

The complaint

Mr S is unhappy that AXA Insurance plc has declined his claim and voided (cancelled from the start) his residential landlords home insurance policy due to misrepresentation (not correctly answering questions about cover).

What happened

Mr S' rental property suffered water damage, so he made a claim. AXA discovered the property was unoccupied when Mr S took out the policy. It said this was a misrepresentation. If Mr S had answered the questions correctly AXA would never have offered to provide cover knowing the property was unoccupied. It declined the claim and voided the policy. AXA did accept it had delayed the claim investigation and offered Mr S £150 as compensation for the avoidable delays. Unhappy with this Mr S brought his complaint to this service.

Our investigator didn't uphold the complaint. She said although tenants had been arranged, they'd no intention of moving into the property at the point when the policy was set up. So, she accepted AXA's point that it wouldn't have accepted the risk had Mr S correctly answered the question about whether or not the property would be occupied when the policy started. Mr S said he was living at the address, but the records suggested nobody had lived there for a couple of months. Our investigator felt this was backed up by Mr S attending on the day the tenants arrived to conduct additional cleaning. In relation to the delays our investigator agreed that AXA's £150 offer of compensation was fair.

Mr S didn't accept this and asked for his case to be passed to an ombudsman 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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

AXA said Mr S failed to take reasonable care not to make a misrepresentation when he answered the following question:

AXA: "So you've said that the tenants... they are going to be in the property when the policy starts? And they are employed / Self employed? Is that correct?"

Mr S: "They are, yes"

This was also backed up in the schedule issued to Mr S which said the following:
"The entire property will be occupied when the policy starts."

I agree."

I don't think there's any dispute that a clear question was asked, and that Mr S didn't answer it correctly. So, I think Mr S failed to take reasonable care when he answered the question.

I accept this is a qualifying misrepresentation as AXA have been clear in evidence that if Mr S had answered the question correctly it wouldn't have offered any cover or policy. Its acceptance criteria said it would decline to offer cover in such a situation. That means it would never have been insuring the property when the water damage occurred.

I have to consider if AXA acted fairly when it decided to decline the claim and void the policy. In the circumstances and based on CIDRA I think it has. Mr S said he was living at the property, but the damage was found by the tenants when they visited the property and Mr S was notified of the damage by his letting agent. AXA has pointed out the inconsistencies in Mr S' evidence as he'd initially said he wasn't living there.

delays

It's accepted that the delays in dealing with the claim were too long. AXA accept that six weeks was added to the time it should've taken and that this delay was avoidable. But it did acknowledge this and offered Mr S £150 as compensation. In the circumstances of the case I think that's a fair and reasonable amount.

My final decision

I don't uphold this complaint against AXA Insurance Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 January 2021.

John Quinlan
Ombudsman