

The complaint

Mr W is complaining AXA Insurance UK Plc avoided his commercial property insurance policy and, in turn, declined a claim he's made for fire damage.

Mr W has been represented in the handling of this complaint, but for ease of reference I shall refer to anything the representative has said as being said by Mr W.

What happened

In April 2019 a fire occurred to Mr W's property, so he looked to claim for the damage from his commercial property insurance policy provided by AXA. Mr W had explained to AXA that the property was split into two parts – one to a private property rental and one occupied as a cafe.

AXA appointed a loss adjuster who investigated the matter. However, it advised AXA the cafe was unoccupied and Mr W had told it that it had been unoccupied for 18-20 months. AXA said it wouldn't have insured the building had it known the property was unoccupied. So it avoided Mr W's insurance policy, refunded the premium he'd paid and declined his claim.

In August 2023 Mr W referred his complaint to this Service as he thought it was unfair AXA had avoided his insurance policy. He said he was simply refurbishing the cafe at the time and disputed it had been unoccupied.

Our Investigator didn't uphold the complaint. She was persuaded the property had been unoccupied when the policy renewed and she said Mr W should have disclosed this to AXA when the policy renewed. She was satisfied AXA wouldn't have insured the property had it known this. So she said it was entitled to avoid the insurance policy at the time.

Mr W didn't agree with the Investigator and he provided two signed witness statements which set out that he and his family were refurbishing the cafe at the time, but had only been doing so for a few months. And he said that he and his sons operated the cafe at the time (and continue to do so).

As Mr W didn't agree with the Investigator, the complaint's 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.

I've decided to not uphold this complaint and I'll now explain why.

The relevant law in this case is the Insurance Act 2015, This required the policy applicant to make a fair presentation of the risk to the insurer so that it had enough information to assess the level of risk it was willing to provide and on what terms.

And if the applicant fails to do this, the insurer has certain remedies provided the misrepresentation is – what the Insurance Act describes – as a qualifying breach. For it to be

a qualifying breach 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 breach.

If the qualifying breach was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it's entitled to avoid the consumer's policy. If the breach wasn't deliberate or reckless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the breach.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying breach wasn't deliberate or reckless and the insurer would have charged a higher premium if the consumer had made an actual fair presentation of the risk, it will have to consider the claim and settle it proportionately if it accepts it.

In this case, AXA says Mr W failed to tell it that part of the property was unoccupied and it says it wouldn't have insured him had he done so. So it says this would equate to a qualifying breach and the Insurance Act entitled it to avoid the policy in these circumstances. I've thought about whether this was fair.

The schedule of insurance asks Mr W what the occupancy status of the ground floor flat was and he said "*Coffee Shop*". However, AXA's loss adjustor said Mr W had told it that it had been unoccupied for 18-20 months.

Mr W has disputed this and provided two signed statements which say his family ran the shop and were refurbishing it at the time. But they said they'd only just started the work and said the cafe was open at the time and they were doing the work around it.

There are, of course, two very distinct versions of events being provided about what happened. But I cannot ignore that Mr W has provided these statements five years after the event. In its avoidance letter, it invited Mr W to seek legal advice if he didn't agree with it, but I haven't seen anything to show he responded to this letter until he contacted this Service four years later.

Mr W has said he didn't receive this letter, but I don't agree. The letter was addressed to Mr W's address and also sent to his broker. I think it's *most* likely he would have contacted AXA sooner if he didn't know the outcome of the claim.

I'm ultimately persuaded by the statement provided by the loss adjustor that the ground floor had been unoccupied when the policy renewed. And it's likely to have been as such for a period of time. The covering letter with the schedule of insurance asked Mr W to check all the information was correct. And I think he should have told AXA the ground floor was unoccupied when the policy renewed. I'm also satisfied AXA wouldn't have insured the property had it known this, so it was fair for AXA to say there was a qualifying breach.

AXA hasn't treated the qualifying breach as deliberate or reckless. But, as I said, I'm satisfied it wouldn't have insured had Mr W told it the property was unoccupied. The Insurance Act entitled AXA to avoid the insurance policy in these circumstances. And I think that's fair in this case.

AXA has refunded the premium Mr W paid, so I don't think it needs to do anything further.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 December 2024.

Guy Mitchell
Ombudsman