

The complaint

A company that I'll refer to as P has complained about the way AXA Insurance UK Plc settled its business interruption insurance claim.

Mr T, a director of P, has complained on P's behalf through a representative. For ease of reading, I'll refer to P throughout.

What happened

P claimed on its policy after its business was impacted by Covid-19 and the Government's response to the pandemic. P was closed between 23 March and 4 July 2020. AXA accepted P's claim under Section 4 – loss of revenue and appointed a loss adjuster.

P said it was told by AXA's loss adjuster that interim payments would be made, and the claim would be finalised once it reopened. However, AXA later said that as the indemnity period for the policy was 24 months, they needed to consider P's losses over the 24 months and not the time it was closed.

AXA said P had clawed back most of its losses in the few months after it reopened in July 2020 and that needed to be taken into account when calculating losses. AXA said they were unable to establish P's losses until the end of the 24 month period, but their approach was to pay 50% of the 2020 losses. However, they said if P hadn't experienced a loss over the 24 month period, they would require reimbursement of any money paid.

P didn't think this was fair or in line with the terms and conditions of the policy, so it brought its complaint to our service.

Our investigator looked into P's complaint and recommended it be upheld. He agreed that there was a 24 month indemnity period but thought AXA should make an interim payment for P's losses between March and July 2020, adding interest and an additional £250 compensation for the inconvenience caused.

P accepted our investigator's recommendation, but AXA didn't. They said they had paid P £1,850 but from April to October 2020, P's losses were minus £10,000 due to the increased revenue after lockdown ended. AXA said they didn't want to pay more than P was entitled to under the policy as any overpayments would need to be repaid.

AXA said if the investigator's recommendation remained the same, they could pay £250 but not interest as there was nothing to pay interest on. As AXA didn't agree P's complaint was passed to me for a decision.

I issued a provisional decision on this complaint on 14 September 2022. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The terms and conditions of the policy says:

"In respect of Loss of Revenue, the amount by which the Revenue during the Indemnity Period shall fall short of the standard revenue."

The policy defines indemnity period as:

"The period beginning with the occurrence of the damage and ending not later than twelve months thereafter during which the result of the business shall be affected in consequence of the damage"

It goes on to say:

"In the definition of Indemnity Period if the Indemnity Period in the Schedule is 18, 24, or 36 months then the above mentioned wording is deemed to be amended, the words "12 months" are replaced by 18, 24 or 36 months respectively as applicable."

The policy schedule sets out that the indemnity period for the policy is 24 months.

As the indemnity period is 24 months AXA is able to take into account P's loss of revenue over the 24 months and not just the period of time it was closed. This means that if P didn't make a loss over the 24 month indemnity period, AXA doesn't have to pay P for any losses incurred during the time its business was closed. I think this is fair and reasonable because if P made back the money it lost between March and June over the rest of the indemnity period, then it has been put back in the position it would have been in without the closure.

I think AXA's position of paying 50% of the claim in lieu of the full 24 month figures is fair and reasonable. I say this because if AXA had paid more than P was entitled to AXA would have looked to recover the money. I note that AXA have also offered to review the settlement if P provides details of its revenue for the 24 months. I'm satisfied this is fair and reasonable as it will allow AXA to consider if anything further needs to be paid on P's claim.

Communication about how the claim would be settled

From the information provided by P I can understand why Mr T is frustrated. I haven't seen anything from AXA to indicate that they told him how the claim would be settled, instead I think AXA indicated to P that it would receive payment for the losses it incurred during the lockdown.

However, P is the eligible complainant and I can't only make an award for P, as a limited company. I haven't seen anything to indicate that AXA not being clearer about how the claim would be settled caused P a loss it wouldn't otherwise have had. I do think P would have been inconvenienced by not knowing how the claim would be settled as it continued to submit information for the claim because it thought it would receive payment for only the time it was closed. I think it's fair and reasonable that AXA compensates P for this and I'm satisfied that £250 is a fair and reasonable amount to do this.

AXA accepted my provisional decision however, P didn't agree. P said that while AXA could probably technically settle the claim in the way it had, it didn't think it was a moral way to do so. P also asked if this was how AXA usually settled claims and said that the compensation I intended to award for inconvenience was low, given the time involved in dealing with the claim.

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've considered the points P has made but they don't persuade me to depart from my provisional findings.

AXA have confirmed that their practice is to settle claims in this way where the policy allows them to. And, for the reasons I've set out above, I think this is fair and reasonable.

I understand P believes £250 compensation for inconvenience is too low. However, when considering the information provided about P's inconvenience I remain satisfied that this is a fair and reasonable amount in the circumstances.

Putting things right

AXA should pay P £250 compensation for its inconvenience.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint and require AXA Insurance UK Plc to pay P £250 compensation for its inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 22 November 2022.

Sarann Taylor
Ombudsman