

## The complaint

Mr H has complained about his policy for his let holiday home, for the 2020 policy year being avoided (treated as though it never existed). This complaint is against AXIS Specialty Europe SE.

## What happened

Mr H owns a property outside of the UK. He lets it out. He had a policy, starting in 2020, which covered that property for damage, with Mr H having declared to the insurer that the property was let.

In 2023, following a claim Mr H had made for earthquake damage, it was decided that Mr H was likely letting the holiday home as a hotel. It was felt that was a different risk – and one, if known about, which it wouldn't have offered a policy for. Mr H was told that his policy was being avoided to its starting point in 2020.

Mr H was unhappy about that. He complained to the Financial Ombudsman Service and his complaint came to me for an Ombudsman's review. At that time it wasn't clear which business had insured Mr H. I reviewed matters and issued decisions on the relevant businesses to explain whether or not we could consider Mr H's complaint against them.

I determined that, in the year 2020 and in respect of the avoidance decision which was made following the claim in 2023, Axis Specialty was carrying out a contract of insurance. So I said I thought I could consider the complaint about the avoidance of the 2020 policy year against it. Axis Specialty agreed and said it maintained the decision which had been made regarding the policy avoidance.

I issued a concluding decision to confirm a complaint against Axis Specialty, about the avoidance of the 2020 policy, could be considered. I explained I'd move on to consider the merits of that complaint.

I then reviewed the file provided by the broker which managed the claim and communicated the avoidance decision. And I issued my provisional findings on the merits of the complaint.

My view was that Axis Specialty had not acted fairly when it avoided the policy for 2020. I set out my reasons for that and said I thought Axis Specialty should amend the record of the avoidance on any database and pay Mr H £500 compensation. My provisional findings were:

### "Relevant legislation"

*This is a commercial contract. The relevant legislation to consider is the Insurance Act 2015.*

*The Act says that when arranging insurance, the party to be insured must make a fair presentation to the insurer of the risk they present. The Act explains that by "fair presentation", the prospective or renewing policyholder must tell the insurer:*

- *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.

So an insurer does not have to ask specific questions of the policyholder to put them on notice about what it needs to know. But where questions are asked, this Service will consider them, along with any answer given.

It's worth noting here that the Act explains that the phrase "ought to know" encompasses anything the prospective or renewing policyholder could find out by undertaking a reasonable search of available information.

The Act also sets out what insurers can do when a breach of the duty to provide a fair presentation of risk occurs. If the insurer can show that but for the breach no policy would have been offered, then the breach becomes a "qualifying breach", entitling the insurer to a remedy for the situation, such as avoiding a policy. But if there was no breach then there is no remedy.

### Was there a breach?

Axis Specialty says Mr H was letting the property in question as a hotel, not a holiday home. It said it was believed that the property was being operated as a commercial concern rather than a domestic holiday home, and that the way Mr H was letting the property did not fit with its definition of a holiday home.

In reaching that conclusion Axis Specialty had taken note of a report made by its loss adjuster which visited the property. But also various on-line adverts for the property and guest reviews. Axis noted particularly that there were staff present at the property, with food offered to guests and housekeeping services. With the property being referred to as a "guesthouse" and, in one guest review "a boutique hotel". It alleged there was a front desk.

I note that Mr H was asked certain questions in 2020 when the policy renewed. I can see he declared that the holiday home was let to others. This was recorded on his policy document showing the "Property Use" type. I can see Mr H was asked:

"Is the property used for any business purposes other than purely of a clerical nature or holiday lettings?"

To this question Mr H answered "no".

So from that I think Axis Specialty knew and accepted that the property was being used for a commercial purpose ie it was let out to others for the purpose of business. I don't think there was any breach of fair presentation from Mr H then as far as him letting the property to others on a commercial basis.

I've then thought about the distinction Axis Specialty has sought to make between a holiday home letting and a hotel.

I concede that if someone was running a hotel that was set up and run in the way that, for example, some of our national brand name hotels are – that is a very different proposition to a home which sometimes has guests staying in it. They are two very different things. I think most people would be able to see that the risks involved for those two things would be very different and that an insurer would want to know where a property was being run like a national branded hotel, whilst actually being declared to it as a "holiday home let to others".

