

The complaint

Mrs C and Miss C complain that AXA Insurance UK Plc avoided (cancelled from the start) Mrs C's policy and didn't notify them.

What happened

In July 2019 Mrs C took out car insurance with AXA. Her daughter, Miss C, was a named driver on the policy. In late 2019, AXA identified the policy may have been set up by an unregulated broker (ghost broker). So, AXA decided to avoid Mrs C's policy. On 31 October 2019 it sent a notice to the email address on record (Miss C's email), advising it would avoid the policy in seven days. On 7 November 2017 it sent a further email confirming the policy was avoided and there was no insurance.

But Mrs C said Miss C didn't receive the emails. And so, they didn't realise the policy had been avoided until January 2020 when Miss C was stopped by police. The car was then impounded, and Miss C was charged with driving without insurance - although these charges were later dropped.

Mrs C complained to AXA about both the avoidance and the lack of notice. AXA didn't uphold the complaint. It said it had acted in line with the policy terms and conditions. But AXA later acknowledged it would have been better for Mrs C to also receive postal correspondence and offered £125 as a gesture of goodwill.

Mrs C didn't think this was fair, so she brought these concerns to our service.

When explaining its decision to avoid this policy, AXA initially said Mrs C had made a reckless misrepresentation in relation to the information provided. But it later said it hadn't relied on misrepresentation to avoid the policy. Instead, AXA said it relied on the following term:

'If we suspect fraudulent activity has taken place on your policy either by you or someone on your behalf, we may cancel by giving you 7 days' notice in writing to either the email or the last postal address known to us. This includes if your policy has been set up by an unauthorised or unregulated intermediary.'

I have noted that this term doesn't mention avoidance, which is what AXA did here, but cancellation. And I have looked at whether AXA were entitled to avoid or cancel the policy below.

AXA said it relied on this term because the policy was set up in a fraudulent way by a ghost broker to obtain a cheaper price. AXA told us it had identified a large number of policies which were set up in this way – but it couldn't share this information with our service due to data protection concerns. AXA stressed selling insurance is a regulated activity, and it's important not to turn a blind eye to unauthorised ghost brokers.

In relation to its attempts to contact Mrs C, AXA told us it had notified her via email and wouldn't have risked sending a notice via post due to the potential fraud risk connected with the ghost broker's involvement.

After reviewing all of the evidence our investigator upheld Mrs C's complaint. They said it wasn't fair for AXA to avoid the policy without evidence of a qualifying misrepresentation. And they thought AXA should have made an effort to contact Mrs C by more than one method before avoiding her policy. AXA disagreed so the matter has been passed to me to decide.

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.

AXA initially told our service that Mrs C's policy was avoided due to a reckless misrepresentation. Misrepresentation is also suggested in the avoidance notice AXA sent to Mrs C. The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA) does allow insurers to avoid policies under certain circumstances.

According to CIDRA, AXA may have been entitled to avoid the policy if it could show the ghost broker deliberately misrepresented information that was relevant to the insurer's decision to cover Mrs C. AXA may also have been entitled to avoid for misrepresentation if it could show Mrs C was reckless in checking the accuracy of the information given at application when it was provided to her to check. But whilst I'm aware AXA had a correct email address for Miss C, I haven't seen any evidence from AXA that any incorrect information was relevant to the insurer's decision to cover Mrs C. And that's because AXA has since told us misrepresentation wasn't the basis of its decision. So, whilst our investigator has asked for more information - this hasn't been provided. Given this, based on the information available to me, I don't think it's fair for AXA to avoid the policy based on misrepresentation.

Instead, AXA has said the policy was avoided because a ghost broker was involved in the setup. AXA has told us it considers the setup of the policy by an unauthorised intermediary as fraud. And it's said that a customer's innocence or lack thereof is irrelevant. AXA has relied on the following term to explain their decision:

'If we suspect fraudulent activity has taken place on your policy either by you or someone on your behalf, we may cancel by giving you 7 days' notice in writing to either the email or the last postal address known to us. This includes if your policy has been set up by an unauthorised or unregulated intermediary.'

