

The complaint

Mr E is unhappy that AXA Insurance UK Plc (AXA) is only covering 71% of a claim made under his landlord building insurance policy.

Where I've referred to AXA, this also includes actions and communication by agents acting on their behalf.

What happened

Mr E owns a property which he rents out to tenants, and he has a landlord building insurance policy underwritten by AXA. This was originally taken out in 2017 and renewed each year since.

In 2022 Mr E made a claim to AXA for subsidence damage at the insured property.

Whilst validating the claim, AXA said Mr E was underinsured. They said the reinstatement (rebuild) declared value was only 71% of what it should have been, so they said Mr E was underinsured and that he'd failed to make a fair presentation to them. As a result of the underinsurance, AXA said they'd apply average, and that they'd only cover 71% of the claim.

As Mr E was unhappy with AXA's position, he approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint. She said whilst the reinstatement declared value on Mr E's policy was a lower amount than AXA said it should've been, the sum insured on the policy was still sufficient regardless. So, the investigator didn't think AXA had shown Mr E was underinsured, and she recommended AXA continue with the claim without applying average, along with paying £100 compensation.

AXA didn't agree so the case was passed to me 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.

Having done so, I've reached the same overall outcome as our investigator.

AXA has referred to the sale of the policy in 2017 and what they asked Mr E at that time. Mr E declared the reinstatement value as £125,000, although AXA hasn't shown that this amount wasn't sufficient in 2017.

In any event, the policy was renewed each year after, and the reinstatement declared value was increased by AXA each year. Mr E then made a claim in 2022, five years after taking out the policy. So, I've looked at the policy documents from that renewal year, along with the relevant terms that apply.

So, from reading the renewal documents, Mr E would reasonably be of the view that £240,437 is the amount he is insured for, which in any event is sufficient based on what was the declared reinstatement estimate, and AXA's recalculated amount too. Whilst AXA says it doesn't expose the sum insured at point of sale to avoid confusing a policyholder, having both figures in the renewal documents, in my view, has that effect.

AXA has said that the building sum insured is subject to day one average cover, which they say uplifts the sum insured to protect the policyholder against inflation and underinsurance. And the amount has been increased by AXA each year. I recognise the policy terms outline a day one average cover extension, and talks about the rebuild value and applying average, but this seems to be an uplift to protect against less than 15% underinsurance. So, whilst AXA says the sum insured is there to protect against underinsurance, on the same note, they have applied average based on underinsurance of the declared reinstatement value, when the *sum insured* is actually sufficient.

And the only reference to *day one average cover* in the renewal documents is:

"What's included in your policy package:

Day one average cover, automatic uplift on buildings sums insured to cover inflation"

So, this doesn't reference the reinstatement declared value and instead refers to the *sum insured*.

AXA has referenced Mr E's requirement to make a fair presentation of risk, which was highlighted on his renewal documents. But immediately after this, it also says:

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

So, the reference here is that the *sum insured* needs to be sufficient (i.e., £240,437 – which is sufficient), with no mention of the reinstatement declared value, or the impact of that being incorrect. And the corresponding renewal schedule also says:

"We have automatically increased your sums insured by the following percentages to allow for the effects of inflation

- *Buildings of residential properties* 9.9%

If you have provided updated sums insured at renewal we will use these values. Your updated sums insured are shown in your schedule."

And the policy terms also confirm:

"Limit of cover

The most we will pay for any property covered by this section is the sum insured shown in your schedule for each item plus index linking in line with the Inflation protection cover."

And the buildings section of the policy confirms the *buildings sum insured* is £240,437.

So, whilst the reinstatement declared value, which is only an opinion of what it would cost, was lower than the *sum insured*, the listed *sum insured* was sufficient, even based on AXA's revised rebuild calculation. So, I agree with our investigator, that AXA hasn't demonstrated Mr E was actually underinsured as, in line with the policy terms and documents, he had cover up to £240,437, which was sufficient to rebuild his property.

With this in mind, I'll be directing AXA to continue dealing with the claim without applying the average deduction. I also agree with our investigator that AXA should also pay Mr E £100 compensation for the additional distress caused by unfairly applying average to the claim.

My final decision

It's my final decision that I uphold this complaint and direct AXA Insurance UK Plc to:

- Continue dealing with Mr E's claim without applying the average deduction
- Pay Mr E £100 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 12 September 2024.

Callum Milne
Ombudsman