I'm not persuaded though that the threads of distinction which Axis Specialty is pulling at here are so defined. I'm also not persuaded that its necessarily fair for Axis, when seeking to

*make such a distinction, to rely on advertising detail and guest reviews. The latter are very subjective and the former are designed to attract guests. By which I mean that a certain amount of 'gilding' might reasonably be expected.*

*I don't think its necessarily unreasonable for a holiday let property to offer room cleaning services and even to offer the provision of food to guests. A video of the property shows there is no reception desk and no spa (the latter being mentioned in some adverts for the property). There is a small kitchen – but not the type of commercial kitchen I'd expect to see in a hotel.*

*When Axis Specialty's loss adjuster visited, their report referred to "several employees" and "management staff". But no greater detail than that was given about the property or the way it was run, or indeed the exact number of non-guests present and their role. I don't think the comments are particularly clear or persuasive evidence of the property being operated as more of a hotel than a holiday home let for commercial purposes. I'm mindful that there might have reasonably been cleaners on site, and it wouldn't be unusual for 'managing agents' to attend for a loss adjuster's visit.*

*I think Mr H concedes that, at least at times, he lets the property on a room basis. But I don't think that again is necessarily out of line with how some holiday homes are let. I, personally, might think of a holiday home as a family or 'group' venue – somewhere that is exclusively for you (as a holidaymaker) and your guests. But equally I'm aware of homes which are let by room depending on area and the clientele intended. I think that where the line might be drawn for when a holiday home become a hotel, is not clear and it might well fall in a different place for different people, and the line might also be drawn differently depending on which country and customs are in play.*

*Clearly Axis Specialty thinks that what Mr H was doing was letting this property as a hotel. It thinks he should have told it this rather than telling it that it was a holiday home let to others. But the Act says Mr H must tell the insurer everything he knew or ought to know that might affect the insurers' judgement. I've described about the uncertain landscape of definitions about holiday homes for letting versus those for hotels. I've said that the understanding of people about this likely varies widely, depending on a number of varying factors. I said Axis Speciality hasn't presented any strong evidence that makes me think this was definitely a hotel. I've explained that Mr H did tell Axis Specialty that he was letting this home to others as a business. In light of all that I'm not persuaded that Mr H did not make a fair presentation to Axis Specialty.*

*One other point which is relevant here is that all of this investigation by Axis Specialty occurred in 2023/2024. That was following a claim, which is not unreasonable. But it did mean that the focus was on how the property was let at that time. Whereas the renewal, and the question of whether fair presentation was given, date to 2020. Beyond the policy document which, as I said, confirmed it was used for business as a holiday home let to others, I've not seen anything from 2020 that might speak of how the property was being let/used then. Overall I'm not persuaded that, in 2020, Mr H breached his obligation to make a fair presentation to Axis Specialty.*

#### *What does this mean?*

*So as it hasn't been shown that Mr H did not make a fair presentation to Axis Specialty, then it hasn't been shown there was a qualifying breach related to a failure to make a fair presentation. Which means that Axis Specialty, whilst it clearly does not like the way it thinks the property was being let, has no remedy available to it under the Act. Which means that it was unfair and unreasonable of Axis Specialty to avoid Mr H's 2020 policy.*

*Often, in a situation like this I'd require an insurer to reinstate cover. But, as I understand it, that is not required by Mr H in this instance. I do think though it should remove the record of the avoidance from its own and any industry database. If it needs to record anything about the cover ending/ceasing/not existing, it can show it as 'not taken up' or something similar.*

*I can see that Axis Specialty's action has caused Mr H a lot of difficulty. Mr H is aware that the actions of Axis Specialty have had wide reaching implications for him, beyond the scope of the 2020 policy. And Mr H is aware that I can't take that upset into account here (because it relates to a different period of cover which this Service cannot consider). But, Axis Specialty made an unfair decision to avoid the 2020 policy and Mr H has had that unfair outcome recorded against him. That record will have had a long-term effect on Mr H. I'm satisfied that £500 compensation is fairly and reasonably due in the circumstances here."*

Mr H asked why this matter was not being considered against the broker or retail insurer. He said it wasn't helpful to him to slap Axis Specialty on the wrist by requiring it to pay £500 when the damage at the heart of the claim will cost £40,000 to resolve.