I recognise ghost broking is an unregulated activity that causes significant problems within the insurance industry and should be taken seriously. But my role here is to decide if AXA has treated Mrs C fairly in the circumstances. Having reviewed the information available to me, I don't think it has. In particular, I don't think it's provided enough evidence to support its reliance on this policy term.

Firstly, this policy term allows for cancellation, not avoidance, which is what AXA did. Avoiding is cancelling a policy from the start as though it never existed, where as normal cancellation would be from the moment AXA chose to end the policy. AXA acknowledged this term doesn't technically allow for avoidance, but said it did this because it allowed the return of all of Mrs C's premiums. I'm not persuaded by this reasoning, as AXA still could have chosen to refund the premiums even if it had cancelled the policy. Although I recognise there would then be a period on cover which it wouldn't have received premiums for.

But overall, I don't think this matters here because I don't think either approach was reasonable in these circumstances – I'll explain why.

Under the Insurance Act 2015 an insurer is entitled to cancel or avoid a customer's policy for fraud. But this is a very serious matter. It means that the cancellation or avoidance will be registered on internal and possibly external insurance and fraud databases. It will also have to be declared in future insurance applications which can increase premiums or make it difficult for a consumer to get cover.

Taking this impact into account, I would expect AXA to show us strong evidence that fraud has occurred before cancelling or avoiding the policy on these grounds. In other words, I would expect AXA to provide evidence that a ghost broker knowingly misrepresented Mrs C's information to lower her premiums and/or qualify her for insurance she would otherwise not have been entitled to.

But AXA hasn't provided this evidence. It's clear there is some data in Mrs C's policy details which is inaccurate – the occupation of both her and her daughter is incorrect and their relationship is listed as 'partners' not 'mother-daughter'. Yet AXA doesn't appear to have checked with Mrs C that this information is different from what she provided at the point of application. I've also seen no evidence to show this information would have made a difference to the terms AXA would have offered. And whilst I appreciate AXA has said it's difficult to share this data with our service, I also haven't seen any evidence the person who set this policy up was a ghost broker. So, without any evidence to support AXA's suggestion fraud occurred here, I don't think it's fair to avoid or cancel the policy for fraud.

And even if AXA was to provide this evidence, I would also expect it to demonstrate on balance that Mrs C knew or ought to have known about the fraud. Whilst this isn't a requirement set out in the terms and conditions of the policy, given the very serious consequences of policy avoidance and cancellation on the individual consumer, I would expect a fair approach to be taken. And I don't think it's fair to permanently disadvantage Mrs C if there's no evidence she knew or ought to have known the insurance was taken out fraudulently. In such circumstances, Mrs C would be as much a victim of fraud as the insurer.

I can understand why, regardless of whether Mrs C knew or ought to have known it had been set up by a ghost broker, AXA might not want to continue this policy. And AXA has explained that allowing the policy to continue fuels ghost broking activity. It's also possible Mrs C may not have paid the correct premiums if not all her information was accurate. But I don't think it's reasonable to suggest her innocence is irrelevant. If there's no evidence Mrs C was or should have been aware of the potential fraud, and there's no evidence of misrepresentation, then I think it's fair to expect AXA to give Mrs C the option of cancelling in the first instance. This ends the fraudulent policy and the ghost broker's involvement in a way that's fair to everyone involved.

So, I've thought about whether the evidence indicates Mrs C knew or ought to have known of the potential ghost broker involvement – but I don't think the evidence suggests this. Mrs C told AXA she thought her son-in-law got her this quote and that someone set it up for him through a well-known price comparison website. Mrs C says they were then sent a link from this comparison website through which they took out the policy. Mrs C's son-in-law has since told our service he used the comparison website directly. He told us Mrs C wasn't particularly clued up on using the internet, so he thinks she misunderstood him.

