

The complaint

A limited company, which I will refer to as S, complains about the handling of its commercial insurance claim, and the decision of AXA Insurance UK Plc to avoid the policy and decline the claim.

What happened

The following is intended only as a brief summary of the events. Additionally, whilst other parties have been involved, for the sake of simplicity, I have largely just referred to S and AXA even where other parties have been sending correspondence on their behalf. I have though also referred to one of S's current directors, as Mrs D, and two of the former directors, collectively as F, as the actions of the individuals is relevant.

S operates as a retail shop. The original director of S sadly passed away in early 2022. F was appointed as the directors of S. There was a dispute over whether they ought to have been appointed, and they have since been removed allowing Mrs D to become a director in April 2023. During this dispute over F's involvement in S, injunctions were put in place in February and March 2023 which prohibited them from acting as directors other than in the ordinary course of business.

S held a commercial insurance policy, underwritten by AXA. The policy had renewed in March 2023. Mrs D then took over S, and soon after had to claim for damages and losses caused to S's premises and business.

AXA considered the situation, and in March 2024 it sent a letter of concern. This said that AXA had not received a fair presentation of the risk prior to the renewal of the policy in March 2023. And that, whilst it had not made a final decision, it considered it was entitled to avoid the policy and decline the claim(s). AXA consider it should have been informed that, in March 2023, there was a dispute over the ownership/control of the company. And that there were court-imposed restrictions relating to F. AXA said that if it had been told about this, it would not have renewed the policy. Discussions on the claim continued. But, ultimately, AXA confirmed its position in March 2025.

S complained about this decision, and the handling of the claim, bringing its complaint to the Financial Ombudsman Service. However, our Investigator did not recommend that it should be upheld. He empathised with Mrs D – and the other current directors – but explained that the complainant here was S itself. And the obligations at the time of the policy renewal were on S – and those operating it at the time. One of the obligations was to disclose every material circumstance which S was aware of, and that this would include the issues raised by AXA. And these were not disclosed. Our Investigator was persuaded that AXA would not have offered the policy had this information been disclosed. And he considered this meant that AXA acted fairly and reasonably when deciding to avoid the policy and decline the claim.

Since the Investigator's view, AXA has agreed to pay £500 compensation for the issues S experienced during the claim handling process.

S remained unsatisfied and its 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 consider that AXA was entitled to avoid the policy and decline the claim. And I think a payment of £500 compensation is a fair and reasonable resolution to this complaint. I've explained why below.

Firstly, I would just like to reiterate that the above is intended merely as a summary. The background and circumstances are far more detailed than I have set out. And both parties have made detailed submissions, covering a number of points. I have considered all of these, but I have not commented on each of them within this decision. Instead, I have focused 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.

Secondly, I would like to express my sympathy for the experiences Mrs D has had to go through in relation to S, and the position she finds herself in now. I would also like to express my condolences to her for the loss of her husband – the original director. It seems clear that Mrs D is, as she has said, the innocent party in this who has been impacted.

However, Mrs D is not the policyholder and never was. The policyholder is S itself, which is a limited company and a legal entity in its own right. Not only does this mean that I can only consider this complaint based on the experience S itself has had, but it also means that the responsibilities that existed at the time of the policy renewal in March 2023 were those that S had.

The Insurance Act 2015 says that when a non-consumer (i.e. a commercial) insurance contract is entered, it is the insured that must comply with the duty of fair presentation. In this case, the insured is S itself.

The duty requires the insured to disclose every circumstance that would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms. I consider that the judgement of a prudent insurer would be influenced by the fact there was a dispute as to the ownership/control of the insured company. And that the individuals who were registered as the current directors, and who were conducting the day-to-day operation of the insured, had been issued with court-imposed restrictions relating to this control and operation.

It is not disputed that these were the circumstances at the time of renewal. It is also not in dispute that AXA was not made aware of these circumstances.

I do appreciate that, in effect, the individuals who needed to declare these circumstances (F), were the same individuals who were the subjects of the circumstances. But this does not change the obligation that S itself had. By not disclosing this information, S was in breach of the duty of fair presentation.

The Insurance Act goes on to set out the remedies that are available following such a breach. AXA has offered to refund the premium paid for the policy, which it would not have to do if it was considering the breach to be deliberate or reckless. But where the insurer would not have entered into the contract on any terms, the remedy for a breach which is not deliberate or reckless is that the insurer may avoid the contract and refuse all claims.

AXA's underwriters have been clear that had these circumstances been declared, they would not have offered the policy. Given the seriousness of these circumstances, I have no reason to doubt this. And I am persuaded that the policy would not have been entered had there been no breach of the duty of fair presentation. It follows that AXA is entitled, under the remedies available in the Insurance Act, to avoid the policy and decline the claim.

I have thought carefully about the circumstances of this case. As I have said above, the issue here is not one caused by Mrs D (or the other current directors). But the impact will, ultimately, be on them. However, this does not mean that it would be fair or reasonable to require AXA to meet a claim for losses that it would not have agreed to insure. This is particularly true where, as appears likely in this case, the circumstances surrounding F were potentially the cause of the loss that is being claimed for.

Taking everything into account, whilst I appreciate it is not the outcome S or its current directors were hoping for, I consider AXA acted appropriately by avoiding the policy and declining the claim. It follows that I cannot fairly and reasonably direct AXA to do more here.

I have also thought about the handling of the claim and the length of time it took to finalise the decision, as well as the general customer service provided throughout. This was a complex matter, with ongoing legal action being taken in respect of F. It was always likely to have taken some time for the claim to be dealt with.

Looking at the timeline holistically, it is clear that there were periods where each party could have been more proactive and could have progressed things more quickly. For example, following AXA's initial letter of concern, it took S (and its representatives) around five months to provide a proper response. But it then took AXA about five months to provide its final answer. Taking things as a whole, whilst AXA should not be responsible for the whole length of the process, there were periods when AXA caused avoidable delays.

Though I note AXA has already apologised if its communications seemed insensitive, I am unable to take into account the distress or emotional impact this situation had on Mrs D. As I have explained, she is not the complainant here. And S is a limited company that cannot experience distress.

But I do think AXA should pay S £500 compensation to reflect the avoidable inconvenience caused to S by its handling of the claim. I acknowledge that this is unlikely to provide S or its directors with the outcome they were seeking. However, I consider that this is the fair and reasonable resolution to the complaint.

My final decision

My final decision is that AXA Insurance UK Plc should pay S £500 compensation.

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

Sam Thomas
Ombudsman