

## The complaint

Mr R complains AXA Insurance UK Plc unfairly declined a claim against his home insurance policy.

## What happened

I issued a provisional decision. I said:

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

Mr R took out a home insurance policy with AXA in November 2022. In March 2023 Mr R made a claim against the policy for fire damage. AXA avoided the policy and declined the claim because it thought Mr R had made a careless qualifying misrepresentation.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn’t made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

AXA has said Mr R misrepresented his occupancy, insurance history and the condition of the property. I will address each in turn.

AXA has shown as part of the online application it asked: “*When are you and your family at home?*”. I find this question clear. Mr R chose “*Most days for at least a few hours a day*” from a drop down. AXA concluded, based on Mr R’s testimony, that the Council had the property registered as a second home, and from a statement from a neighbour, that Mr R wasn’t at the home most days for at least a few hours a day. I find AXA’s conclusion reasonable and not contrary to the evidence. I’m satisfied Mr R gave incorrect information to AXA and therefore failed to take reasonable care.

AXA has shown as part of the application Mr R was asked to click “*No, I do not agree*” or “*Yes, I agree*” on a webpage titled “Important Statements”. The statements include that the applicant had not had insurance refused, cancelled or declined, and that the home is maintained in a good state of repair. I find these statements clear.

Mr R clicked to say he agreed. AXA says Mr R provided incorrect information because he had had insurance cancelled and the property was not maintained in a good state of repair.

I find AXA's conclusion reasonable and not contrary to the evidence. I say this because Mr R has confirmed he had a home insurance policy cancelled by an insurer because of non-payment. I have seen pre-fire photographs of the property which do not show the property was in a good state of repair. Further, the emergency services' report of the fire described the property as derelict, as did the local press. And an auction website advertising the property for sale in 2021 said: "*Property requires renovation before habitation*". I'm satisfied Mr R gave incorrect information to AXA and therefore failed to take reasonable care.

AXA has shown – through a witness statement from an underwriter and other supporting evidence – that it would not have offered cover at all had it not been for Mr R's misrepresentation. It follows Mr R made a qualifying misrepresentation. AXA has said the qualifying misrepresentation was careless. I find that fair and reasonable as it's better for Mr R than for it to consider Mr R's misrepresentation deliberate or reckless.

Overall, I find it was fair and reasonable for AXA to avoid Mr R home insurance policy from inception (with a refund of premiums) and decline the claim.

#### *My provisional decision*

I don't intend to uphold this complaint."

AXA didn't provide any further evidence or arguments for me to consider. Mr R (and his professional representative) provided further submissions. For ease of reading, I will refer to their submissions collectively as Mr R's.

#### **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.

Mr R has provided evidence and arguments he says shows he did take reasonable care when taking out the policy, and that even if he didn't, AXA has been unfair to avoid the policy. I will address each in turn.

Mr R told AXA he was at home most days for at least a few hours a day. He says the answers available to him on the drop down were entirely unclear and liable to cause confusion to a reasonable consumer. I disagree as I'm satisfied the answers would cover ordinary property occupancy.

Mr R says AXA would have provided cover under a different brand had he said he was at the property "*Weekends Only*". I don't find this makes a material difference. This is because when weekends only is selected cover is declined. There is an option to be directed to a specialist insurance brand of AXA, but it's just that – specialist. And it requires a whole new application process.

In any case, while Mr R's testimony about his occupancy is inconsistent, it's apparent he did not visit the property often and didn't stay there overnight. The electricity was turned off/faulty, mains gas had been capped and shutters put up, allegedly to protect the property. I'm satisfied the property would most fairly be described as unoccupied, so weekends only

wouldn't have been accurate either.

Mr R has said the "Important Statements" were positioned unclearly given the use of a list, a small font size and one button to agree. I don't agree. In my view the information is presented in a clear enough manner for a reasonable person to see it, understand it, and recognise its importance.

While I accept Mr R has sought evidence that his previous policy being cancelled might not have been material to AXA's decision making, Mr R knew he had a policy cancelled not too long before he applied for this one, and then agreed to the statement to proceed with the application. Cover would not have been provided if Mr R had taken reasonable care with his answer. And while I accept the specialist insurance brand asks the question in a different way, which may lead to cover being offered, that's not relevant to this application.

Mr R has argued his property was in a good state of repair. He's provided some evidence from outside the application process to show AXA's definition is for a property to be in a good state of repair there should not be evidence of incomplete building works, rot, damp, infestation, faulty wiring or plumbing, roof/chimney damage or damage affecting the security of windows or doors.

Based on the photographs I've seen (including ones supplied by Mr R, which he says were recent to the fire), as well as other evidence, I don't find a reasonable consumer would consider the property in a good state of repair. The condition of the property is exceedingly poor. As far as I can see, there were no usable bathrooms or kitchen facilities, wallpaper is hanging off the walls, fixtures are hanging off the ceilings, there are cracks in some of the walls and panelling missing. Further, Mr R has said there was storm damage.

I remain of the opinion it was fair and reasonable for AXA to avoid Mr R's home insurance policy from inception (with a refund of premiums) and decline the claim because I'm satisfied Mr R made a careless qualifying misrepresentation and AXA would not have offered the policy on any terms if he hadn't.

For completeness, while I accept AXA's enquiries took some time and Mr R felt it was looking for a way to decline the claim, I find the customer service it provided satisfactory given the magnitude and complexity of the claim. It follows I'm not requiring it to pay Mr R compensation for how the claim was handled.

I recognise Mr R will be disappointed this outcome. But my decision ends what we – in trying to resolve his dispute with AXA – can do for him.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 April 2024.

James Langford  
**Ombudsman**