DRN-5754312

The complaint

A limited company, which I will call "M", has complained about the AXA Insurance UK Plc's decision to void its business insurance policy.

Mr G (as director of M) has brought the complaint on its behalf.

What happened

M is involved in roofing and cladding work. Mr G took out the policy with AXA via an online broker site in March 2023. In December 2023, Mr G contacted AXA as a sub-contractor had injured themselves at work. The policy renewed in March 20224.

Having reviewing the potential claim, AXA said that the policy had been provided on the basis of Mr G stating that the business was an employment agency. AXA said that M had not provided a fair representation of the risk it was asking AXA to cover; and that if Mr G had correctly input that it was a roofing and cladding business when applying for the policy, it would not have offered a quote for cover, as it does not provide this policy for roofing businesses.

AXA said that it also noted M had tried to obtain quotes for cover via the same online broker in 2020 and had run five quotes entering the correct trade of roofer but was declined for cover every time, as it is not a trade it covers. Then in March 2023 Mr G ran the quote entering that the business was an employment agency. AXA says that because of this, it considers the misrepresentation to have been deliberate, which would mean it is entitled to void the policy and also keep the premiums, but nevertheless offered to refund the premiums paid since March 2023.

Mr G complained but as AXA did not change its position, he referred the complaint to us. Mr G says the trade activity may have been entered in error.

One of our Investigators looked into the matter. Initially he recommended the complaint be upheld, as AXA had not provided evidence to support that it would not have offered the policy if it had known M was engaged in roofing activities. He also said AXA should pay £300 compensation.

AXA responded to the assessment with evidence from its underwriters that it would not have provided any quote to M if it had entered its trade as roofing. In light of this, the Investigator changed his mind and did not recommend the complaint be upheld, as he was satisfied that AXA was entitled to void the policy from 2023.

However, the Investigator said AXA had offered to repay the premiums from both policy years and it had only refunded the premiums paid from March 2024. He therefore recommended that AXA refund the premiums for the 2023-2024 policy year together with interest.

Mr G does not accept the Investigator's assessment, so the matter has been passed to me.

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 this complaint. I'll explain why.

Relevant considerations

I am required to consider what is fair and reasonable in all the circumstances of this complaint, having regard to the law and industry practice.

As this is a commercial contract of insurance, The Insurance Act 2015 is the relevant law here.

The Insurance Act 2015 places a duty of fair presentation of risk on the policyholder. It says:

> *"Before a contract of insurance is entered into, the insured must make to the insurer fair presentation of the risk."*

And:

> *"the disclosure required is …disclosure of every material circumstance which the insured knows or ought to know."*

If the insured fails to do this the insurer has certain remedies, provided the breach of the duty of fair presentation is a "*qualifying breach*", as set out in the Act. If the insurer shows it would not have offered the policy at all, or would only have offered it on different terms, then it's a qualifying breach.

Schedule 1 of the Insurance Act 2015 sets out the remedies available for insurers for qualifying breaches as follows:

> *"If a qualifying breach was deliberate or reckless, the insurer—*
>
> *(a) may avoid the contract and refuse all claims, and*
> *(b) need not return any of the premiums paid.*
>
> *Other breaches*
>
> *Paragraphs 4 to 6 apply if a qualifying breach was neither deliberate nor reckless.*
>
> *4. If, in the absence of the qualifying breach, the insurer would not have entered into the contract on any terms, the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid.*
>
> *5. If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.*
>
> *6. (1) In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim."*

In order to fulfil a fair presentation of risk, The Insurance Act 2015 says a commercial policyholder must disclose 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.

In the circumstances of this case, I have to consider whether Mr G, on behalf of M, gave a fair presentation to the insurer of everything he knew – or ought to have known – about the risks he wanted to insure.

The Insurance Act 2015 doesn't give consideration to how clear any questions asked of the applicant were when deciding if a policyholder made a fair presentation. However, we usually think it's fair and reasonable for an insurer to ask a clear question, so the policyholder can find out what it wants to know. And the Insurance Conduct of Business Sourcebook says that a way of ensuring a commercial customer knows what they need to disclose is to have "*asked clear questions about any matter material to the insurance undertaking*".

I am satisfied that the trade that M is engaged in is material to the insurance undertaking. I have therefore considered whether clear questions were asked of Mr G about the nature of the business.

AXA has provided evidence that during the application process Mr G was asked the following question:

> "*What is your specific trade/profession?*
>
> *Start typing to choose from over 1,000 options."*

There would also have been a *"Help box"* which when clicked says: *"Choose your best match. We need to know what your business does and how it works."*

I think this question is sufficiently clear and I think most people would recognise that different trades would present different risks. And clearly, Mr G would have been aware of the business activities, so should have been able to answer this correctly.

I therefore do consider that a clear question was asked of Mr G and he failed to make a fair presentation of the risk at the point of sale.

Did the misrepresentation of risk impact AXA's decision to offer insurance or the terms on which it did so?

AXA has provided evidence that if the primary trade of roofing without application of heat and secondary trade of cladding had been entered during the quote application process, it would not have provided a quote at all as it does not provide cover for roofers.

Having considered everything carefully, I am satisfied AXA would not have offered the cover if Mr G had entered the correct information about the nature of the business. I am therefore also satisfied that it is a qualifying breach in accordance with the Act.

Remedy available to AXA

As this was a qualifying breach, AXA is entitled to a remedy under The Insurance Act 2015. As set out above, the remedy available depends on whether the breach was deliberate or reckless or not deliberate or reckless.

Mr G says he must have made a mistake when completing the online form. AXA says it

thinks it was deliberate, as he had previously tried to obtain quotes with the correct information and not been provided any with the same online broker.

As set out above, if a qualifying breach is deliberate or reckless, The Insurance Act 2015 provides that the insurer can void the policy, reject any claim and keep the premium. If it is not reckless or deliberate it is still entitled to void the policy but should refund the premium. If it was careless mistake, as Mr G has said, then it would fall within the category of breaches that the Act describes as "*neither deliberate nor reckless*".

AXA has offered to refund the premiums paid for 2023-2024 and 2024 onwards. This would be in line with the remedy available for a qualifying breach that is neither deliberate or reckless. I do not therefore need to make any finding as to whether it was deliberate or not.

Having considered everything carefully, I think AXA has acted fairly and reasonably and in line with The Insurance Act 2015. There was a qualifying breach of the duty to make fair presentation of the risk he was asking AXA to insure and so it is entitled to void the policies from the date they started and it has offered to also refund the premiums, in line with The Insurance Act provisions for a misrepresentation that was in effect a careless mistake. I think this is fair and reasonable.

The Investigator recommended AXA add interest on the refund of premiums for the policy year 2023 – 2024, as it had been offered in May 2024 but not yet paid. I agree that interest should be paid on that for that period.

My final decision

AXA Insurance UK Plc has already made an offer to refund the premiums paid by M from March 2023 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that AXA Insurance UK Plc should refund the premiums from March 2023, if it has not done so already. It should also pay interest on the 2023 policy year premiums, at 8% simple per annum from 9 May 2024 to the date of reimbursement.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 22 October 2025.

Harriet McCarthy
Ombudsman