

The complaint

1 complains that AXIS Speciality Europe SE has unfairly voided its buildings insurance policy and declined to provide cover, following damage resulting from an escape of water.

What happened

The background to this complaint is well known to both sides, so I've focused on the relevant points below only.

A claim was made to AXIS in July 2024 who provided buildings insurance to 1, for a shared block of flats. When the claim was being progressed, it was identified that one of the flats within the block had been sub-let to a local housing authority and had been since 2020.

On discovery of this, AXIS said it hadn't been made aware of this when the policy was inceptioned or renewed. Had it been told one of the flats was sub-let in this way, it would not have provided cover as it was outside of its underwriting criteria. It proceeded to decline the claim and voided the policy from its last renewal date and refunded the premiums paid.

Unhappy with the voidance of the policy and claim decline, 1 complained, but AXIS maintained its position and didn't think it had done anything wrong.

Our investigator looked at this complaint and set out why they didn't think AXIS needed to do anything else. They explained the relevant law to be considered is the Insurance Act 2015. 1 had a duty under the act to make a fair presentation of risk when it arranged the insurance for the building. This duty was in place when policies renewed as well as when they were first inceptioned. If there is a breach of this duty, the insurer has a number of remedies available to it, if the breach can be shown to be a qualifying breach.

A qualifying breach is made when there hasn't been a fair presentation of the risk and the insurer can demonstrate that it would have acted differently by not offering the policy, or offering it but on different terms, had a fair presentation of the risk been made.

Our investigator felt 1 had failed to make a fair presentation of the risk when the policy was taken out and AXIS had demonstrated it would have acted differently had this not happened. AXIS had demonstrated that, had a fair presentation of risk been made, it wouldn't have provided cover for the building and our investigator didn't think it had acted unfairly when it voided the policy on this basis and returned the premiums paid to 1.

1 disagreed with the outcome of our investigator. They explained when the policy was renewed, the director shared the details of the policy renewal with the leaseholders of the building. No one responded to say the terms were not being met or that there was any errors and the policy proceeded on that basis. They felt this demonstrated reasonable steps had been taken to provide a fair and accurate representation on the statement of facts from all leaseholders.

They felt AXIS is in breach of the Equality Act 2020 and places the leaseholders at risk of breaching this when not allowing local authority tenants to be insured.

When AXIS had highlighted the non-compliance with its statement of fact, the issue was rectified with the sub-let to the local authority being immediately terminated. It was also unfair to remove cover from all properties in the block when only one property was in breach of this requirement and it was fair and reasonable that it provided cover to the other flats.

Finally, there was a direct negative impact on the beneficiaries of the policy who as well as being significantly financially disadvantaged with the claim not being paid, had suffered a great deal of distress and upset with the situation and this should be taken into account.

Our investigator said they couldn't consider whether the leaseholders complied with requests for information from 1. But they had considered the relationship of 1 and AXIS and whether 1 had fulfilled its duty and the opinion remained that it hadn't.

The complaint has been brought by the limited company 1, so they didn't think the reference to the Equality Act related to it. But this was a new complaint not previously brought and the investigator was satisfied they'd considered the relevant law and obligations on 1 in reference to this. And they didn't think the losses of the beneficiaries of the policy were something to be considered with this complaint as this was brought by 1 and a previous complaint had been brought by the leaseholder who was seeking her losses as a result of the decline and voidance.

The complaint was referred for decision at the request of 1 and has been passed to me for consideration.

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've decided not to uphold this complaint, for much the same reasons as our investigator. I appreciate 1 and its representative will be disappointed by this outcome as this does have a significant impact on the property with damage outstanding. But I'll explain why, the test set out by our investigator shows AXIS has fairly taken the steps it has.

1 is a limited company and the crux of this complaint is whether it has fulfilled its obligations when arranging the insurance for its property as set out within the Insurance Act 2015.

1 has a duty to make a fair presentation of the risk to the insurer and this includes disclosing every material circumstance which they know, or ought to know. Or failing that, disclosure that gives the insurer sufficient information to put a prudent insurer on notice of the risk.

If there is a qualifying breach, where the insurer can demonstrate it would have done something differently had the fair presentation of risk been made, there are different remedies available. The relevant ones here are:

- If the breach is deemed to be deliberate or reckless, the insurer can avoid the policy and refuse all claims but doesn't need to return the premium paid.
- If it was neither deliberate or reckless and the cover wouldn't have been provided, the insurer can avoid the contract and refuse the claims made but would need to return the premiums paid.

The statement of fact sets out the following within it:

"Please read the following statements and satisfy yourself that they are correct in relation to

You and in respect of each property which forms part of this proposal.

d. Property Occupation

ii) The property must not be sub-let

iii) The property must not be let to housing association or Local Authorities”

1 argues that it took reasonable steps to ensure that it satisfied itself that this statement of fact was correct. At each renewal the details of the statement of fact were shared with the leaseholders and no one responded to say this wasn't true.

I think an attempt was made by 1 to satisfy itself that the property was occupied in accordance with the terms of the policy. But one of the flats within the block had been let to a local authority and had been since 2020 and I think more could have been done to confirm the tenants in situ with each flat to confirm this provision had been met.

With the property having a flat within it, let to the local authority, the statement of fact was not satisfied and there was a breach of the duty. And I think 1 ought to have known this was the case when thinking about the length of time this property had been sub-let for and its duty to make a fair presentation of the risk.

AXIS has demonstrated that it would not have provided the cover for the property had a fair presentation of the risk been made and the breach is a qualifying breach and it is entitled to apply remedies from the Insurance Act.

AXIS has refunded the premium paid for the insurance and in doing so, is treating the breach as neither deliberate nor reckless and I think it acted fairly here. There was an intention on 1 to clarify the statement of fact was satisfied. But it didn't go as far as it could have when confirming this with each leaseholder and checking the tenants in place with each flat. And when 1 confirmed the statement of fact was satisfied, it failed to make a fair presentation of the risk.

I've not seen that AXIS has had a complaint raised with it and whether its policy terms impact the leaseholders of the property and put them at risk of being in breach of the Equality Act 2020. This would need to be raised with it in the first instance and is not something which is part of this complaint.

This complaint is brought on behalf of 1 and it is the impact on it that I can consider here only. So although 1 has been represented with the complaint by a leaseholder who owns one of the flats damaged by the escape of water, I cannot consider the impact on them as a beneficiary.

I know this has had a significant impact on them and I understand why they've taken the steps they have to challenge the actions of AXIS and whether these are fair. But for the reasons I've set out above, I think AXIS has taken reasonable steps that it is permitted to take when 1 failed in its duty to make a fair presentation of the risk. As such, I am not asking it to do anything else now.

My final decision

For the reasons I've explained above, I don't uphold 1's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask 1 to accept or reject my decision before 4 August 2025.

Thomas Brissenden
Ombudsman