

## **The complaint**

Miss B complains that AXA Insurance UK Plc (AXA) have avoided her policy unfairly and refused her claim.

## **What happened**

In January 2019 Miss B's neighbour complained to her that structural work that was taking place at her property had caused a water escape into their property.

Miss B's builder offered to put right the water damage to the decorations in the neighbour's flat as a gesture of goodwill. No admission of liability was made.

Miss B took out a buildings and contents policy with AXA through a price comparison site in March 2019. The policy was with company M but underwritten by AXA.

In July 2020 Miss B was notified by her neighbours' insurers that he was making a claim against her for damage to his property.

Miss B notified AXA in August 2020 and was advised not to admit liability. Over the next few months Miss B provided all the details to AXA but found it difficult to correspond with them.

In March 2021, AXA told Miss B that they had avoided her home insurance policy from March 2019 when it was taken out. AXA said when Miss B took out the policy, she had answered the questions about structural works incorrectly and hadn't declared any incidents giving rise to a claim.

One of our investigators has looked into Miss B's complaint. She thought that AXA had acted fairly in voiding the policy and refunding the premium.

Miss B disagreed with our investigators view, and so the case came to me to review. I issued a provisional decision on the complaint. My provisional findings were as follows:

*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 thinks Miss B failed to take reasonable care not to make a misrepresentation when she took the policy out. They have pointed to what they say are two separate misrepresentations.*

*AXA say that when they quoted for the policy, Miss B*

- failed to tell them about structural works that were ongoing that cost more than £25000 - which is a deliberate qualifying misrepresentation*
- failed to tell them about the ingress of water complaint raised by her neighbour in January 2019 - which is a careless misrepresentation.*

*They say that If Miss B had made these disclosures they would have declined cover and so they are entitled it to avoid the policy, decline the claim and refund the premium already paid.*

*In order to consider whether Miss B did make a qualifying misrepresentation, I have reviewed the information from Miss B about the work that was undertaken at the flat, and the exchanges between Miss B, her builder and her neighbour.*

*AXA have provided me with all their documents and have answered further questions about what questions were asked when the policy was quoted. I asked AXA to provide me with screen shots of the questions asked during the online quotation process, and Miss B's responses, as these form the basis of the alleged misrepresentations. However, AXA were not able to provide me with these. They have however, provided a copy of the Statement of Household Insurance, which contains the information that Miss B supplied online when she was quoted for the policy.*

### ***Failure to inform of structural work***

*AXA have told me that Miss B bought the policy through a price comparison website and the question that was asked during the online quotation process was "Is your flat undergoing any building work". They say Miss B answered "No" which they would consider to be a deliberate misrepresentation.*

*However, although AXA have sent me a screen shot of the website's current page with the question on, they haven't been able to provide me with any evidence which shows this question being asked as part of the quotation process, nor of what the question was in 2019. They have also not been able to evidence Miss B's response. So, I cannot say for certain what question was asked and what the response was.*

*I have also considered the Statement of Household Insurance to see whether that contains any questions about building works, as it contains the information provided by Miss B at the time of quotation. It does contain a list of the questions and her responses. However, there are no questions relating to any building works or structural alterations.*

*I am therefore unable conclude that there was a misrepresentation at the point of quotation in respect of this part of the complaint, as there is no evidence of what was asked and what response was given.*

### ***Failure to advise of the ingress of water claim***

*AXA say that during the quotation process, Miss B was asked the question "Is your house in a good state of repair" with the additional text "Your house should be structurally sound with no evidence of damp, rot, or faulty plumbing or wiring". They say Miss B responded "Yes" to*

*this question, and that this is a careless misrepresentation as she was aware of the ingress of water issues raised by her neighbour.*

*Again, I haven't been provided with the screen shots that evidence the question and answer given here. However, there is a question on the Statement of Household insurance which says "Is the property in a good state of repair" and the response given was "Yes" so I am satisfied that this question was asked.*

*I've then thought about whether this is a misrepresentation – did Miss B take reasonable care to answer the question. The question asks about the condition of Miss B's property, which as far as she knew, was in a good state of repair. I haven't seen anything which suggests that Miss B's flat was in a poor state of repair and although she was doing renovations, these were to improve the property, not repair it.*

*The question doesn't ask about damage to neighbouring properties, and so I don't think that Miss B has misrepresented in her response to this question. The additional text to supplement the question asks about damp, rot and faults to her property. As the ingress of water didn't affect her property, I don't think that is responding "Yes" to this question was a misrepresentation.*

*The Statement of Household Insurance also contains the question, "Have you, or any other proposer to this insurance suffered a loss/made a claim? You should include all incidents whether or not you made a claim and whether or not you were paid for that claim.". Miss B has responded "No" to this question.*

*AXA have also drawn attention to this question in their submissions, so I've thought about whether Miss B took reasonable care in responding to this question given that she knew about the ingress of water into her neighbour's flat.*

*Miss B argues that the approach from her neighbour in February 2019 does not constitute a "claim", and therefore she was not obliged to notify AXA. The first time she was notified of a "claim" was in July 2020.*

*As she hadn't made a claim for the issue, I've considered if she had suffered a loss that she should have known to disclose. Miss B has provided me with copies of e mails with her neighbour which show that the water ingress started on 22 January 2019 and continued until 4 February 2019. Miss B placed her trust in her builder to sort this out with her neighbour and the e mails show that an agreement was reached between the neighbour and the builder about remedial works sometime in the summer of 2019.*

*I think it's reasonable that Miss B responded "No" to this question as there was no claim, she had suffered no loss, and there was no damage which she considered she was liable for – her builder was undertaking the repairs as it was his responsibility.*

*The question also asks Miss B to include "all incidents whether or not you made a claim and whether or not you were paid for that claim".*

*However, I think it's reasonable for Miss B not to have considered that the issue raised by her neighbour was relevant here either. Having suffered no loss there would have been no reason for her to consider a claim.*

*I don't think that in answering this question as "No", Miss B was attempting to mislead AXA, and I think she took reasonable care in responding.*

*So, I think that AXA have acted unfairly in avoiding the policy and their actions are not in line with CIDRA.*

In the light of these findings, I therefore intended to uphold Miss B's complaint, and I invited the parties to comment.

### **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.

I sent Miss B and AXA a copy of my provisional decision. Miss B has replied and has nothing further to add. AXA have responded with no comments but have sent me a copy of the Statement of Household Insurance. I have already seen this document and commented on it in my provisional decision, and so my view remains unchanged. I am therefore making my final decision for the reasons I've summarised above.

### **Putting things right**

To put things right, AXA should reinstate Miss B's policy and consider any claims that arise, in accordance with the terms and conditions of the policy.

### **My final decision**

My decision is to uphold Miss B's complaint and direct AXA Insurance UK Plc to put things right as above

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 5 April 2022.

Joanne Ward  
**Ombudsman**