

The complaint

A complains that AXA Insurance UK Plc has failed to provide cover for business interruption. It feels this decision is unfair as the business has been impacted and it feels assistance should be provided.

What happened

A contacted AXA to notify it of issues it was experiencing at its shop. They said a neighbouring property was causing damage to the business with second-hand smoke from cigarettes entering its property. This was causing customers to leave the shop due to the smell and it had changed the opening hours to try and avoid the risk of the tenant above being around when the shop was open.

A wanted to claim from AXA for the lost revenue which was a result of the smoke and it needing to change the opening hours.

AXA said there was no valid claim to be made. Although the policy provides cover for business interruption, this was only relevant if the loss was the result of an insured peril. And while it was likely unpleasant with cigarette smoke from a neighbouring property and this entering the shop, it was not something specified within the policy as an insured peril. So it was unable to provide any assistance for lost revenue that A said its experienced as a result of the smoke.

Our investigator looked at this complaint and highlighted that A has also raised concerns about the property and escape of water and rotten window frames. They said this was looked at under a separate claim reference and was not part of the claim and complaint AXA had considered about the cigarette smoke. This was focused on the smoke ingress and whether AXA was acting fairly when declining to provide business interruption cover for the losses experienced in reference to this. He said if A wanted to complain about the escape of water claim and AXA's decision on this, it would need to be raised with it first.

Overall, our investigator didn't think AXA had done anything wrong when refusing to provide cover for the losses A said its incurred. They were satisfied the policy cover did not extend to this and AXA had made a fair claim decision when declining the claim.

A responded to say it was unhappy the other claims, including separate claims it has for water ingress and escape of water were not being considered with this complaint. They felt this had been raised as a complaint and AXA failed to deal with this when it should have done. They also said they disagreed with the claim decision on the cigarette smoke. They said the smoke made the shop unsuitable for occupancy and because of this, AXA should step in.

Our investigator's opinion remained unchanged. He said he could only consider what had been dealt with by AXA as a complaint. So he wasn't able to consider anything beyond the smoke and the decision on this. They said a new complaint would need to be raised by A with AXA about the other claim decisions if they were unhappy with these.

And there was nothing which persuaded them the policy should extend to cover the issues complained about with the smoke from the neighbouring property.

A maintained that AXA should be doing more and asked for the complaint to be referred for 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 decided not to uphold this complaint, for much the same reasons as our investigator. I appreciate A will be disappointed by this, but I'll explain why I've reached this decision.

For clarity, I have only considered the actions of AXA and its claim decision with the second-hand smoke. I appreciate A feels more should be considered with the other claims it has made and had declined, but these have not been considered as a complaint. A has indicated this has now been raised with AXA as a new complaint and if unhappy with the outcome, they may bring this complaint to this Service. But I am only considering what was addressed in AXA's final response of April 2024.

AXA and our investigator have explained what cover A has in place with its policy. This does provide cover for business interruption for a range of different circumstances, but this is only applicable if the interruption is the result of an insured peril.

A argues the property is not suitable for the business it runs because of the second-hand smoke smell. This has impacted its revenue with customers being put off by the smell and its opening hours changed. I can understand why the smell of smoke from a neighbouring property will be unpleasant and that it might well have an impact on customers visiting the shop. But I don't think AXA has acted unfairly when it has said it cannot provide cover for this.

There is only cover for business interruption where there is cover for the incident under the material damage. And smoke entering the property would not meet this definition and I don't think AXA has acted unfairly when saying there is no cover. Equally, although A says the property has become unsuitable for its needs, it would not be reasonable to say there has been denial of access.

AXA said A may need to speak to the landlord of the property directly or look at a claim under the legal insurance A has in place. It has acted fairly in highlighting this to A as assistance through these channels might help A with the dispute it has with the neighbouring tenant and it might be assistance is available with any civil dispute here. But this would be separate to a claim under this insurance and the cover AXA provides.

Overall, I am satisfied that AXA has acted fairly when declining to cover the business interruption A said it has incurred as a result of the second-hand smoke ingress. This is not something covered under the policy and while I appreciate this may be impacting A's business, it is not fair and reasonable to ask AXA to cover perils not covered under the policy.

My final decision

For the reasons I've explained above, I don't uphold A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or

reject my decision before 10 January 2025.

Thomas Brissenden
Ombudsman