

The complaint

Ms W complains about the decision by AXA Insurance UK Plc ('AXA') to decline a claim she made on her home insurance policy, following an escape of water.

AXA are the underwriters (insurers) of this policy. Some of Ms W's dissatisfaction relates to the actions of agents acting on behalf of AXA. As AXA are responsible for the actions of those agents, any reference to AXA in my decision should be interpreted as also covering the actions of those agents.

Ms W appointed a representative when she made this claim and later complaint. I'll only refer to Ms W in my decision.

What happened

The background to this complaint is well known to Ms W and AXA. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Ms W had booked to be abroad for a few days at the end of 2023 and the start of 2024. On 1 January 2024, Ms W's friend let her know that there'd been a leak at her property. Ms W raised a claim with AXA on 2 January. They ultimately declined the claim as they said she'd not made them aware of the extent of renovation works at policy inception and that the renovation works were still being undertaken at policy renewal. They said had they known this information, they'd still have offered cover – but on different terms.

Ms W was unhappy with the declined claim and raised a complaint. In their response, AXA offered Ms W £300 as an apology for poor communication and inconvenience caused. As Ms W remained unhappy with AXA's response, she referred her complaint to our Service for an independent review.

Our Investigator considered the complaint and recommended that it be upheld. As AXA didn't accept, the complaint has been referred to me for a 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The scope of my decision

Usually for this type of complaint I'd be considering whether AXA had fairly investigated and considered the claim in line with the policy terms, when declining it. But for completeness, as AXA have gone back to policy inception and renewal as the basis for applying an endorsement they've chosen to rely on when declining the claim - that'll also be my starting

point. But I'll largely focus on the policy renewal as that was the relevant contract of insurance for this claim.

Ms W has referred to not receiving her renewal invitation as she says AXA didn't update her contact details. I won't be focussing on this point as no persuasive supporting evidence has been provided and I'd reasonably have expected her to contact AXA through alternative communication channels if she'd had no contact from them, but was unhappy at still being charged premiums. Ultimately each policy is a new contract between the insurer and the insured.

My key findings

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation 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 misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

AXA thinks Ms W failed to take reasonable care not to make a misrepresentation when she took out this policy and when the policy renewed. They say she didn't disclose important information about renovation works that were planned. As above, I'm primarily concentrating on policy renewal.

The information Ms W was asked to confirm at renewal was based on the information she'd given AXA at policy inception. AXA say that Ms W didn't provide accurate information at renewal about the nature of the renovation, that contractors would be carrying it out, the completion date, the value and the impact on the size of the property. Whilst some of these questions were 'statements of fact' – meaning CIDRA is the relevant consideration, others were 'statements of opinion' – meaning I'll keep in mind the 'principles' of CIDRA.

I've looked at the renewal information and it's clear the information provided wasn't accurate based on what we now know. Ms W's defence is that the majority of the works were completed in the first policy year, prior to the policy renewing. Whilst information appears to also have been misrepresented at policy inception regarding the extent of renovation works, the relevant misrepresentation to this claim event is the policy renewal. The evidence on file shows that at least some renovation works were ongoing post policy renewal - so it was relevant information that AXA would want to know about. I'm also satisfied Ms W has been afforded a fair opportunity to how the works had completed prior to policy renewal and has been unable to satisfactorily do so. I've also noted that Ms W seems to have previously been accepting of 90% indemnity, prior to the unoccupancy decline by AXA.

AXA have shown evidence that they'd still have offered cover – but on different terms. They've shown that additional endorsements would've been applied to the policy and a higher premium charged. This means I'm satisfied Ms W's misrepresentation was a qualifying one.

I've also considered if there are any mitigating factors that might affect a fair and reasonable outcome here. Ms W has pointed to issues with her address and receiving the renewal invite. Whilst nothing persuasive has been provided to support that she tried to update her address prior to renewal, I've kept in mind Ms W knew that this information about the renovations was important to the insurer at policy inception, so one can assume that she'd also have known it'd be important at policy renewal.

AXA haven't said they regard Ms W's to be deliberate or reckless - so on balance, I've interpreted this (alongside the actions they've taken) to mean they regard it to be careless. It's not the role of our Service to put the customer in a less favourable position as a result of them bringing their complaint to us. The actions an insurer can take under CIDRA are influenced by the categorisation of the misrepresentation.

