

## The complaint

Mr J, representing his business, M, has complained about M's commercial property insurer AXA Insurance UK Plc. It provides the insurance for a property M lets out where there was a fire. Mr J's unhappy because AXA avoided M's policy (treated it as though it had never existed), thereby declining the claim. For ease of reading, from here, I'll refer to Mr J only.

## What happened

Mr J owns a property which comprises a shop and a four-bedroom flat above. On 2 July 2023 there was a fire in one of the bedrooms of the flat. Most of the flat was affected by smoke and water. Mr J made a claim to AXA on 3 July 2023.

AXA, noting it had some concerns about the claim, appointed a loss adjuster and a drying company. The drying company attended to begin drying on 7 July 2023. The loss adjuster attending on 19 July 2023, noted further concerns about how, or whether, the premises was occupied. AXA decided to carry out some more enquiries, including interviewing Mr J on 23 August 2023.

Subsequently in November 2023, and having sought legal advice, AXA decided that Mr J had not made a fair presentation to it when the policy renewed in December 2022. It noted the policy schedule said the occupying tenants were working and that the house was not an HMO (house of multiple occupancy – let to three or more people from more than one household). But it noted that as of October 2022 Mr J had begun letting to students – it believed they were not from the same family. AXA noted that if it had been told the tenants were students or that it was an HMO, it wouldn't have offered cover. So it avoided the policy, declining the claim as a result. But it said it would refund Mr J's premium.

Mr J was unhappy. He told AXA that it had got things wrong. He said the tenants had told him they were working as they hadn't found study placements. He said they were all from the same family, perhaps cousins, and that they had all been living together prior to taking up residency, as a group, in his property. He said AXA had started work to reinstate the property and only stopped as he'd asked for a cash settlement. He said it had taken too long to make its decision and its delay had affected him. When AXA wouldn't change its mind, Mr J complained to the Financial Ombudsman Service.

Our Investigator felt AXA had reached a fair and reasonable decision that Mr J was letting to students from more than one household. She noted that, if it had been told this, it wouldn't have offered a policy to Mr J. She thought it had acted fairly and reasonably in the circumstances to avoid the policy and decline the claim.

Mr J wasn't happy. He said he couldn't have foreseen that his tenants would become students, they had told him they were working. Mr J said AXA's delay had caused poor health as well as mental and financial strain as he hadn't been able to generate an income from the property. Mr J said that without any insurance settlement, he had not been able to repair the property.

The complaint was referred to me for an Ombudsman's decision. I was minded to require AXA to reinstate the policy and consider the claim. But I wasn't minded to make it do anything more than that, such as pay compensation. So I issued a provisional decision to share my views with both parties. My provisional findings were:

*"This complaint has focused on AXA's view that Mr J did not make a fair presentation when he arranged the policy. At the outset I'll explain that I think AXA had reasonable concerns in that respect that required further investigation by it. I also think it completed those enquiries in a reasonably timely manner. But I don't intend to go into much further detail about those enquiries, what was found or the outcome that resulted. That's because, in my view, AXA's actions earlier in the claim mean it can't reasonably act on what it found to avoid the policy and decline the claim.*

*AXA, during the first notification call by Mr J, arranged to dry the property. Drying a fire damaged/water-soaked property is the first stage of repair work to reinstate it. Drying a property like this early can be important to minimise the chance of further losses/costs arising. So it is something that most prudent insurers will want to do, even whilst still investigating their liability for the loss. Depending on how that is all arranged and handled will determine whether an insurer can reasonably later revert to a position of avoidance – that's because in acting to dry the property the insurer enters a contract to repair it.*

*On this occasion I note that AXA had concerns about the claim at the outset. I also note that it began drying even in spite of those concerns. I further note that when arranging to dry the property, AXA did not reserve any rights as to liability. I've seen AXA say, on several occasions, after it avoided the policy, that it dried the property but did not agree/accept liability. But, given AXA already had concerns when it enacted the repair contract, to later review its liability with a view to exiting the contract, AXA would have had to actively caveat that contract at the outset. AXA did not do that here. So by drying the property AXA entered into a contract to repair it and what it found later, in the circumstances here, doesn't allow it then to fairly and reasonably avoid the policy, thereby avoiding the repair it had begun.*

*The fair and reasonable remedy, I think, at this stage, is for AXA to reinstate the policy. Had the policy remained in place it would have been due to renew in around December 2023. In the circumstances AXA wouldn't have offered further cover. So I think it's fair for the reinstated policy to be marked as lapsed at the point of that renewal. I understand that AXA had reimbursed Mr J's premium, so he'll need to repay that. AXA will then need to finish the repair it started and consider any other claims Mr J may wish to make, such as for lost rent.*

*I realise that Mr J has asked for a cash settlement. However, as AXA had entered into a contract to repair the property, that is the point the parties should be returned to – with AXA picking up the reinstatement and finishing that repair. Of course, the policy will be reinstated too, so if Mr J isn't willing to let AXA complete that work, and insists that it settles the claim in cash, AXA can then offer settlement in line with what the policy terms allow in that instance.*

*On this occasion I don't intend to require AXA to pay compensation to Mr J. I realise that this has been a difficult time for him. However, I do think AXA had reasonable concerns which it acted fairly to investigate and consider. Enquiries like this will naturally cause some delay and result in some inconvenience. It is usually where an insurer undertakes unfair or unreasonable enquiries, or handles reasonable investigations poorly, such as to cause avoidable delays, that I would look to award compensation. Which isn't the case here."*

AXA didn't reply within the deadline set for responses. Mr J said he accepted my findings. He said he would be looking for a cash settlement from AXA. Regarding the premium, he said AXA had returned that without his request – he asked if that would mean he won't have to repay it. Mr J said he'd like some guidance on what will happen now.

## **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 note Mr J's query about the refunded premium. AXA's position which triggered this complaint was that Mr J hadn't made a fair presentation when arranging the policy. What an insurer can do in that instance is covered by legislation. And the legislation, in the circumstances here, required AXA to return the premium to Mr J. It wasn't something he had to ask for. But the effect of my decision is to undo that, with AXA having to reinstate the policy and consider the claim. Naturally for a policy to be in place and a claim to be considered, the policy premium reasonably has to be paid.

So if Mr J accepts my final decision within the timeframe set, in order to allow AXA to comply with my award of reinstating the policy and considering the claim, Mr J will have to repay it the premium he was refunded.

Other than as I've touched on above, about Mr J accepting my decision and paying AXA the refunded premium, I can't offer much guidance about how matters will progress. Once Mr J has communicated his acceptance to our Investigator (if he does), we'll share that detail with AXA. This Final Decision will have ended our involvement and it will then be up to AXA and Mr J to progress matters between themselves.

## **Putting things right**

I require AXA to:

- Remove the record of the avoidance from its own and any external database.
- Reinstate the policy to the point of renewal following the loss, with Mr J paying the required premium.
- Complete reinstatement of the property. But if Mr J insists on receiving a cash settlement, settlement should be made in line with the policy terms and conditions.
- Consider (in line with the relevant terms and conditions) any other claim from Mr J under the policy for this loss.

## **My final decision**

I uphold this complaint. I require AXA Insurance UK Plc to provide the redress as set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 1 August 2024.

Fiona Robinson  
**Ombudsman**