

The complaint

Mr and Mrs H have complained about the settlement offered in response to a claim made under its business insurance policy with AXA Insurance UK.

AXA are the underwriters of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the loss adjusters it used to deal with claim on its behalf. As AXA has accepted it is accountable for the actions of the loss adjuster, any reference in my decision to AXA includes the actions of the loss adjusters.

What happened

Mr and Mrs H run a guest house insured under a Guest House and Bed and Breakfast business insurance policy with AXA. I will refer to the guesthouse as S. They contacted AXA in April 2020 to make a claim as a result of the Government's response to the Covid-19 pandemic.

AXA initially rejected the claim but later agreed to meet the claim under the extension to the core business interruption cover under the policy, which provides for losses resulting from a human infectious or contagious disease occurring in the premises. However, in the course of considering the claim, AXA found that Mr and Mrs H didn't open the hotel to guests all year round (it only opened February to November each year) which it says is the basis on which the insurance had been offered. AXA asked for confirmation that the premises were occupied all year round. In April 2021, Mr and Mrs H said that they lived in another hotel also owned by them, in the same street as S, and their son lived at and managed S for them, so it is occupied all year round. As it was satisfied the property was occupied all year round AXA agreed to the claim.

The policy provided cover for a maximum indemnity period of 24 months. AXA agreed a schedule of interim payments to cover the period of time that S was required to close as a result of the Government restrictions. The last payment for the first year's indemnity from March 2020 was paid in July 2021.

In late 2021, Mr and Mrs H also said that they had both caught Covid-19 in July 2021 and as a result were not able to open S between July 2021 and the end of 2021, so wanted to include loss of revenue for that period in their claim. They also said they wanted to wait until the end of the 24 month indemnity period (*i.e.* around March 2022) to submit further accounts details.

AXA said it would not cover closure as a result of Mr and Mrs H's own illness, other than a ten-day isolation period, as there was no requirement for S to close for any longer. However, AXA also questioned why the fact Mr and Mrs H being ill would affect S opening if it was managed by their son.

Mr and Mrs H had a long telephone conversation with AXA about this and the claim in February 2022, during which Mr and Mrs H said that their son doesn't manage the business and it was their son's girlfriend that in fact managed the hotel since 2019 but she had left during the pandemic to find another job.

AXA was not satisfied with the information provided. It said it would pay one further interim payment (of £7,000) in full and final settlement of the claim but would need further information (including formal interviews with Mr and Mrs H, their son and his girlfriend, employment records and evidence that the other hotel, in which Mr and Mrs H lived, was shut at the same time) before it would agree any further payment.

AXA also said that if the further investigation resulted in evidence that the information provided in April 2021 wasn't correct, it might seek to recoup the payments it had already made.

Mr and Mrs H did not want to go through a formal interview process. During the call, it was discussed that they might accept £9,000 as a final payment to avoid the need for further investigation. Following this, AXA paid a further £9,000 (which it says means it paid a total of just over £65,000) but has refused to make any further payment.

Mr and Mrs H say they didn't agree this amount and are unhappy with AXA's handling of the matter. They say there is £22,000 outstanding on their claim. They have also complained about the phone call discussion, which they say was completely wrong and caused them stress. Mr and Mrs H say they felt blackmailed into accepting a reduced settlement. Blackmail is a criminal offence and this caused them both severe anxiety and stress, and led to medical issues for Mrs H.

AXA has maintained its position on the claim, as it says it has not received sufficient evidence to establish the claim. AXA said Mr and Mrs H say that as they were not able to work, the hotel couldn't operate but this is not consistent with what they previously told AXA about the way S was run. So it says it is not obliged to make any further payment until it has the further information requested from Mr and Mrs H.

AXA also said that Mr and Mrs H had asked not to settle the matter until the end of the indemnity period (*i.e* 24 months from March 2020) so it was not responsible for delays, apart from since March 2022.

AXA did however, offer Mr and Mrs H £500 compensation for the way the call in February 2022 was handled, as it said its position could have been communicated better than it was and for some delay on its part.

