

The complaint

A company I'll refer to as T complained about a claim decision, reached by AXA Insurance UK Plc, under its retail business insurance policy, and the way they handled it.

Mr A, a director of T, has complained on T's behalf.

What happened

The background to the complaint is well known to all parties. Therefore, rather than repeating in detail what happened, instead I'll summarise my understanding and focus on what I consider to be materially relevant to the complaint.

T's property caught fire in May 2020 which caused damage, so it raised a claim with AXA. AXA appointed a loss adjuster, but concerns were raised regarding the information provided to them by T. So, AXA requested further information from T.

Throughout the claim, AXA raised several concerns to T – who appointed a loss assessor to handle the claim on its behalf. AXA were initially considering whether to avoid the policy, but they made a decision on the claim instead.

AXA appointed a forensic expert who said the most likely cause of the fire was due to the deep fat fryer oil overheating. And CCTV footage from T's property had shown the fryer was left unattended when the fire started. They said T's employee – who was responsible for attending the fryer whilst in operation – was seen to be standing just outside a fire exit using their phone, with their back to the fryer when the fire started. AXA referred to the policy and said T had breached a condition precedent by leaving the fryer unattended during its operation, as such they declined T's claim.

T didn't agree. It raised an initial complaint with AXA regarding the overall handling of the claim. It said it thought AXA were looking for ways to decline the claim and not pay out. It said AXA had a copy of the CCTV footage early on in the claim, and it took them until March 2021 to decline it, relying on the footage and policy terms. T said AXA delayed the claim unreasonably and reached an unfair decision.

In respect of the claim decision, T responded to say the policy doesn't define the term attended. It said an employee was stood within close proximity of the fryer in the kitchen at the time of ignition – no more than a few metres away. T said it's reasonable to interpret the term attended as being present, which it says an employee was, which can be seen within the CCTV footage. T also said the policy doesn't say an employee must be standing facing the fryer for the condition to be met.

T also said that, even if the fryer was unattended, the fire started due to a mechanical fault and not due to the oil overheating. Therefore, the policy condition AXA relied on to decline the claim was immaterial. As T remained unhappy, it complained.

AXA responded to the complaints T raised regarding the handling and claim decision. They said they had reasonable concerns regarding the information provided to them by T, and it

was appropriate to investigate this. They also maintained their decision regarding the claim. As T thought AXA had acted unfairly, it brought the complaint to our service.

An investigator here considered the complaint. She felt AXA had declined the claim fairly as she also thought the fryer was unattended at the time the fire started, based on the CCTV footage. She didn't think T's employee was able to intervene given she had her back to the fryer and her attention was elsewhere.

Our investigator considered T's argument regarding the cause of the fire, which it considered to be due to a mechanical failure. But she said there was a lack evidence to show this being the cause. And in any event, the policy condition precedent AXA relied on to decline the claim wasn't limited to fires caused by oil overheating.

She did however think AXA had caused some delays and recommended they apologise to T for this.

AXA accepted our investigator's view, but T didn't.

T responded with further information. It provided photographs to demonstrate the distance between the fryer and where its employee was standing at the time the fire occurred. It thought this demonstrated the fryer was being attended by an employee given the short distance between the two. Our investigator considered this but didn't change her view. As such, T requested that an ombudsman considers the complaint, so it was 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.

A key finding I need to make is whether I think AXA reached a fair and reasonable outcome on the claim based on the evidence I've seen. And having done so, whilst I appreciate this will come as a considerable disappointment to T, I think they did. I'll explain why.

I'll now refer to the policy, which says:

'15c – KITCHEN CONDITION

In respect of all sections of this policy it is a condition precedent to any liability of Insurers to make any payment where there is a kitchen facility or cooking equipment in operation that:

- 1. The insured will provide one portable fire extinguisher which is foam or dry powder based, one portable extinguisher which is water based and one fire blanket and that these shall be maintained in effective working order, kept in close proximity to the cooking equipment and serviced annually by a specialist contractor.*
- 2. The cooking equipment is attended at all times during its operation.'*

The dispute present is whether T's employee attended the fryer at all times during its operation. T thinks, given the employee was standing only a few metres from the fryer at the time it likely caused a fire, they were present and therefore the condition precedent cited above wasn't breached. To support this, it provided photographs showing the distance between the fire exit (where the employee was standing) and where the fryer was situated.

