DRN-5799213

The complaint

A limited company, which I will refer to as S, complains about the handling of and decision made on its commercial property insurance claim, by AXA Insurance UK Plc.

What happened

The parties are aware of the circumstances leading to this point, so the following is intended only as a summary. Additionally, whilst other parties have been involved in the correspondence, etc. for the sake of simplicity, I have just referred to S and AXA.

S operates as a manufacturing business, and owns a site with multiple individual buildings. It held a commercial insurance policy with AXA, which provided cover for its premises. The policy incepted in 2021 and the schedule sets out that buildings with certain numbers on site were covered. Buildings numbered six, seven and ten were not listed – and so not covered.

In 2022, a presentation was put together by S's broker and provided to AXA. This noted that there were eleven buildings on site, but that only some of these required cover under the policy. A site plan was included to help identify these buildings. This plan shows twelve numbered buildings.

Buildings one to five, eight and nine, and eleven were used and insured. Buildings six, seven and ten were noted as being not in use, and insurance for these buildings was not required. This accords with the insurance provided the previous year.

Building eleven is noted to be a bungalow of standard construction. The other insured buildings were described in the presentation as being brick and block walls, with external timber cladding to the upper half. This description was only assumed for building nine, which was described as being of unknown construction.

The policy was renewed in 2022, with cover being provided for the "Workshop(s) occupied by [S]". It does not seem a similar presentation was made in 2023, and the policy renewed with a similar schedule being provided.

In January 2024, there was a fire at S's premises. The fire damaged two of the buildings on the site. Based on the plan provided in 2022, these were the buildings listed as six and seven. S claimed for the damage caused to these buildings, and the stock stored in (what I will refer to as) building seven. There is some dispute over whether the damaged buildings should actually be considered eight and nine, with S saying that buildings six and seven were different buildings that had been previously demolished.

AXA began to investigate the claim. This investigation took a number of months, and S brought a complaint to the Financial Ombudsman Service about this delay. Around this time, AXA also reached its decision on the claim.

AXA declined the claim. It said that S had not requested or received cover for buildings six, seven and ten. And that the 2024 renewal specifically set out that these buildings were not covered.

AXA said that S had not provided evidence of demolishing the buildings S had said were actually six and seven. AXA pointed to a 2020 report that described buildings six and seven as being “timber cladding, timber framed”. And that a 2023 report referred to there being plans to demolish timber buildings to the north of the site. And AXA said that there had been a planning application submitted to redevelop the site in the location of the damaged buildings.

Ultimately, AXA did not consider that the damaged buildings were covered by the policy.

S was unhappy about this. Our Investigator considered it would be appropriate for the issue of the decline to be considered as part of the complaint that had been brought to us, and AXA has agreed to this.

Our Investigator concluded that AXA had been required to carry out a detailed investigation. And noted that this would inherently take some time. But he did think there were some avoidable delays that S experienced. So, he recommended AXA pay S £150 in respect of this.

Our Investigator also concluded that it was not fair or reasonable for AXA to decline the claim. He thought that it was AXA’s responsibility to draft the policy in a way that made it clear what was covered, and that the wording of the schedule – and lack of clarity over the numbering of the buildings – meant that this hadn’t happened. So, he thought that as – at least building seven – was being used, it fell within the cover provided. And the claim should be reconsidered under the remaining terms of the policy.

AXA did not agree with this. And, as our Investigator was unable to resolve the complaint, it was passed to me for a decision. I issued my provisional decision on 7 August 2025. The following is an extract from that decision:

> “There is obviously some dispute over the numbering of the buildings. The schedule for the 2023 policy – which is the one relevant to this claim and complaint – does not refer to any building numbers though. So, I am less persuaded than some that the specific number attached to any particular building is overly relevant. But it does help to identify which building is being referred to.
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> With this in mind, for the sake of clarity within this decision, I have adopted the numbering which was used in the 2022 presentation. I will refer to the two buildings S has said should actually be considered as six and seven as the “western properties”. This means that, for the sake of description in this decision, the damaged buildings will be referred to as six and seven.
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> It should be noted that S submitted a planning application in 2023 that still used the numbering from the 2022 presentation, as I believe did the 2024 presentation. As an aside on the planning application; my review of this is actually that the area to be developed is not that where the damage occurred, but actually where the western properties are. Clearly, there seems to be some confusion around the various plans and maps.
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> Regardless, the main reason I don’t consider this to be overly important is that the 2022 presentation also set out details of the building construction. The buildings to be insured were all said to be a combination of brick and timber walls. I have been provided with copies of photos which clearly show the buildings that were damaged were almost exclusively timber constructions. They may have had brickwork in the foundations, but I do not consider this formed part of the walls – certainly when compared to the other buildings on site.

So, regardless of the numbering, the buildings that were to be covered by the 2022 policy were those that are part brick. And the fully timber buildings were not included within the list of buildings that were to be covered. It follows that the intention of the 2022 policy was not to cover the buildings that were later damaged and that form this claim.

