

The complaint

This complaint is brought on behalf of limited company “M” in relation to an insurance claim made under its policy with AXA Insurance UK Plc (“AXA”). The complaint involves delays in AXA’s handling of the claim and its ultimate decision to decline it.

Any references to M in this decision include its representatives.

What happened

M had held a commercial all risks policy with AXA since 2019. It made a claim under the policy, following water ingress after a storm in February 2022. The loss adjuster that dealt with the claim on AXA’s behalf noted several concerns, including the change in commercial use of the premises, the construction of the flat roof, maintenance issues and the general condition of the property.

It also questioned whether the storm was the main cause of the damage, as opposed to wear and tear. And said that there had been a breach of the condition requiring a flat roof to be inspected annually. Ultimately, despite there being a number of concerns, AXA repudiated the claim on the basis that M had failed to disclose that the building had a large flat roof, and the condition that would’ve applied had been breached because annual inspections hadn’t been carried out. M raised a complaint about AXA’s decision and the time it had taken.

In its response to the complaint, AXA maintained its position to decline the claim, referring to the several concerns its loss adjuster had raised. And in relation to delays it said it wasn’t a straightforward matter, so it wanted to ensure it was confident about the facts before taking the decision to repudiate the claim.

M didn’t accept AXA’s response, so the complaint was referred to this service. To put things right, M asked for full reimbursement for the roof repair or replacement, reimbursement of the cost of all internal damage, and any associated remedial work. It also asked for compensation for the loss of rent during the period in which the property was uninhabitable, plus interest. Our Investigator considered the complaint, but didn’t think it should be upheld. He said AXA had provided evidence to show that if it had known about the flat roof, it would’ve still offered cover, but on different terms. He said based on those terms, and his view that the condition that would’ve been applied had been breached, it wasn’t unfair for AXA to decline the claim.

Because M didn’t agree with our Investigator’s view, the complaint has now come 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.

Having done so, I’ve decided not to uphold this complaint. I’ll explain why.

I've looked into how the policy was taken out. AXA says it received this as part of a portfolio of risks from the broker. The presentation of each risk was set out on a spreadsheet, which included information that would be required for cover to be agreed. I've seen this email and the spreadsheet provided by the broker at the time. The spreadsheet includes a column for endorsements – in which one of the possible endorsements is a “flat roof inspection condition” which requires a flat roof to be inspected annually. This condition was noted alongside at least three properties on the spreadsheet. But not next to M's property. So I can't see evidence that AXA was made aware of the flat roof of the insured premises.

Under the Insurance Act 2015, commercial policyholders have a duty to make a fair presentation of the risk to the insurer when taking out a policy – that is, they have to volunteer the right information to the insurer. Specifically, they have to disclose either:

- Everything they know, or ought to know that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or
- Enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

And from the spreadsheet AXA was provided, I can't see that a fair presentation of the risk was made here, because there was an opportunity to let AXA know about the presence of the flat roof, but this information wasn't included. I think M should've made this clear when it took out the policy, because it was a material circumstance that would've affected AXA's risk assessment, and the cover it was willing to offer.

I can't consider the role of the broker in this case – my role is to consider whether AXA acted fairly and reasonably in declining the claim. And from the information I've seen, it's clear that enough information wasn't provided to AXA when this policy was taken out, because AXA wasn't made aware of the flat roof. If it had been, the evidence shows that the flat roof condition would've applied to this particular property as it had been applied to others.

So I'm satisfied M breached its duty to make a fair presentation of the risk here. And I've considered what would've happened had M not breached its duty, and disclosed everything it should've. If – in those circumstances – the insurer would've done something different, then the lack of disclosure would constitute a qualifying breach. AXA has provided evidence to demonstrate it would've provided cover, but on different terms. And it's also provided evidence that those terms would've included the annual inspection condition precedent.

The condition AXA says it would've applied is:

“You must arrange for the waterproof covering of flat roofs to be inspected annually by a builder or roofing contractor with experience in the construction and maintenance of flat roofs”.

So, as AXA has been able to demonstrate that it would've provided cover on different terms, had it known the insured premises had a substantial flat roof, I'm persuaded M made a qualifying breach when it took out cover.

The condition would've required M to have the roof inspected annually. It's not in dispute that the last inspection of the roof took place over 12 months prior to the damage following the storm. This means that had the policy with the correct condition precedent been sold to M, then this claim wouldn't have been accepted due to M's breach of the condition. It follows therefore, that I don't consider AXA has acted unfairly by declining the claim on this basis.

I've considered what M has said about there being a common condition in similar policies

around that time, requiring a flat roof to only be inspected once every five years. But AXA has provided us with persuasive evidence to demonstrate that a one-year condition would've been applied to the policy, not the five-year condition M thinks should've applied. M has provided details of other policies imposing five-year inspection requirements – but the schedules are dated 2021 and 2022 and are for different risk addresses altogether, obtained under different portfolios, and so these don't persuade me that AXA would've applied the same endorsements when M's policy was taken out.

I've also considered the decision M has referred to, relating to a separate case, in which an Ombudsman determined that an insurer hadn't met its obligation to highlight terms (including a flat roof inspection condition) that affected the validity of the claim. But the circumstances of that case weren't similar to this one. For example, in that case the existence of a flat roof had been disclosed to the insurer. And my role is to consider each case on its own merits. So I'm not persuaded that this is relevant to M's complaint.

For the reasons I've explained, I don't consider AXA acted unfairly by declining the claim, so I'm not requiring it to do anything differently in this case.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 27 November 2024.

Ifrah Malik
Ombudsman