

The complaint

Mr M complains about AXA Insurance UK Plc (“AXA”) and their decision to decline the claim he made on his home insurance policy, following an escape of water which caused significant damage to his property.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Mr M held a home insurance policy underwritten by AXA when his property was damaged by an escape of water. So, he contacted AXA to make a claim.

At the time, Mr M owned two properties. For the purposes of this decision, I will refer to the damaged property and risk address as “property 1”. I will refer to Mr M’s other property as “property 2”.

AXA considered Mr M’s claim and undertook significant investigations to validate it, which included obtaining reports from a loss adjustor, who I’ll refer to as “C”. And having considered all the information available to them, they declined the claim. AXA explained their opinion that Mr M has carelessly misrepresented the information supplied to them when the policy was inception, disputing property 1 was Mr M’s permanent and primary residence and that it was occupied day and night. So, they downgraded the cover provided from inception to FLEA cover, which excluded cover for escape of water. And this meant the escape of water was an uninsured event and so, something they wouldn’t cover. Mr M was unhappy with this decision, so he raised a complaint.

Mr M set out why he thought this decision was unfair, reiterating his belief that he hadn’t misrepresented the information provided at inception and that the property was occupied, as well as property 2. Mr M didn’t believe the evidence AXA had relied upon was more persuasive than the information and testimony he had put forward and so, he wanted the claim decision reversed, and his claim accepted. Mr M also complained about the length of time the claim took to process.

AXA looked into Mr M’s complaint and didn’t uphold it. They thought they had acted fairly, and in line with their underwriting criteria, when downgrading Mr M’s cover. And so, they thought the claim decline was fair. AXA also set out why they didn’t feel there were unnecessary delays, explaining additional enquiries were required to ensure the claim decision they made was fair, and correct. So, they didn’t offer to do anything more. Mr M remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and didn’t uphold it. Our investigators reasoning has been sent to, and commented on, by both parties so I don’t intend to recount it in detail. But to summarise, our investigator thought AXA were fair when deeming Mr M to have misrepresented the information he provided at the inception of the policy, and renewal. And they were satisfied that AXA would have offered downgraded cover had the correct information been provided. So, they thought AXA had acted fairly, and in line with the Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”) when taking this

action and subsequently declining the claim. And they didn't think AXA had caused unnecessary delay when reaching this decision. So, they didn't think AXA needed to do anything more.

Mr M didn't agree, providing several comments and additional information explaining why. This included, and is not limited to, Mr M's belief that the water bills and electoral vote information he provided was satisfactory evidence to show the property was occupied as he stated at inception. Mr M also referred to previous evidence he sent which he felt evidenced AXA's willingness to provide him a new policy, including cover for escape of water, if he had declared property 1 as a secondary residence occupied during the day. And he pointed to photo's he'd sent which he felt showed his family living in property 1 prior to the escape of water. In summary, Mr M set out his belief that AXA hadn't provided conclusive evidence to show the property was unoccupied and so, he didn't believe their decision to downgrade the cover on the policy, and so decline the claim, was a fair one.

Our investigator considered all of Mr M's representations, but their opinion remained unchanged. Mr M continued to disagree and so, the complaint has been passed 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, it would be useful to explain what I've been able to consider and more importantly, how. It's not my role, nor the role of our service, to re-underwrite the claim Mr M made as we don't have the expertise to do so. Instead, it is my role to consider the actions AXA have taken and decide whether they were fair and reasonable, based on the information available to them at the time. So, this is what I have done.

I'm also unable to speculate on whether or not I think Mr M's property was unoccupied, as I wasn't at the property at the time of the insured event. So, in situations such as this where there is a clear dispute between both parties, I must make a decision based on the balance of probabilities and what I think is most likely to have happened, considering the evidence put forward. And where necessary, our service's approach places greater weight on the opinion provided by industry experts, such as C in this situation.

I also want to make it clear that, in line with our services informal approach as an alternative to the courts, I won't be commenting on every point that has been made or put forward. Instead, I will focus on the points I'm satisfied are pertinent to the decision I've reached. But I want to reassure both parties that all the information supplied, including both parties' testimony, has been considered at length even if I don't talk to it directly.

AXA have declined the claim after downgrading Mr M's cover to FLEA cover, which doesn't include a provision for claims made for escape of water. And they did this after deciding Mr M made a misrepresentation when incepting the policy, and then again when the policy renewed in 2022. So, I've considered whether AXA were fair to reach this conclusion, based on the information available to them and if so, whether they have then acted in line with the rules set out within CIDRA. I've answered each of the questions CIDRA sets out separately,

for ease of reference.