It should also be noted that it is the responsibility of the insurer, in the case AXA, to appropriately draft the wording of the agreement so that it matches the intentions of the parties. The legal interpretation of a contract is an objective task. The subjective intentions of the parties are not usually relevant. There are some circumstances where the background and context means something must have gone wrong with the language, but it will be rare for a court to reach this conclusion.

Taking this into account, I can understand why our Investigator reached the conclusion that he did. It was AXA's responsibility to draft the policy terms appropriately. And, arguably, it failed to do this. AXA created a situation where the policy can reasonably be interpreted to provide cover in respect of all buildings on the site that are used as Workshops - regardless of any prior intention to exclude certain buildings from cover.

However, I need to reach my decision based on what is fair and reasonable in all the circumstances of the case.

With this in mind, I need to think about whether it would be fair and reasonable to require AXA to meet a claim relating to a building that S clearly did not want covered in 2022, and where S did not inform AXA of any change to this intention.

S said in 2022 that it did not use the buildings that it did not want insured. So, given this information, I can understand why AXA may have considered limiting cover by reference to the use of buildings was appropriate.

Of course, it is not the 2022 policy that is directly relevant here. The claim was made under the policy that renewed in 2023. And each policy forms its own contract.

As well as AXA's responsibilities though, S had responsibilities when taking out and renewing the policy – as well as during the period of cover. S is a commercial customer. So, the Insurance Act 2015 applies. And this sets out the relevant requirements for a commercial customer when taking out a contract of insurance. Essentially, this requires the customer to accurately declare any circumstance that would influence the judgement of a prudent insurer to provide the insurance and on what terms. So, given S was aware that it had previously told AXA that is only used certain buildings, if it was now using building seven (and six) it ought to have declared this to AXA at the time of the 2023 renewal. I have seen no evidence that this happened. So, S was likely in breach of the duty of fair presentation here.

Similar responsibilities exist where there is a change in circumstances during the term of cover. So, if the buildings were not being used at the point of the 2023 renewal, but started to be used after that point – prior to the fire – S ought to have informed AXA of this. Again, I have seen no evidence that this happened.

If a policyholder is in breach of these responsibilities, it is necessary – when considering how an insurer responds to a claim – to think about what the insurer would have done were they to have been given correct, updated information.

The Insurance Act 2015 sets out the legal remedies that are available to an insurer in

such circumstances. Effectively, unless the breach is shown to be deliberate or reckless, the insurer would be entitled to apply the terms that would've existed had there been no breach. AXA hasn't said that there has been a deliberate or reckless breach here. So, I have thought about the position if it was found there was a non-deliberate or reckless breach.

This is what I asked AXA about, i.e. what would it have done had S informed it of the change in use of buildings six and seven.

AXA responded, saying; "given the age, construction and poor condition of the building that AXA's underwriter has confirmed that AXA would have insured the building on a 'debris removal' only basis and that it would not have provided cover for any stock stored in building [seven] due to the highly combustible nature of the building and the stock."

AXA has also said that this approach would have applied regardless of whether it had been informed of the change in use prior to renewal or during the period of cover.

I do not find it surprising that AXA would have restricted any cover to the buildings only and not the stock – given the insecure nature of these buildings. It would seem doubtful to me that AXA would provide cover for the storage of stock in a building that did not have a door that could be secured.

AXA has also referred to the condition of the buildings. If the buildings were in a very poor condition, it would follow that AXA would not insure their reinstatement. However, AXA has provided limited information about the evidence its underwriter has relied upon in reaching this conclusion.

It is not for me to determine what decision an underwriter is willing to make when providing cover. But I do need to be persuaded that it has reached its decision fairly. I note that buildings six and seven were not in great condition. But I have seen little that AXA can have relied upon to reach a conclusion that their condition was so poor as to lead to 'debris removal' cover only being provided. And I would also point to the location of the planned development of S's premises. If the underwriter has based its conclusion that the buildings would not have been reinstated upon this point, this would seemingly not be accurate.

So, without additional evidence to support the conclusion the underwriter has reached, I consider that AXA would most likely have provided standard cover for reinstatement. AXA may be able to provide me with further evidence to show that is not the case. But my provisional decision is based on the evidence currently available to me.

Based on this, AXA should reconsider the claim based on the premise that it would have provided standard cover for the buildings, but not for the stock.

S has also complaint about the claim handling process. This is a complex situation. So, I think it was reasonable that the claim took some time to be considered. However, I also think there were some issues that could have been avoided.

I appreciate the whole situation would have likely been stressful for the directors of S. However, the complainant in this case is S – a limited company. As such, it cannot suffer distress. And I am unable to direct AXA to pay compensation to S's directors.

> Taking everything into account, I agree with our Investigator that an award of £150 is appropriate to recognise the avoidable issues relating to AXA's claim handling."

I asked both parties to respond with anything further they had to submit. AXA provided detailed comments from one of its senior underwriters, explaining the underwriting criteria and referring to comments about the condition of buildings six and seven within reports created in 2020 and 2022 by third parties.