Whereas, AXA says, the employee could be seen on their phone with their back to the fryer in CCTV footage, when the fire most likely started. Therefore, they say it was unattended whilst in operation.

I've given very careful consideration to the submissions made by both T and AXA, and also viewed the CCTV footage. Overall, I'm satisfied it's fair to conclude that being attended means that someone would need to be in a position to interfere if something went wrong.

In this case, the employee – said to have been responsible for the fryer whilst in operation – can be seen on the CCTV footage just outside the fire exit walkway (as the outside camera picked them up), on their phone. I didn't witness the employee observe the fryer for the period they were shown on the CCTV footage. When the employee did turn around after approximately 11 minutes, it's most likely this was when they first noticed there was an issue. I say this because it appears the employee rushes into the kitchen, and another person is then seen exiting from the same point, holding an item which is on fire.

I do understand T's argument here. It thinks, given the employee was standing only a few metres away from the fryer, this means they were in close proximity, and therefore attending it. Having seen the photos T provided, whilst I agree there is only a few metres distance between the two, I'm not satisfied this is strong enough evidence to persuade me to agree AXA's claim decision was unfair.

I don't think this can reasonably be considered as someone attending the fryer at all times during its operation. I find that the intention of this condition precedent is to ensure any cooking equipment is attended at all times, importantly, so someone can interfere if an issue arises. That wasn't the case here. The CCTV footage, in my view, shows the fryer wasn't being attended at all times during its operation.

The expert report dated June 2020 that reported on the fire says when there is a period of oil overheating, it is evidenced by smoke, and if noticed, a fire can be averted by switching off the fryer. Had the employee responsible for attending the fryer been in a position to interfere, I think they could have acted to mitigate the loss that unfortunately occurred here. So, on balance, if the breach of the condition precedent hadn't occurred, I think this could have made a difference to the outcome of the claim.

I note T argued the fire was caused by a mechanical failure rather than the cooking oil overheating. However, I haven't seen any strong persuasive evidence to agree this conclusion is what happened. And in any event, the condition precedent would still apply under these circumstances, so I don't think this makes a material difference to the outcome of the claim. The fryer needed to be attended at all times whilst in operation, and I'm satisfied AXA have reasonably demonstrated it wasn't.

The other aspect complained about by T was how things were handled by AXA. I've considered the overall handling of the claim, and whilst I do accept there were unavoidable delays, there were periods where AXA could have handled things better. I accept an insurer has the right to investigate concerns they may have, and I note AXA said here they were unable to make a decision on the claim without first making enquiries into the information provided by T. But there were periods where T's loss assessor had to chase for updates, and some delays were experienced which I think on balance could have been avoided.

Our investigator set out some of the examples of where she felt AXA could have handled things better, so I won't go on to repeat these here. What I have gone on to consider is whether these delays had an impact on T financially or caused unreasonable inconvenience – over and above what's naturally expected following a fire claim.

Having done so, I haven't seen strong supporting evidence which demonstrates T experienced a direct financial loss due to these delays. Nor do I think T would have been in a substantially better position had AXA declined the claim sooner than they did, but for these delays. I note T instructed a loss assessor to handle things on its behalf, which would have somewhat removed the impact of the additional inconvenience these delays caused.

Overall, I agree a written apology from AXA to T for these delays is a fair and reasonable way to put matters right in respect of this aspect of the complaint. So, I'll be directing them to do this if they haven't already done so.

I accept my decision will come as a considerable disappointment to T. But my decision ends what we – in attempting to resolve its dispute with AXA – can do for it.

Putting things right

If they haven't already done so, AXA Insurance UK Plc must issue a written apology to T recognising the delays caused.

My final decision

My final decision is I uphold this complaint. I now require AXA Insurance UK Plc to resolve matters as set out under the heading "*Putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 10 March 2022.

Liam Hickey
Ombudsman