

complaint

Mr C complained that AXA Insurance Designated Activity Company declined his claim on his car insurance policy.

background

Mr C took out an insurance policy with AXA via a broker. When his son, a named driver under the policy, had an accident in about August 2018, Mr C claimed under the policy.

AXA said the car was uneconomical to repair, but they declined his claim and so wouldn't pay him its market value and returned the car. They said that Mr C didn't own the car, his son did, and, if they'd known that, they wouldn't have provided cover. This was because he didn't have an insurable interest in the car.

AXA also avoided the policy, meaning that that they treated it as if it never existed, though they said they would refund his premiums subject to him returning the insurance certificate. Mr C complained about their decision and about their delay in telling him.

The investigator didn't think that AXA had acted unreasonably in declining the claim and avoiding the policy. But she did think they delayed in deciding, and this inconvenienced Mr C so they should pay compensation. Mr C didn't agree and so I've been asked to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

What I have to consider is whether AXA have acted reasonably in avoiding the policy and declining the claim.

An insurer is only able to avoid a policy in certain circumstances. The Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA") says that in order to do so, they must show first that there was a 'qualifying misrepresentation'. To do that, the insurer must show that they asked a clear question, and that the consumer didn't take reasonable care in answering it.

But Mr C didn't think he'd made any misrepresentation. He said he was the car's owner and he had correctly answered a question confirming that he was the registered keeper and owner of the vehicle. But AXA thought that Mr C's son, a named driver on the policy, was in fact the owner because he paid for the car under a finance agreement in his name.

Mr C says that this was because Mr C had poor credit and he paid his son back monthly for the car in cash. Later Mr C said that when he put the car on the policy the broker only asked him if he was the registered keeper, not if he was the owner. However AXA have provided us with the broker's transcript of the call on 13 April. It shows that the agent asked Mr C *"Will you be the registered owner and keeper?"* and Mr C replied *"I will."*

I think that this was a clear question and that Mr C said that he was the owner and registered keeper of the car.

Mr C has shown us the purchase receipt and finance agreement for the car. They show that Mr C's son bought the car on 6 April 2017, paying a deposit of £2000, and signing a finance agreement for the balance of the car's price.

He's also shown us the V5 registration document for that car. It shows that Mr C is the car's registered keeper since 13 April, but the former keeper was Mr C's son from 6 April. So Mr C's son had bought the car then put into his father's name only a few days later. But, as the V5 document says on it, registration is not proof of ownership. Mr C said that he was the car's owner and his son only paid for the car because Mr C had a poor credit history, but Mr C was paying his son back in cash instalments. But there isn't any objective evidence to support this and so I don't find it persuasive evidence.

AXA have also shown us a screenshot of Mr C's son's social media page dated 7 April 2017 which has a photo of the car with the caption "*Friday treat*", suggesting that Mr C's son considered himself the car's owner from that day. Taking all of this into account, I don't think it was unfair of AXA to decide that Mr C didn't take reasonable care in answering their questions about the ownership of the car.

AXA have also shown us Mr C's statement of fact, which says that he is the owner and registered keeper. It includes a warning that the information in it is important to AXA and reflects the answers given to them, and if they are incorrect to advise them immediately, failing which they can avoid the contract and refuse all claims. So I think Mr C shouldn't have been in any doubt that he should give the correct information.

AXA have to show that the information they asked for was important to them and that they means showing that it wouldn't have offered a policy at all to the consumer – or would only have done so on different terms – if they'd known the true facts. Insurable interest is such an important part of insurance that it's clear that they wouldn't have insured Mr C if they'd known he didn't own the car.

I'm satisfied that Mr C was not the car's owner. And as AXA had asked a clear question about this, I think they acted reasonably to decline the claim. And even if Mr C believed the car to be his, it wasn't, and so he didn't take reasonable care not to make a misrepresentation.

The question is whether that is a careless misrepresentation under CIDRA or a deliberate or reckless one. AXA would have to show that it was deliberate or reckless, and I don't think they've done that. Which means that it was careless, and AXA should return the premiums. And AXA said from the start that they would do this, subject to Mr C returning the insurance certificate. I think that's reasonable and I expect them to do that.

Mr C was also unhappy that AXA took so long to decline his claim. Their final response to him wasn't until 22 January 2019, though he made the claim in August 2018. He said he'd had to spend time chasing them, via his broker. He also said that on January 18 he been told that AXA would honour the claim, and on that basis, he bought a new car, only for them to change their mind and decline the claim a few days later. He said he wouldn't have bought the car if AXA had told him earlier, and he wouldn't have got into that sort of debt if he'd known they would decline.

AXA apologised for the months of delay, which they said had been down to interdepartmental oversight. There do seem to have been crossed wires within AXA. They said they did have a conversation with the broker on 18 January, in which they discussed accepting the claim, but this was not their final decision. So they wouldn't accept any blame for him buying a new car in reliance on that. However they did offer him compensation of £250 for their delay.

I do think that AXA should have made their decision sooner, but that doesn't mean I think they are liable for Mr C's debt from buying a new car. Mr C wants us to listen to the recording of this AXA and broker conversation, but I don't think that's necessary, as AXA accept that it happened. But AXA hadn't given Mr C their final response directly at that point, and so I don't think that they can be held responsible for his decision to buy a new car right away. And in any event, as it was Mr C's son and not Mr C who owned the car claimed for, Mr C wasn't already incurring debt for that. I can see that the situation has been worrying and frustrating for Mr C and that their delay in deciding caused him inconvenience. However I think the £250 they have offered is fair compensation for that and so I don't ask them to offer more.

my final decision

It's my final decision that I uphold this complaint in part, and I require AXA Insurance Designated Activity Company to do as follows:

- Pay Mr C compensation of £250 for his distress and inconvenience
- Refund to Mr C the premiums that he paid under the policy, adding interest on that amount at 8% simple per annum from the date of avoidance to the date they make the payment to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 September 2020

Rosslyn Scott
ombudsman

AXA must pay the compensation within 28 days of the date on which we tell them Mr C accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If AXA consider that they are required by HM Revenue & Customs to withhold income tax from that interest, they should tell Mr C how much they have taken off and give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.