

## **The complaint**

Mr and Mrs P have complained about their let property insurer AXA Insurance UK Plc. They made a claim for their property which had been damaged when someone converted it to grow cannabis. However, AXA avoided their policy and, by association, declined their claim.

## **What happened**

Mr and Mrs P, in around 2020, decided to move out of their home and let it to tenants. At the time they all left the UK for a while. Mr P has said he later returned and lived at a relative's house but the property he and Mrs P owned continued to be let.

When Mr and Mrs P renewed their policy for the let property in 2022, a policy underwritten by AXA was arranged. When arranging the cover they were asked to confirm they were permanently residing in the UK. They said they were. The policy was agreed on that basis.

In early 2023 the property was found to be damaged. Mr P made a claim and in August 2023 he met with a loss adjuster at the let property. The loss adjuster recorded in a report that Mr P had only returned to the country for a few days because of the claim, that he and his family had moved abroad in 2020.

AXA reviewed the situation. It noted that Mr P had sought to explain the answer given about residing in the UK by explaining that when he was considering the matter he was mindful that he held permanent UK residency. So he thought a misunderstanding may have occurred because AXA's question was not clear. AXA noted that Mrs P was also said to not reside in the UK. AXA said if it had been told the true position on where the policyholders resided, cover wouldn't have been given. It decided to avoid the policy.

Mr P complained to AXA. After it issued a final response letter to him, which explained it was satisfied by the decision which had been made, Mr and Mrs P brought their complaint to the Financial Ombudsman Service.

In the complaint form to our Service, Mr P said the AXA policy doesn't define what "residing" means and he was mindful that he had always maintained a UK residency status. He said if he'd misunderstood what AXA had wanted to know, that was AXA's fault for not being clear enough. He said the legal principle of "Contra Proferentem" should be applied – where any lack of clarity should be construed in his favour. Mr P said that when the policy renewed in 2022 he was visiting Mrs P abroad where she'd been working with an organisation since the Covid-19 pandemic. He said that when Mrs P and the children moved abroad for her work, he had remained living in the UK, moving in with relatives.

Our Investigator considered matters. She explained that the relevant legislation which applies in this situation is the Insurance Act 2015. She took into account that there was some inconsistency between what Mr P had told this Service about where he lived, and what AXA appeared to have been told. However, she noted that Mr and Mrs P were both policyholders and she was satisfied they had given incorrect information to AXA when arranging the policy about where they resided. She was also satisfied that if they had given correct information, the policy with AXA would not have been put in place. Consequently our

Investigator felt AXA had acted fairly and reasonably when it had avoided the policy, consequently declining the claim Mr and Mrs P had made.

Mr P told our Investigator he had been contacted about a return of premiums. He queried if he should accept the payment. Regarding the complaint outcome he said he disagreed with it. He said the policy document does not say that both policyholders must be residing in the UK – that requirement was not sufficiently clarified or communicated. He said AXA has also not defined the term permanent and it makes no sense that any policyholder would have to spend 365 days a year in the UK. He said his broker had sought clarity from AXA before the 2022 renewal and he had spoken with other insurers – he thinks there is an inconsistent approach on this matter in the industry. He noted AXA had underwritten some other previous policies and they had not been so restrictive.

Our Investigator replied to Mr P. She wasn't minded to change her view on matters though so referred the complaint for an Ombudsman's 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'm satisfied that our Investigator reached a fair and reasonable outcome. I've explained my views on the complaint below. I trust my explanation will help Mr and Mrs P understand why I've reached this decision.

I know Mr P has requested that the legal principle of Contra Proferentem should be applied here. If this complaint were about AXA declining a claim based on the terms and exclusions of the policy, terms or exclusions which were felt to be unclear, then that principle would likely be relevant. However, as our Investigator explained this is a matter of what detail was shared with AXA when the policy began. And when policies are arranged there is legislation which applies which sets out the rights and obligations of both parties, in this case the relevant legislation is the Insurance Act 2015.