Was there a misrepresentation?

Mr M disputes there was a misrepresentation made. While AXA has set out why they believe there was, at both inception and renewal, regarding the occupancy of property 1.

I note at the time of inception, and renewal, Mr M owned two properties. And both properties were insured by AXA, with both being listed as Mr M's permanent home, being occupied day and night in the policy schedule before, and after, renewal. I've also listened to the call Mr M held with AXA when he took out the policy. And I'm satisfied on this call, Mr M confirmed the details listed above, confirming the property 1 wouldn't be left unoccupied. So, I'm satisfied the questions asked by AXA were clear and that Mr M had an understanding of them when he provided his answers.

But I've seen a document from Mr M's architect in May 2022, which confirms that Mr M and his family were permanently living in property 2 at that time, not property 1. And, that Mr M and his family didn't feel it was viable to move into property 1, due to the renovation work they intended to undertake. An accompanying Design and Access statement report also confirms that property 1 was *"purchased to serve as their family home, having outgrown their current residence"*.

Based on the above, I'm satisfied B were fair to review this information and conclude that Mr M and his family weren't using property 1 as their permanent residence, or that it was being occupied day and night, as it signalled their intention to use the property as such once renovation work was completed. And this work was never completed.

While I recognise Mr M has provided context as to why this application was submitted containing this information, I'm unable to say AXA acted unfairly when relying on this information as it was a formal document used to help approve renovation work and so, I wouldn't expect AXA to accept, or assume, information supplied in these processes were knowingly or wilfully incorrect.

I note this renovation work was approved in August 2022. But Mr M confirmed to C that due to financial constraints, he took the decision to move his family into property 1 shortly after. And this was before the policy renewed in September 2022. I must be clear I've seen no evidence to show this was definitively the case, nor have I seen a tenancy agreement to show property 2 was being lived in by someone else from this time as Mr M suggests. But even so, I've considered the evidence and testimony supplied to decide whether I think AXA were fair to say Mr M also misrepresented the information supplied at renewal. And I note Mr M's renewal schedule contained the same answers as the previous policy year.

I've seen C's report from January 2023, which recounts a conversation held with Mr M's neighbour to property 1. Within this, C confirm Mr M's neighbour initially stated no-one had lived at the property for some time, before changing their testimony to say Mr M was at the property during the day and then, changing again to say the family moved out following the flood. I can understand why this discrepancy would cause concern for AXA.

In addition to this, I note C's report advised property 1 was largely unfurnished at the time of their inspection, although Mr M has explained he threw a large majority of the damaged furniture away, or moved it back into property 2, which he says he moved into with his tenants still living there at the same time.

While I recognise why Mr M may have disposed of damaged furniture, I must also consider the fact that Mr M didn't hold contents insurance for property 1 at the time of the escape of water. And I can understand why AXA would have concerns about this, as I think it would be fair to expect a family using a property as their permanent home, both day and night, to have this cover in place for a fully furnished home.

Further to this, I note AXA obtained utilities bills from Mr M for property 1 for the period he states he and his family had moved into the property permanently. But these utility bills show that from May 2022 to January 2023, which includes the period of time Mr M says he and his family had moved into the property, minimal gas was used. And when this usage is compared to the size of the property, and the size of Mr M's family, against standard expected usage available to find online, I'm satisfied there is a clear discrepancy that would reasonably lead AXA to believe the property wasn't occupied as Mr M had declared at inception, and then renewal.

I note AXA, and our service, have provided Mr M the opportunity to provide similar utility bills for property 2 over the same period so these can be considered and compared. And to date these haven't been received. Considering the clear discrepancies that I'm satisfied the utility bills from property 1 show, I'm satisfied this was a reasonable request from AXA and as Mr M didn't comply with this request, I can't say AXA were unfair to make determinations from the evidence they did hold.

Despite this, I note Mr M did provide additional information to AXA, and our service. And he has provided a water bill, alongside photos and evidence of the electoral register that he feels supports his position that he and his family were residing at the property permanently.