Whilst there is a slight discrepancy here in what Mrs C and her son-in-law told us, I think the explanation for this seems reasonable in the circumstances. I say this taking into account the fact Mrs C asked her son-in-law to help her get the quote in the first place. And I have also

noted Mrs C doesn't sound overly certain about how he did this in the call to AXA. She said '*I think my son-in-law...*' and then she can be heard consulting with her daughter about the comparison website used.

AXA also hasn't shown me that Mrs C's policy was substantially cheaper, such that I think the lower price should have alerted her to possible fraud. And I don't think it's unreasonable for a consumer to believe a link from a well-known price comparison website to a well-known insurer was legitimate. So, I don't think there's sufficient evidence here to suggest Mrs C knew or ought to have known this was potentially fraudulent.

Given this, I think AXA should have given Mrs C the option of cancelling her policy before it cancelled it for her. And in the circumstances, I think it's likely Mrs C would have done so. I say this as the alternative would be AXA cancelling it for her which would have disadvantaged her as outlined above. But I'm aware this would all be dependent on whether she received AXA's communications. And this is also important in considering Mrs C's complaint that AXA didn't tell her that her policy had been cancelled.

So, I've considered Mrs C's complaint that her daughter didn't receive AXA's notification.

AXA has evidenced that it emailed to warn Mrs C it was avoiding the policy, and then again once it had done so. Give this, I'm satisfied it did attempt to communicate its decision to Mrs C. AXA also feels it's likely Mrs C knew what had happened, as the email address it used was correct and it also refunded the entire year's premiums.

But Mrs C said Miss C didn't get these emails. Mrs C says they've since checked the email account again, including junk mail, but the emails aren't there. Mrs C also told AXA she didn't check the current account it refunded the money to very often, so she hadn't noticed the refund.

Where the evidence is incomplete or conflicting, I need to decide what's most likely to have happened.

I've noted that Mrs C didn't ring AXA to complain until after her daughter had been pulled over, which was around two months after the policy was avoided. Mrs C has also explained that her daughter is a blue badge holder and is reliant on her licence to get around. Given the importance of the ability to drive to Mrs C's daughter, I do think it's unlikely she would risk driving without insurance for several months. And I also think it's unlikely Mrs C would have waited two months if she felt she had cause to complain.

I've thought about the refunded premiums and I recognise this wasn't a small amount of money. But it's not uncommon for individuals to have more than one current account. And if that account is reserved for specific purposes or isn't someone's primary account, I don't think it's implausible that someone might not check this for a couple of months. Which is what Mrs C has told us happened.

Taking all of this into account, I think it's most likely AXA's emails went into Miss C's junk folder. I say this as junk email folders often periodically delete emails. And this seems to me the most likely explanation for what happened here, explaining both why the emails weren't received and why they are no longer there, despite the fact AXA clearly sent them.

Mrs C feels that AXA should have done more to contact her. AXA has said this was an online policy so it wouldn't have used other methods of communication. It's also said it wouldn't have sent post in these circumstances because it was concerned the address might have been fraudulent (and incorrect) based on the potential ghost broker involvement.

But I have noted this contradicts what it previously told Mrs C when it offered her £125 as a goodwill gesture. It also seems to me that if AXA had concerns over the accuracy of the contact information it held, this applied to all of the details, not just the postal address. This would include the email address it relied on to notify Mrs C. Whilst I appreciate this email address turned out to be correct, AXA didn't know that at the time.

I've raised this with AXA and it told me that the welcome email sent when the policy was taken out had not been returned undelivered. AXA acknowledged that the lack of a 'bounce back' is not a guarantee that the email address doesn't belong to someone else. But they thought it was likely someone would have contacted them if they'd received an email about insurance they were unaware of.

But I don't find this argument persuasive here. If a ghost broker was responsible for the fraudulent email account, they wouldn't get in touch with AXA. And I also don't think it can be taken as likely that someone else would take the time to contact a company if they received information about a policy that wasn't theirs – people are busy and natural suspicion of spam and fraud may lead others to delete rather than report.