The Act places responsibility on the prospective policyholder to make a fair presentation of the risk they present to the insurer. Which means the insurer does not have to ask questions of the prospective policyholder – rather it is up to the prospective policyholder to tell the insurer, in short, everything it needs to know.

The Act says that if a fair presentation is not given, and the unfair presentation causes the insurer to offer a policy it otherwise would not have done, then the insurer can avoid the policy. In avoiding the policy any claim will fall away, but the insurer, unless it is arguing the unfair presentation was given deliberately, should refund premiums.

I can see that, here, AXA has sought to refund the policy premium. So I'm satisfied it is not suggesting that Mr and Mrs P deliberately made an unfair presentation to it.

I can also see that the policy documents did set out a list of "eligibility criteria". In the list one of the things the policyholders were asked to confirm or agree to was "You...ARE permanently residing within the United Kingdom". AXA has shown that if Mr and Mrs P had said 'no' they couldn't confirm that statement, then the policy would not have been offered.

I accept that the policy could not have been arranged without the eligibility criteria being agreed to. And I'm mindful that Mr and Mrs P haven't denied being asked this question. Rather Mr P has sought to explain why it was that agreement to this statement was given, and why his giving that agreement, in the circumstances, was reasonable.

With Mr P's arguments in mind, I'm not persuaded that the statement is unclear in any way. Whilst Mr P seems to have read it as asking him to confirm his residency status, the statement does not refer to "residency". The word it uses is "residing" – and I'm satisfied that an everyday and common interpretation of that phrase is "living". I wouldn't say it was reasonable to read that word and conclude one was being asked about one's residency status within a particular country. Furthermore, nothing in the documents suggest that the statement only needs agreeing to by Mr P, as only one of two policyholders.

Mr and Mrs P were both named as policyholders. AXA told them there was a list of eligibility criteria. The list used the word "You". But all policyholders would need to be eligible – so it makes no sense to assume that the phrase "You" meant the criteria was only relevant to one of the two policyholders. I think, by using the word "You", AXA was reasonably directing that criteria at each policyholder. If Mr P had chosen to undertake that arrangement himself, it was still up to him to answer for both him and Mrs P. If he did not, and as he has said, instead gave his agreement to the statement based on only his residency status, I can't say that was AXA's fault.

I know Mr P thinks the issue of 'permanently residing' somewhere is unfair and is dealt with inconsistently across the industry. But in asking where someone permanently lives, I don't think AXA is seeking to say a policyholder can never take a holiday or that they must spend 365 days a year in the UK.

It does not surprise me that Mr P has found different approaches to this matter from different insurers, and even perhaps from AXA in respect of different business arrangements it has which result in different policies being offered. That is because most insurers often offer more than one product. What that product offers and the price the insurer charges for it are all set following an insurer's assessment of risk. So there will naturally be differences between policies and insurers depending upon which risks have been identified and to what degree an insurer has decided to accept that risk. Insurance is a competitive market which means there will be differences in approach. I appreciate that Mr P perceives these differences as AXA having been inconsistent when it has dealt with him. However, AXA has shown that it had decided, for this policy, to not take on a policyholder who does not permanently reside in the UK. That was a decision for it to make in the normal course of its role as an insurer. It has not acted unfairly in this respect.

Overall I'm satisfied that Mr and Mrs P did not make a fair presentation to AXA when they arranged their policy in 2022. They were asked to confirm "You...ARE permanently residing within the United Kingdom" and, at the very least according to Mr P, Mrs P was not. As I've said, AXA has shown that if it had been told the statement could not be agreed with, cover would not have been given. In the circumstances and given what the legislation allows, I think AXA acted fairly and reasonably when it avoided the policy, declined the claim and sought to refund the premium paid.

### **My final decision**

I don't uphold this complaint. I don't make any award against AXA Insurance UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 6 March 2025.

Fiona Robinson  
**Ombudsman**