But having considered this evidence, I've not been persuaded AXA were unfair when deciding this didn't impact their decision that Mr M made a misrepresentation. While I acknowledge this evidence suggests Mr M used property 1 in some capacity, I'm not satisfied this evidence is strong enough to suggest Mr M and his family used the property as a permanent residence, with it being occupied day and night, as he declared at both inception and renewal and from which the level of cover AXA originally offered was provided.

So, because of the above, I'm satisfied AXA were fair to deem that Mr M made a misrepresentation at both the inception and renewal of the policy in question.

Was this a qualifying misrepresentation?

As well as being satisfied AXA were fair to decide Mr M made misrepresentation, for me to say AXA were fair, and acting in line with CIDRA, to take resulting action I must first be satisfied the misrepresentation was a qualifying one. So, I need to be satisfied AXA have evidenced that they would have offered the policy on different terms had Mr M provided correct and accurate information.

AXA have supplied me with underwriting criteria, which is commercially sensitive and not able to be shared. But this satisfies me had Mr M declared property 1 was being used a secondary residence, and not occupied day and night, they would still have offered cover. But crucially, that this cover would have been downgraded to FLEA cover, which doesn't include the provision of cover for escape of water claims.

So, I'm satisfied there was a qualifying misrepresentation in this situation.

Again, I note Mr M disputes this. And he's provided screenshots of a quote he says he obtained from AXA online which would still have provided escape of water cover, had he declared the property was occupied in the day and as a secondary residence. But crucially,

I'm unable to see all the questions Mr M was asked, and how he answered them from these screenshots.

And even if this wasn't the case, I'm not satisfied this supersedes the underwriting criteria AXA have supplied and I must consider that this was an online quote and not a guaranteed policy put in place. And I must also note this quote was generated stating Mr M and his family would be occupying the property during the day and from the evidence supplied, I'm not satisfied this was the situation considering there was evidence to suggest Mr M and his family were living in property 2 up to the date the insured event took place.

Was the qualifying misrepresentation careless, reckless or deliberate?

The actions an insurer such as AXA can take following a qualifying misrepresentation differ, depending on whether they deem the misrepresentation to be careless, reckless or deliberate. In this situation, AXA have confirmed they view Mr M's misrepresentation to be careless, considering he stated he and his family were permanently residing in both property 1 and 2, both day and night.

Having considered this reasoning, I agree with AXA that the misrepresentation was careless, rather than reckless or deliberate. I don't dispute Mr M likely answered the questions posed by AXA when incepting the policy, that followed through at renewal, to the best of his knowledge considering it was likely he intended to move his family into property 1 once renovation works had been completed.

But as I've set out above, I'm not persuaded this was an accurate reflection of his family's situation at the time the policy was taken out, considering the application for the renovation works hadn't been approved at the time. The evidence available to me satisfies me that while it may have been Mr M's overall intention to use property 1 as a permanent residence, both day and night, this wasn't the case when he supplied AXA with the information that informed the level of cover they would offer.

In situations such as this, where a careless qualifying misrepresentation has been made and had this not been the case a policy would have been offered on different terms, an insurer is able to treat the policy as if it had been provided on those terms to begin with.

In this situation, I'm satisfied AXA would have provided cover on a FLEA only basis, without the provision for escape of water. And I'm not persuaded that Mr M's situation changed before and after renewal, although I recognise his opinion states otherwise.

So, I'm satisfied that AXA were fair to assess the claim Mr M made based on him holding an insurance policy with FLEA only cover. This means that any claim for escape of water was an uninsured event and so, I'm satisfied AXA acted fairly when declining the claim on this basis.

I'm also unable to say AXA caused any avoidable, or unnecessary, delays when reaching this decision. In claims of this nature, an insurer is entitled to take steps to validate the claim and considering the complexity of this issue and the need to request additional reports alongside information from Mr M, I'm unable to say the claim was unfairly delayed by the actions AXA took.

So, while I recognise this will come as a disappointment to Mr M and will have a significant financial impact on him and his family, I won't be directing AXA to do anything more on this occasion.

Again, I want to make it clear to Mr M I've carefully considered all his representations and

the impact this decision will likely have on him, and his family, even if I haven't spoken to them directly. But for me to say AXA should do something differently, I must first be satisfied AXA have acted unfairly, or incorrectly, taking into consideration CIDRA and our services own approach. In this situation, I can't say AXA have and so, this is why I won't be directing them to take any further action.

My final decision

For the reasons outlined above, I don't uphold Mr M's complaint about AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 July 2025.

Josh Haskey
Ombudsman