “reduce proportionately” means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract...”*

However, I'm not satisfied that AXA have yet fairly shown the sum insured/rebuild value they've chosen to rely on (£641,000) is fair and reasonable. To be clear, it's not my role to determine what the sum insured value should've been. Instead, it's my role to decide if, on balance, AXA have treated Mr and Mrs L fairly and reasonably when responding to this claim. Mr and Mrs L said their chartered surveyor has explained they followed the information given by AXA and inputted it into the BCIS calculator (for which they have a subscription) and came out with the figure of £645,00, versus the figure of £533,000 using the free version of the calculator. This naturally calls into question how Mr and Mrs L could've arrived at a figure close to what was needed to be adequately insured even if they had taken additional steps to ensure the adequacy of the sum insured figure.

The relevant ABI guidance for policy holders can be found here:

<https://www.abi.org.uk/products-and-issues/choosing-the-right-insurance/home-insurance/buildings-insurance/calculating-your-rebuild-cost/> and it links to the free version of the calculator (which has resulted in a lower sum insured figure).

I asked AXA about this in a recent email. Their response doesn't adequately address this point and AXA will need to take additional steps outside of this decision to demonstrate that the increased sum insured value they're seeking to rely on is fair. I'll set out below my direction regarding this point. For clarity – this finding is specific to the circumstances of this complaint and not setting a precedent. I make this point as Mr and Mrs L have referred to their surveyor's comments about a systemic issue with underinsurance in the UK.

#### *The service provided*

AXA accepted that they'd let Mr and Mrs L down when responding to this claim. They offered £200 to recognise issues that occurred. I find this doesn't go far enough.

I find the £600 total recommended by our Investigator to be fair, reasonable and proportionate. I've reached this finding having carefully considered what happened, the impact on Mr and Mrs L and our published guidelines on these types of awards. There were claim delays, incorrect conclusions reached as to the cause of some of the damage (rising damp for example) and communication issues. I have kept in mind some of the positive actions of AXA – such as agreeing to pay the £200 fee for a contractor of Mr and Mrs L's choosing to survey the property.

#### *Loss of rent claim*

Mr and Mrs L have described in detail the financial implications they've incurred. Unfortunately, as a landlord with multiple properties, there will always be a level of risk.

I've also noted that the most recent tenants were moved into the property even when there were known issues. I acknowledge Mr and Mrs L's point that this was at the insistence of their lettings agent. But I'm not considering the actions of that party.

An email from the lettings agent dated 27 July 2024 stated:

*“The tenants are becoming increasingly more and more frustrated by the day, and we are headed in a similar direction as we experienced with the previous tenants...”*

I also note from the evidence that there is reference to some of the problems only coming to light during a leaving inspection and there being negligence on the part of previous tenants when not reporting the issues. I've also kept in mind that there was a delay in reporting the damage to AXA. I acknowledge some of this delay was due to Mr and Mrs L not wanting to claim against the insurance initially, until the repair costs became clearer. Again, I don't hold AXA responsible for that point and there can be no doubt it has compounded the issues here.

My understanding from Mr and Mrs L is the latest tenants were unhappy with the repeated contractor visits that would be needed to carry out repair works and when they moved out their lettings agency communicated the property would need to be repaired before being let out. Based on all the evidence I've seen, I don't find that the property was uninhabitable during the period between the last tenants leaving and repair works beginning. Therefore, notwithstanding some of the service issues that AXA are responsible and have contented to delays, I find that AXA have fairly declined Mr and Mrs L's claim for loss of rent. But it was very positive of AXA to offer three months loss of rent. I won't be directing AXA to make any other contribution (above what they've offered) towards Mr and Mrs L's loss of rent under this policy.

#### *Temporary repairs*

I've noted AXA's comments about Mr and Mrs L rejecting an earlier settlement offered and I've listened to a copy of a relevant call recording. At around seven minutes into the call, Mr L makes it clear he doesn't want to accept a payment that might prejudice his position without bringing the complaint to our Service. I find it could've been made clear in that call that the third payment (over £18,000) could be accepted on a without prejudice basis – particularly given the breakdown in the relationship that had occurred by that point.

I find that Mr and Mrs L took reasonable mitigation steps when arranging temporary repairs to enable the property to be let out again. I note AXA's comments that their surveyor didn't

list any temporary repairs were needed. AXA have asked for evidence to be provided to substantiate the repairs along with evidence that the property was re-let as a result. I consider this fair. AXA would only be expected to cover any repairs that fell within the cover the policy provided.

#### *The remaining part of the dispute*

AXA have chosen to cash settle the claim and both parties have agreed a schedule of works which includes a matching sets contribution towards undamaged parts of the kitchen. I consider this fair.

#### **Putting things right**

AXA Insurance UK Plc will need to:

1- Reconsider the sum insured value they've relied on. If AXA wish to rely on the higher sum insured figure, they will need to demonstrate to Mr and Mrs L (with reasonable supporting evidence) that it's a figure they (Mr and Mrs L) would've reasonably been able to reach with the free version of the calculator tool: <https://abi.bcis.co.uk/>

If this recalculation results in a lower sum insured value, AXA will need to recalculate any

proportionate settlements already paid and add 8% simple interest\*. This would need to be calculated from the date of the previous settlement until the date any updated settlement is paid to Mr and Mrs L. In addition, this includes any outstanding claim related repairs. The interest is to be calculated from the date any earlier settlement/s were made until the date any updated settlement is paid to Mr and Mrs L.

2- Consider further evidence (that Mr and Mrs L will need to provide), to substantiate the temporary repairs carried out and evidence that the property was re-let because of the temporary repairs.

If satisfied, reimburse Mr and Mrs L for any claim related repairs in line with the remaining policy terms and limits.

For both points above, AXA will need to add 8% simple interest\* per annum to any settlement, this is to be calculated from the date that Mr and Mrs L incurred the repair costs (subject to them providing reasonable proof) until the date any settlement is paid to Mr and Mrs L.

AXA would only be expected to cover any repairs that fell within the cover and limits of the policy provided. AXA can also fairly deduct any costs that would otherwise have been covered under their earlier settlements - so as to not doubly indemnify Mr and Mrs L.

3- Make a 50% contribution towards the undamaged kitchen units.

4- Pay Mr and Mrs L the equivalent of three months' loss of rent, as previously offered.

5- Pay Mr and Mrs L a total of £600 in recognition of their service failings.

\*If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs L how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs, if appropriate.

### **My final decision**

My final decision is that I partially uphold this complaint. Subject to Mr and Mrs L responding to accept the decision before the deadline set below, I direct AXA Insurance UK Plc to follow my direction as set out under the heading '*Putting things right*'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 5 May 2026.

Daniel O'Shea  
**Ombudsman**