DRN-5870917

The complaint

P, a partnership, complains that AXA Insurance UK Plc ("AXA") unfairly declined a claim under their commercial property insurance policy.

Mr Y brings the complaint on P's behalf. P is also represented, but for ease of reading, I have just referred to P and AXA as being involved in the complaint.

What happened

The details of this complaint are well known to both parties, so the following is a summary of key events only.

P held a "Property Investors Protection" policy which covered several insured locations. The policy was taken out in January 2020 through P's broker, who I will refer to as "L" in this decision. In July 2020, P notified L that a new tenant had taken up occupancy at one of P's sites for tyre storage ("the tyre storage site"). L notified AXA of this update, but AXA decided this was a fundamental change in risk, and not one it wanted to provide cover for.

AXA notified L it wouldn't be providing cover for the tyre storage site going forward. An updated policy schedule was issued which removed cover for the tyre storage site and showed a reduction in the property owners' liability limit, and said cover was only in relation to the adjoining car-storage area. In November 2020, the tyre storage site unfortunately caught fire, causing extensive damage. AXA declined cover on the basis it had removed that part of the property from cover previously.

P was unhappy with AXA's decline of the claim and said they hadn't received direct notice of the change in cover. They also said AXA had no contractual right to remove an individual location mid-term. He also said the premium had been paid in full, no refund was ever given, and AXA's descriptions of how the policy had been amended were contradictory and caused confusion. AXA responded to P's complaint and said it had acted fairly. It said it had adjusted the policy following a material change in risk and relied on L to communicate the underwriting change, which it said was standard market practice. P remained unhappy with AXA's response – so, they brought the complaint to this Service.

An Investigator looked at what had happened but didn't think the complaint should be upheld. She was satisfied AXA was entitled to decide whether it would like to continue offer and under what terms. And she felt AXA had acted fairly and reasonably by updating this change in cover to L directly. P didn't agree with the Investigator's recommended outcome. They provided detailed and lengthy replies, the main points of which were:

- AXA's position had been inconsistent. It said there was no cover, and P believed the policy had been cancelled.
- AXA had appointed a loss adjuster and generated a claim number, indicating the policy was active.
- AXA had no contractual right to amend cover mid-term. The policy terms only allowed cancellation.
- The tyre storage site was notified to AXA before cover was amended, so the insured

peril existed while cover was in force.
- The policy's "Non-Invalidation" clause protects landlords where tenant acts occur without consent.
- AXA reduced liability cover from £5,000,000 to £1,000,000 but charged the same premium.

P asked for an Ombudsman to consider the complaint – so, it's been passed to me to decide.

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've reached the same overall conclusion as the Investigator, and I do not uphold this complaint.

I should explain from the start that I won't be repeating the entirety of the complaint history here in my decision or commenting on every point raised. Instead, I've focussed on what I consider to be the key points I need to think about in order to reach a fair and reasonable conclusion. This reflects the informal nature of this Service and our key function; to resolve disputes quickly, and with minimum formality. However, I want to assure both parties I've read and considered everything provided.

I also want to set out what I will be looking at as part of my decision. I'm aware P has brought a separate complaint against their insurance broker which this Service is also considering separately. While P has set out why both complaints should be considered as part of one complaint; other than in situations where L could be shown to be acting as an agent of AXA, I'm only able to consider AXA's actions in this decision. Each complaint concerns a separate legal entity, so I'm unable to consider two parties' actions as part of one decision. That means I won't be making any findings about the broker's actions in this decision. However, as both complaints arise out of the same set of background events, there will be instances where I refer to background information which overlaps the complaints.

P's submissions are detailed and lengthy. While I thank P for them, both parties are aware of these, and I do not intend to repeat their detail in full here. As such, I will be focusing on what I consider to be the core components of the complaint. The crux of this complaint is therefore about AXA removing cover for the tyre storage site, thereby rendering the subsequent fire claim in November 2020 as not being covered by the policy. There are several key aspects of the complaint which I will address in turn below.

Change in underwriting due to a material change in risk

I should start by explaining that it's not this Service's role to dictate to an insurer what risk it should underwrite or what it should charge customers for an insurance policy. This is a decision for each insurer to make based on its own established underwriting criteria. So, the risk it chooses to take on, and the methods used to calculate premiums, are a commercial decision for it to make. A wide range of factors are considered, and each insurer will have its own approach and appetite for taking on risk.

I've considered P's submission that AXA had no contractual right to amend the cover during the policy period and has said AXA is only entitled to cancel the policy in its entirety. However, I do not agree with this position. AXA has confirmed the July 2020 change wasn't a cancellation of the policy, it was a mid-term adjustment on the basis of a material change in risk it was asked to insure. General insurance law allows an insurer to vary or withdraw

cover when it is notified of a change in a policyholder's circumstances which fundamentally changes the risk it agreed to insure.