In summary, the relevant endorsements AXA added and that are relevant to the claim were:

- ***"As You have only paid a portion of the required risk premium all claims made under this policy will be dealt with on a proportional basis. You have paid 90% of the required risk premium which means that **in the event of a valid claim We will only be liable for 90% of the claim value. This amount will be subject to the Excesses as detailed on Your Policy Document. The remaining 10% of the claim value will fall to You to pay.**"***
- ***"If your Home is left unattended by you for more than 72 consecutive hours during the Repairs, Alterations, Extensions or Renovations, we'll cover you for the following Insured Losses only..."***

Based on the evidence available to me, I find the actions of AXA when retrospectively applying policy endorsements to be fair and in line with the remedies available to them under CIDRA. I've then gone on to consider AXA's reliance on the referenced endorsements to decline this claim.

The declined claim

AXA have said Ms W left her property unoccupied for more than 72 hours during renovation works and therefore breached the retrospectively applied endorsement. I disagree with AXA and I'll explain why below.

On balance, and on a fair and reasonable basis, I'm persuaded that Ms W has complied with the unoccupancy part of the endorsement. The evidence supports that late evening on 28 December 2023 she left for an overnight stay near the airport she was due to fly from on 29 December. A dog/house sitter stayed at the property until around 9.30am on 29 December. A friend stayed at the house overnight on 29 December and left around 11am on 30 December. The same friend returned on 1 January, discovered the escape of water and let Ms W know. Ms W has provided various phone messages that she says supports what she's said above. Taken at face value, the messages broadly support her testimony.

The wording of the relevant endorsement states: *"If your Home is left unattended by you for more than 72 consecutive hours...."* AXA say because Ms W hadn't been at home for more than 72 hours, she didn't comply with the endorsement. But I find that to be an unfair application of the endorsement terms.

The intention of this type of endorsement is to fairly limit the risk an insurer is exposed to. Leaving a property unoccupied for long periods of time whilst renovation works are happening would indeed increase risk exposure. But in practical terms, it wouldn't be uncommon at all for the policy holder/property owner to move out during a period of renovations to allow contractors to carry out works. Here, the property *wasn't* unattended for

more than 72 hours - as although Ms W wasn't in situ, she had arranged for two others to visit and stay whilst she was abroad over the new year, to care for her pets. I'd agree with AXA's argument if Ms W had left for the airport on 28 December, locked the house and nobody entered it until 1 January. But the evidence doesn't support that was the case.

To put AXA's logic into context: if Ms W had stayed with friends over the new year period instead and just called briefly to her property each day on 29, 30 and 31 December – based on AXA's logic she'd have complied with the endorsement. I find that under a fair and reasonable application of the endorsement, whether it was Ms W or friends who visited the property - this hasn't had any material impact on the loss event or the risk that AXA was covering. I find Ms W to be a credible witness regarding the claim event and it's her honesty (as to her whereabouts) that's being used against her here.

AXA will now need to reconsider the claim in line with the remaining policy terms. They can't fairly rely on the 72 hour renovation endorsement to decline the claim.

But, if this claim progresses to settlement, I also find that AXA *can* fairly rely on the proportionate settlement endorsement to limit their outlay to 90% of the claim settlement value.

As AXA have unfairly delayed a possible claim settlement, they would need to add 8% simple interest per annum to any claim settlement amount. This would need to be calculated subject to Ms W providing reasonable proof of payment/her outlay for repair works carried out.

The service provided

AXA offered £300 compensation in their final response letter for the service provided. Our Investigator recommended that this be increased to £450. I find £450 to be fair, reasonable and proportionate – relative to the impact of AXA's actions on Ms W.

Putting things right

AXA Insurance UK Plc need to:

- Reconsider the claim in line with the remaining policy terms and limits.
They can't fairly rely on the property being unoccupied for more than 72 hours to decline the claim.
If the claim progresses to settlement, they can rely on the proportionate settlement endorsement (90%).
As per our standard approach, if the claim progresses to settlement they will need to add 8% simple interest to any settlement. To be calculated from the date Ms W paid her contractors (subject to reasonable proof being provided to AXA), until the date any claim settlement is made to Ms W.
- Pay Ms W a total of £450 compensation to recognise the impact of their actions on her. Any compensation already paid can be deducted from this amount.

My final decision

My final decision is that I uphold this complaint. Subject to Ms W accepting the decision before the deadline below, AXA Insurance UK Plc need to follow my direction as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 12 March 2025.

Daniel O'Shea
Ombudsman