

The complaint

O, a company, complains about a claim it made on its AXA Insurance UK Plc commercial insurance policy.

The complaint is brought by Mr B, a Director of O, on O's behalf.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here except to say that our investigator didn't uphold O's complaint.

O doesn't agree so the matter has been passed to me to determine.

The facts are not in dispute, so I'll focus on giving my reasons for my 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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

- I can't award compensation for personal distress or pain and suffering to O as a result of how AXA handled its claim, because O is a commercial entity. I appreciate that the way in which the claim has unfolded had a significant impact on Mr B and his Mother, but they aren't the complainants - O is - and as such I can't make any awards in their favour.
- I don't need to determine whether AXA were right to apply an average clause to the building aspect of O's claim or comment on the issue of underinsurance because O didn't suffer a loss here. The third party responsible for the damage to O's building has indemnified O for the balance of the reinstatement costs due after AXA paid part of that claim. Because there's no loss to O, I don't need to consider whether AXA need to do anything further.
- The policy terms make clear that business interruption cover is offered in respect of: *"The loss of Trading Profit due to (a) Reduction in Turnover and (b) Increase in Cost of Working and the amount payable by which the Turnover during the Indemnity Period shall in consequence of the Damage fall short of the Standard Turnover."* From what I've seen O has challenged AXA's calculations in reliance on evidence from its accountant. The evidence I've seen amounts to a letter setting out that loss of turnover for the relevant period amounts to £70,000 with no further detail. It's not unreasonable for AXA to challenge that by seeking evidence for the breakdown of that sum based on the advice of their loss adjuster. This could include the profit and loss accounts for previous years as well as evidence of what costs have increased as a result of inflation (as contended by O).
- AXA has said its prepared to reconsider the business interruption claim once it receives

appropriate evidence. Without that kind of evidence, I wouldn't expect AXA to do anything further in respect of this claim. I note Mr B says his accountant has provided more than the letter I've mentioned. I haven't had sight of anything further, but given what AXA says, it's likely that what's been provided doesn't fully evidence O's position. If O wants AXA to consider the claim further, it will need to provide the type of evidence I've mentioned. I appreciate that Mr B doesn't think he needs to provide the evidence of costs increasing as a result of inflation because he feels everyone is affected by the cost of living crisis. Whilst that may be the case, O will need to demonstrate its losses and to make a successful claim so it will need to show specifically how it's impacted by rising costs, with evidence.

- Mr B has provided recent correspondence between him and AXA in relation to the business interruption insurance claim. I'm not able to comment on this or any ongoing discussions between AXA and O after this complaint was brought to us as AXA has not had an opportunity to respond to everything. If Mr B is unhappy with the way in which these discussions are progressing, they will form part of a new complaint to AXA.
- I note that AXA have accepted O's position that around 60% of bookings were taken by O for guests by one website and the remaining amount through another and that they will factor this into their final calculation of the claim for business interruption. I agree that was a reasonable position to adopt.
- AXA haven't made any further interim payments for business interruption insurance to O because O has refused this. If O changes its mind about this, it should let AXA know.
- I can't determine whether the electricity usage captured by a specialist contractor appointed by AXA is correct. AXA is entitled to rely on the reports submitted by that contractor. If O disagrees with this, it will need to provide evidence to the contrary for AXA to consider.
- O is unhappy that AXA initially told it to house Mr B in one of its available rooms when these rooms were intended for customers. A room was available, so I don't think the position AXA initially took was unreasonable, particularly because AXA were factoring in the loss of profit from this into the business interruption insurance claim in any event. AXA eventually agreed to pay for Mr B to be housed somewhere else. I appreciate the payment made in respect of this was received late but as there was no loss to O in respect of this, I can't say AXA need to do anything more.
- I don't think AXA is responsible for O's difficulty in finding a new insurance policy after the current one expired. AXA say they no longer offer this type of insurance so weren't prepared to renew the policy. It's up to an insurer to decide what terms they're prepared to offer insurance on. The fact that they weren't prepared to renew the policy doesn't mean they're responsible for O's inability to source insurance elsewhere. It's inevitable in a claim of this value and complexity that it will take some time to resolve. So, whilst the claim wasn't concluded by the time the policy expired, and needed renewing, this wasn't something I think could be helped in the circumstances.
- O is unhappy with the sums offered in respect of the contents claim. It's not unusual for an insurer to expect proof of value for items claimed. And it was reasonable for AXA to rely on the evidence of its own valuation experts. If O considers the items haven't been valued correctly, it should provide evidence of this to AXA. I would expect AXA to consider this accordingly.
- I haven't considered any delays in AXA progressing O's claim that were referred to by AXA in their final response letter of January 2022 as O is out of time to bring that

complaint. I have however considered the remaining delays complained of and I think that AXA have recognised the only real issue of concern. This was in relation to a complex loss adjuster being instructed later than it should have been. AXA have paid O £200 in recognition of the inconvenience this caused, which I think is reasonable in the circumstances- particularly as there wasn't any financial loss to O as a result. I haven't awarded anything in relation to delays relating to underinsurance being discovered because as I've said above, there was no financial loss to O as a result of this either.

My final decision

For the reasons set out above, I don't uphold O's complaint against AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask O to accept or reject my decision before 31 August 2023.

Lale Hussein-Venn
Ombudsman