AXA said that they were not modern timber framed buildings, but rather former agricultural sheds, made with a lightweight construction of combustible materials. AXA said that it would not normally insure such buildings in their own right. But might do so if they formed part of a larger portfolio of buildings - such as at S's premises. However, significantly, AXA confirmed that such cover would be provided on a 'debris removal' only basis. And that it would not have agreed to cover stock in these buildings due to the increased fire risk posed by their construction.

I explained to S that, based on this evidence, I was persuaded that, had S given AXA appropriate information at the relevant time, AXA would have only offered to cover S on this basis. So, I thought it was fair and reasonable that AXA only have to reconsider the claim on this basis also.

S had by this time also provided its own response to my provisional decision, and added further comments to this. In summary, S said:

- My provisional decision (and update) was based on a "what if" scenario
- And asking AXA now what it would have done is not fair, and if this is the basis for the decision S should be allowed to say what it would have otherwise done
- The policy did not include any terms setting out where stock could be stored
- Other third party sites – such as building merchants – regularly stored stock outside of buildings
- There were security measures relating to the premises
- And the buildings were suitable for purpose – keeping stock out of sunlight
- So, it was not appropriate that S's stock was not covered, even if it was not being stored within an insured building
- S also referred to the impact the situation had had on S and its directors.

S also wanted to see the underwriting comments that had been provided.

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 am only upholding this complaint in part – in line with what I have set out in and since my provisional decision. I've explained why below.

Firstly, I will just repeat that the above is only intended as a summary of the circumstances and arguments. Both parties have provided detailed submissions. Whilst I have considered these, I have not commented on each aspect within this decision. Instead, I have focussed on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman.

As I set out in my provisional decision, and above, I do not think S gave AXA the information it ought to, at the time it ought to, about the use of buildings six and seven. So, whilst I appreciate S's comments about my decision being based on what AXA would otherwise

have done, this is because the situation arose out of an error or omission by S.

I do appreciate that, had S provided full and accurate information to AXA and then AXA had limited cover in the manner I consider it likely would, S may not have stored its stock within buildings six and seven. This means S would not have suffered the loss of this stock. However, the issue I need to determine is whether AXA has acted fairly and reasonably by not meeting the claim for the loss of this stock. Whilst the stock may not have been lost had S acted differently – in both providing full information and then acting on the restriction of cover – I am unable to conclude that AXA should meet a claim for this loss. AXA is not responsible for S's error/omission or the consequences of that.

I also appreciate that S would like to see the full information provided by AXA in relation to its underwriting. However, this is commercially sensitive information and it would not be appropriate, in my view, to share this. I have instead summarised the relevant information and provided this to S, and I have taken into account the comments S has made in response.

However, taking everything into account, I am persuaded that S made an error by not appropriately informing AXA of its use of buildings six and seven. I am also persuaded that had AXA been given the information it ought to have, it would have limited cover of these buildings to "debris removal" only. And would not have covered stock within these buildings.

S has said that the policy that was provided did not include any restrictions relating to stock. This is not entirely accurate, as the policy differentiates between contents and stock. The policy says the former of these includes contents stored at the premises overall including specifically in open yards, whereas the latter is limited to stock at and in buildings. Regardless of this though, the question is not what the policy that was provided said. The determinative issue is what the policy would have said had S provided AXA with the appropriate information.

AXA has explained that buildings six and seven would have been seen to carry a higher fire risk, due to their construction and condition. And that AXA would not have provided full cover in relation to these buildings or stock within these buildings. I do appreciate that some third parties might have cover for stock that is stored 'in the open', but that isn't where S's stock was stored. Ultimately, I am persuaded that it is most likely AXA would not have agreed to cover stock within a building that carried a higher than acceptable fire risk. And it follows that the cover S's claim should be considered under is limited accordingly.

It would seem that there are some further issues relating to the claim that have not formed part of this complaint, including potential issues of underinsurance. I do not seek to formally address these as part of this decision, but would only remind AXA of the remedies that are within the Insurance Act 2015 and the, usual, approach of the Financial Ombudsman to matters of underinsurance in commercial policies. But as there are outstanding issues, it is also not appropriate for me to direct AXA to actually meet the claim even on the limited basis of cover that I consider ought to fairly and reasonably apply. Instead, AXA should reconsider the claim on the basis that, had S provided the appropriate information, it would have limited cover to buildings six and seven to "debris removal" only, and would not have covered the loss of any stock within these buildings. AXA will then need to apply the remaining terms of the policy and any other relevant considerations.

I appreciate this is not the outcome S was hoping for. And I am sorry to hear of the impact the situation has had on S and its directors. But I consider the redress previously recommended for the inconvenience caused to be appropriate. And for the reasons provided above I consider this to be a fair and reasonable resolution to this complaint.

Putting things right

To put things right, AXA Insurance UK Plc should reconsider S's claim on the basis that cover to buildings six and seven is limited to "debris removal" only, and the loss of any stock within these buildings is not covered.

AXA should also pay S £150 for the inconvenience caused by the claim handling process.

My final decision

My final decision is that I uphold this complaint in part. AXA Insurance UK Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 3 October 2025.

Sam Thomas
Ombudsman