AXA didn't void the policy or retrospectively amend the cover. It declined to continue to cover a new risk P alerted it to once it learned what would be stored at the tyre storage site. I've considered AXA's underwriter's submissions on this, and I'm satisfied this was a legitimate and consistent decision. I think there was a clear difference between the tyre storage site previously being unoccupied and then changing to being used for commercial purposes. I'm satisfied this was a fundamental change in the risk AXA was being asked to cover. So, I don't find that AXA acted unfairly or unreasonably here.

AXA's notification of the changes

P says they weren't properly notified of the change in cover. However, AXA says that as the policy was arranged and administrated through a broker, it is normal industry practise for it to continue to communicate via the broker. I've seen nothing to suggest AXA's communication about the change in cover was unclear or misleading. And given the policy was set up by L, while I appreciate P was not contacted directly or personally in respect of the update to the cover AXA was providing, I don't think AXA acted unreasonably here by providing the information directly through P's broker. Additionally, it was P who notified AXA of the change originally through the broker.

AXA's handling of the claim and premiums charged

P says AXA's explanations of what cover the policy provided were contradictory and says AXA had appointed a loss adjuster and generated a claim number, indicating the policy was active. P also explained that the absence of a refund in the policy premium after cover was decreased from £5,000,000 to £1,000,000 shows that cover remained active. I've considered all of these points, but I do not find that the evidence supports those submissions

I think it was reasonable for AXA to appoint a loss adjuster and generate a claim number once the claim was notified to it. AXA's internal notes consistently record that it wouldn't insure the tyre storage location, but other areas of the same overall insured location remained active under the policy. That suggests to me that AXA took initial steps to deal with the claim, but once the true position of the claim was understood, the claim was declined. That wasn't unreasonable.

Additionally, I'm not satisfied it can be shown that AXA not providing a refund of premiums demonstrates that the policy should provide cover for the loss. As I've set out previously, AXA has confirmed and demonstrated with evidence that the policy was not cancelled or voided, there was simply a change in what the policy provided cover for. And, as the Investigator has already set out, AXA said premiums were not refunded as a premium wasn't charged for property owner's liability in the first place. It follows that I don't find AXA acted unfairly or unreasonably here.

The insured peril and the policy's "non-invalidation" clause

P has said the insured peril (which they say was the accumulation of waste creating a fire risk) arose while cover still existed. They outlined that the Environment Agency confirmed circa 1,600 tonnes of tyres were already on site before 28 July 2020 and P says they notified AXA of tenant misuse on 14 July 2020. P also relies on the court case of *Carter v Boehm (1766),* in which P says the court held an insurer cannot retrospectively void cover to escape a risk it knowingly underwrote.

I've considered P's submissions on this point including the court case they have referred to. But I don't think the case supports P's complaint in the way they think it does. I accept that the storing of tyres at the site occurred prior to AXA amending cover. But this isn't the event that P is seeking to make a claim for. The fire in November 2020 is. And that was after AXA had amended the policy cover to remove the tyre storage location from the policy. It follows that I do not find AXA knowingly underwrote this risk or retrospectively voided cover in order to avoid paying a claim for it.

I've also considered P's submissions on the policy's "non-invalidation" clause", which says:

> "Non-invalidation cover
>
> *The cover provided by this section will not be invalidated by any act or omission or an alteration where the risk of damage is increased unknown to you and beyond your control, provided that when you become aware of it, you tell us immediately and pay any necessary additional premium and comply with any additional terms agreed with us."*

This term applies to protect a policyholder from losing cover due to a third-party's acts, where those acts are unknown or outside of the control of the policyholder. But I'm not persuaded it directs AXA to continue to cover a fundamentally changed risk once it is notified of that change. While P says their tenant had stored tyres in breach of the agreed lease, it has been established that P notified AXA of the specific change in risk in July 2020. As such, I'm not persuaded this term applies the circumstances of P's claim.

Finally, I've considered how AXA handled the claim overall, to determine whether I'm satisfied they acted fairly and reasonably, and within acceptable industry standards. AXA's claim notes demonstrate it referred the claim to its loss adjusters in order to confirm what had happened and understand the present position. I'm not persuaded those acts demonstrate that AXA were affirming cover. And once AXA confirmed that the fundamental change in risk was not acceptable to it, AXA amended the cover provided under the policy and relayed this information to P via their broker.

Having considered this complaint very carefully, I'm overall satisfied AXA acted within a range of what a reasonable insurer was entitled to do. It reviewed the change in risk and issued clear instructions to P's broker and handled the later claim in line with that position.

Conclusion

I appreciate that this has been a difficult and protracted situation for P, and I don't doubt the considerable stress and financial pressure caused by the fire. But, while I have genuine sympathy for their position, I'm satisfied AXA acted within its rights under the policy and handled the claim in a way I that consider to be fair and reasonable.

My final decision

For the reasons I have outlined above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A, X and Mr Y to accept or reject my decision before 17 November 2025.

Stephen Howard
Ombudsman