DRN-4660431

The complaint

Mr L complains that AXA Insurance UK Plc has avoided his landlord insurance policy and turned down a claim for fire damage.

What happened

Mr L held a landlord insurance policy with AXA. The policy covered a property containing multiple flats that were let to tenants. The policy renewed in March 2022.

In July 2022, a fire broke out which damaged the main structure of the property, as well as some of the flats. Mr L therefore made a claim. Whilst AXA was assessing the claim, it discovered that Mr L had had a county court judgment (CCJ) registered against him in 2019. AXA said that Mr L hadn't told it this information when the policy renewed, and if he had done, it wouldn't have offered him cover.

AXA therefore avoided the policy from the March 2022 renewal, and returned the premium paid for cover after this date. Unhappy with AXA's decision, Mr L brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. He thought AXA's decision had been in line with the relevant law that applied.

Mr L didn't accept our investigator's findings, and so the matter has been passed to me for a final 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.

I've noted Mr L's representative's request that I phone him before reaching my decision. However, I'm satisfied that I have enough information to decide this complaint without speaking to him. Mr L's representative has explained his points about the complaint in some detail in writing. I'd like to reassure him that I've considered all his points, even if I haven't commented on everything.

As Mr L held a commercial insurance policy with AXA, the relevant law that applies is the Insurance Act 2015 ('the Act'). Under the Act, Mr L was required to make a fair presentation of the risk to AXA when taking out (and renewing) the cover. That meant he needed to tell AXA everything he knew, or ought to have known, that would influence it in deciding whether to accept the risk or not.

When the policy renewed in March 2022, Mr L was provided with a statement of fact. This explained that he had a duty to make a fair presentation of the risk. Mr L was advised to check all the information to make sure the details were correct, and to tell his broker if any of the information was incorrect. The statement of fact said that AXA would provide the insurance cover, based on a number of statements being correct. It then said:

'… no proposer (as a company or individual including any decision makers involved in how the business's activities are to be managed or organised), director or partner of the business…either personally or in any business capacity has:

…

- *in the last 5 years had a county court judgment or Scottish equivalent awarded against them'*

Mr L had a CCJ awarded against him in February 2019, but this wasn't disclosed when the policy renewed. However, Mr L says he wasn't aware of the CCJ when the policy renewed in March 2022.

I understand the debt was settled by Mr L's colleagues on his behalf (presumably using money from his business) in May 2019 when bailiffs attended his workplace. Mr L's solicitor confirmed that Mr L was later advised by his colleagues that the sum owed had been paid. I don't know when he was advised of this, but it seems unlikely that Mr L's colleagues would have paid a debt of over £4,000 for him and not told him about this soon after it happened. I also note Mr L's solicitor said that he hadn't appreciated that a satisfied CCJ would remain on the register, and therefore believed there was no CCJ registered against him.

So it seems Mr L was aware of the CCJ, and that it had been satisfied. However, the statement of fact only referred to a CCJ being awarded against them, and doesn't say this wouldn't need to be disclosed if the CCJ has been satisfied.

Mr L says the CCJ shouldn't have been registered against him, as the debt was an electricity bill that ought to have been in the name of one of his tenant's. He says the energy provider refused to amend the bill and therefore the CCJ was registered in his name. He explains the Energy Ombudsman made a finding on the matter and concluded that he wasn't responsible for the debt.

Mr L has provided us with a document from the Energy Ombudsman (I understand this was issued in September 2020). This says that Mr L had provided evidence to show that someone else was responsible for the electricity at the property from 1 October 2017. The Energy Ombudsman concluded that the energy provider should update their records to show that Mr L wasn't responsible for the meter at the property from 30 September 2017 to 31 March 2019. It also said the energy provider should place the account onto contract rates, and provide Mr L with an apology.

I haven't seen details of the CCJ, though it was apparently registered by the same energy provider referred to in the Energy Ombudsman's decision. So, whilst I don't know for certain that the Energy Ombudsman's findings were related to the debt that led to the CCJ being registered against Mr L, it seems likely that this was the case.

However, I haven't seen any evidence to suggest Mr L had reason to believe the CCJ had been set aside. Although the Energy Ombudsman said the energy provider should update their records to show that Mr L wasn't responsible for the meter, there was no finding made in respect of the debt that had been paid by Mr L's colleagues for him, or the CCJ.

Mr L's representative says the CCJ should be set aside, given the Energy Ombudsman's findings. However, even if the CCJ were to be set aside now, it remains the case that the CCJ was in place at the time of renewal and therefore this should have been disclosed. I therefore find that Mr L ought to have disclosed the CCJ, and in failing to do so there was a breach of the fair presentation of risk.

When a breach of the duty of fair presentation takes place, an insurer has a remedy against the insured if it can show that it wouldn't have entered into the contract at all, or would have done so on different terms. This is known as a qualifying breach.

The broker arranged the renewal through an e-trade system. I understand this system is used by several insurers and it allows brokers to place cover without the need for underwriter intervention. AXA has explained that each insurer has their own acceptance criteria built into the system. It has shown us that if a CCJ is declared at renewal then the application is immediately declined. There is no option to refer the matter to AXA's underwriters for further consideration.

I'm therefore satisfied the breach was qualifying, as AXA wouldn't have offered Mr L renewal of the policy if it had known of the CCJ.

Mr L's representative has asked for a copy of AXA's underwriting guidance, but AXA will have a different appetite for risk depending on the type of cover taken out. The point here is that the broker used the e-trade system to renew cover, and AXA has shown that it wouldn't have offered renewal through that system if the CCJ had been disclosed. Therefore, AXA's underwriting criteria for other policies that it underwrites directly isn't relevant.

AXA has confirmed it doesn't consider the qualifying breach to have been deliberate or reckless. In such circumstances, the Act says the insurer may avoid the contract and refuse all claims, but must return the premiums paid.

AXA avoided the contract back to the March 2022 renewal date, and returned the premium paid after this date. I find this was reasonable and in line with the remedy available to it under the Act. As that means there was no policy in place at the time of the fire, AXA was entitled to turn down the claim.

Mr L has raised the point that he has other commercial policies with AXA, and for one of these, he told AXA in 2024 about the CCJ but AXA allowed the policy to continue. I've looked at the information Mr L has provided relating to this, and AXA said that because the CCJ was registered more than five years ago and Mr L claimed he wasn't aware of it, then it wouldn't impact the policy. That was up to AXA, but that decision has no bearing on its actions with this case. I've concluded there was a qualifying breach of Mr L's duty to make a fair presentation of the risk, and so AXA was entitled to avoid the policy and turn down the claim, as this was the remedy available to it under the Act.

I recognise Mr L will be very disappointed with my decision, but I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 September 2024.

Chantelle Hurn-Ryan
Ombudsman