Axis Specialty said it couldn't agree with my provisional decision. It said it had asked for clarification on a certain point but not received it. Namely regarding:  
"the claim decline and whether the policies from 2021-2023 cannot be looked at due to the avoidance of the customer's policy. As the policy was "not taken up" there would be no valid claim and therefore AXIS have no further responsibility for any claim going forward. We formally ask you to confirm if this is your intended interpretation?"

In terms of the avoidance Axis Specialty said the policy in place was designed for holiday homes and second homes – not hotels or commercial use. With Mr H's intent, Axis Specialty said, being to use the property for commercial purposes, which has, therefore, resulted in its avoidance. The property, Axis Specialty said, should only be used as a second home and not let out, or let only, to family and friends, extending perhaps to 'air b&b' type arrangements. It said this policy was a 'holiday let' product, not a 'hotel' product, with the internet showing that there are differences between a holiday home and a hotel. With the loss adjuster, Axis Specialty said, being satisfied it was being used commercially as a hotel.

### **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 note from the responses I've summarised above that both parties have referenced the decline of the claim in 2023 and the avoidance of the policy for the years 2021-2023. I've explained in separate jurisdiction decisions why I can't look at those issues in a complaint against Axis Specialty. I appreciate that is frustrating and worrying for Mr H, but I can say no more about that here. Which means that Axis Specialty may also be disappointed because where I cannot look at those issues, I can't answer its request for my interpretation of its understanding of the matter. What I can do/all I can do is reiterate that I cannot, have not and will not consider the merits of Mr H's concerns about the claim decline and avoidance for the years 2021-2023 against Axis Specialty.

In terms of Axis Specialty's comments about the avoidance, I'm satisfied that my provisional findings deal with these matters in detail. And this paragraph in particular is worthy of reproducing here (it is already included within my findings as a whole captured above):  
*"Clearly Axis Specialty thinks that what Mr H was doing was letting this property as a hotel. It thinks he should have told it this rather than telling it that it was a holiday home let to others. But the Act says Mr H must tell the insurer everything he knew or ought to know that might affect the insurers' judgement. I've described about the uncertain landscape of definitions*

*about holiday homes for letting versus those for hotels. I've said that the understanding of people about this likely varies widely, depending on a number of varying factors. I said Axis Speciality hasn't presented any strong evidence that makes me think this was definitely a hotel. I've explained that Mr H did tell Axis Specialty that he was letting this home to others as a business. In light of all that I'm not persuaded that Mr H did not make a fair presentation to Axis Specialty."*

The detail Axis Specialty has provided in response to my provisional findings has not changed my view in this respect. Nor has the detail provided by the loss adjuster. I note some further attempt has been made by the loss adjuster to evidence that the property is being run as a hotel. The adjuster has confirmed they were aware of three, possibly four, staff members during their visit in 2023, and they've shown detail from a bookings website and the company registration details for the property. The website and registration details aren't dated. For me then, this detail doesn't change anything. As I said provisionally (also part of my findings copied in full above): *"the renewal, and the question of whether fair presentation was given, date to 2020. Beyond the policy document which, as I said, confirmed it was used for business as a holiday home let to others, I've not seen anything from 2020 that might speak of how the property was being let/used then."*

Having reviewed matters, my view on the complaint hasn't changed. As such my provisional findings, along with my comments here, are now the findings of this my final decision.

### **Putting things right**

I require Axis Specialty to:

- Remove the record of the avoidance from its own and any industry database. If a different record is required to mark the relationship, that should be shown as 'cover not taken up' or something similar.
- Pay Mr H £500 compensation.

### **My final decision**

I uphold this complaint. I require AXIS Specialty Europe SE to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 April 2025.

Fiona Robinson

**Ombudsman**