I appreciate this was an online policy which would normally be dealt with by emails only. But in this case AXA suspected fraud. And AXA had other information available to it which could have been used to try to contact Mrs C or make further enquiries to check the details were correct - this included a contact telephone number, a car registration and a postal address.

So, in these specific circumstances, where the ghost broker involvement has brought into question the accuracy of the contact information, it seems to me unreasonable not to either make further enquiries to verify the information, or attempt multiple methods of contact to ensure Mrs C received the notification. I say this taking into account the serious potential consequences of someone unknowingly driving without insurance. And had AXA done this, I think it's likely Mrs C would have received the notification and become aware that her insurance had been avoided.

I think AXA's failure to do enough to notify Mrs C for the avoidance ultimately led to Mrs and Miss C driving without insurance. Given my earlier findings, had AXA acted fairly in this case, I also think Mrs C would have received and accepted its offer to cancel her own policy.

So, I think AXA should do the following to put Mrs C and Miss C back in the position they should have been in:

- Update any internal and external database to show Mrs C cancelled the policy. AXA should remove any references to avoidance, insurer cancellation, or fraud on these databases.
- Provide Miss C with an indemnity she can produce, if for any reason the crown prosecution decides to reconsider its decision to discontinue prosecution.
- Refund the costs of the car impound and legal fees Mrs C and Miss C have incurred, providing these are not recovered through the justice system.

But AXA has already refunded all of Mrs C's premiums. And had Mrs C cancelled her policy, she would only have been refunded premiums for the remainder of the policy term. Given this, I think it's reasonable for AXA to deduct the costs of Mrs C's premiums from the policy inception until 7 November 2019 (when the policy should have been cancelled) at the rate Mrs C agreed to when she took out the policy, from any payment it makes. I've considered the cancellation fee that is usually applicable, but I think it would have been reasonable for AXA to waive this in the circumstances given it would have been asking Mrs C to cancel the policy.

I've then thought about the trouble and upset caused to Mrs C and Miss C here. It's clear both have been impacted by what's happened. Miss C has had to endure months of worry as the CPS only dropped the charges against her in late August. She's also spent time liaising with solicitors in connection with this. And has left her anxious at a time where she also happens to be pregnant. Mrs C was also clearly upset and worried by the charges. Both were inconvenienced by the car being impounded. And Mrs C has had to spend time trying to resolve this with AXA. I don't doubt this has been a very difficult time, particularly for Miss C.

I think this was partially caused by AXA acting unfairly. But I have thought about the fact that had Miss C checked her junk mail more regularly, it's likely she'd have seen AXA's notifications. This was an online policy with default communication set to email so I think it's fair to say Miss C had some responsibility here. If Miss C had received AXA's notification, some of this upset could have been avoided. And whilst it's unfortunate the emails went into the junk folder, this wasn't AXA's fault. I'm aware AXA has offered Mrs C £125 as a goodwill gesture. Taking everything into account, I think an additional £300 payment, so £425 in total, fairly reflects AXA's role in the trouble and upset to Mrs C and Miss C here.

My final decision

For the reasons I've given above, I uphold this complaint. I direct AXA Insurance UK Plc to:

- Update any internal and external database to show Mrs C cancelled the policy. AXA Insurance UK Plc should remove any references to avoidance, insurer cancellation, or fraud on these databases.
- Provide Miss C with a letter of indemnity if for any reason the crown prosecution service decides to reconsider its decision to discontinue prosecution.
- Refund the costs of the car impound and legal fees Mrs C and Miss C have incurred, providing these are not recovered through the justice system.
- I'm aware AXA Insurance UK Plc have offered Mrs C £125 as a goodwill gesture. It should pay this, if it hasn't already done so. And then it should pay them a further £300, so £435 total, for the distress and inconvenience they've experienced.

AXA may deduct the costs of Mrs C's premiums from the policy inception until 7 November 2019, at the rate Mrs C agreed to when she took out the policy, from any payment it makes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mrs C to accept or reject my decision before 9 October 2020.

Jade Cunningham
Ombudsman