One of our Investigators looked into the matter. He did not recommend that it be upheld, as he was satisfied that AXA was entitled to make the enquiries it proposed and as Mr and Mrs H didn't want to provide that and go through the process it proposed, AXA's payment of £9,000 and offer of compensation was reasonable.

Mr and Mrs H did not accept the Investigator's assessment. Mr and Mrs H have made a number of submissions in support of their initial complaint and in response to the Investigator's assessment. I have considered everything they have said and have summarised their main points below:

- AXA has lied, deceived, coerced, threatened and blackmailed its way to reduce settlement for the claim. Blackmail is a criminal offence.
- They were threatened several times during the phone call in February 2022, with a pointless investigation and threatened with voidance of their policy and having to repay money.
- AXA paid the £9,000 into their account and it had no choice but to accept it.
- The £500 compensation offered is an insult.

- The policy states they would be indemnified for two years if an outbreak of a human infectious or contagious disease occurs within a 25 mile radius. They were ill with Covid-19 at their home which is within a 25 mile radius of S, so this should be covered. In its final response, AXA wrongly said the wording required the occurrence to be on the premises.
- AXA breached the Financial Conduct Authority("FCA") guidelines to handle claims fairly and promptly and to provide guidance on making a claim and information on claim progress.
- It took 6 months after the court issued its judgment in the FCA test case to pay their first year's full indemnity.
- They contacted AXA about making a claim for the period they were ill but AXA didn't give them any guidance and they were only contacted again three or four months later.
- AXA knew from their email 8 April 2021 that they did not reside at S but lived in their other hotel in the same road.
- The policy doesn't say they have to live at the insured premises anyway.
- Their son has lived at S since 2010. He manages the property and reports any issues to them but he does not manage the business.
- The Investigator has sided with AXA and said they lied when the statement of fact clearly shows they didn't. This is slander.
- AXA has also breached FCA guidelines in deducting government grants from the settlement amount.

As the Investigator was unable to resolve the complaint, it has been passed to me.

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'm sorry to hear that the pandemic has had an impact on Mr and Mrs H's business. However, I won't be upholding its complaint. I'll explain why.

Policy cover

The business interruption section of Mr and Mrs H's policy provides cover for a number of events. There are also extensions to the core business interruption cover, including the following:

"This Section is extended to cover loss as insured hereunder resulting from interruption or interference with the Business carried on at the Premises in consequence of:

- 1. Human infectious or contagious disease (excluding AIDS) occurring in the Premises.*
- 2. An outbreak of a notifiable human infectious or contagious disease (excluding AIDS) occurring within 25 miles of the Premises."*

AXA accepted that there had been an outbreak of Covid-19, which is a notifiable human infectious disease) within a 25 mile radius of Mr and Mrs H's premises, which caused them business interruption losses in 2020. However, it said there was no cover for losses aside from the isolation period of two weeks as a result of Mr and Mr H having Covid-19 in July

2021. AXA said that as Mr and Mrs H didn't live at the insured premises, their claim beyond the isolation period was not covered.

Mr and Mrs H say that the policy provides for an outbreak in a 25 mile radius of the premises and as they lived on the same street, this was within 25 miles of S and so the claim for the full period claimed should be covered.

However, AXA had also raised queries about why S could not operate at all, for several months, if it was managed for them by their son and they lived elsewhere. AXA accepted the claim in principle for the isolation period but did not consider there was enough evidence that the fact they tested positive for Covid-19 in mid-July 2021 was the sole reason S was shut from July to October 2021.

Mr and Mrs H said they suffered long term illness and so could not work for this period. Even if it were accepted that the business was interrupted by them not being able to work (putting aside for the moment the questions about how S operated) I've seen no medical evidence or other independent evidence to support that they were unable to work. In addition, the policy requires the business interruption to be the result of an outbreak of Covid-19 in the vicinity or occurrence of Covid-19 in the premises. The recommended isolation period for those with Covid-19 was set as it was considered that people would no longer be contagious after that period. If they are no longer contagious, I think it might be reasonable to consider that the outbreak or occurrence had passed and so there would be no cover for the period after this. I am therefore not persuaded that there is enough evidence that AXA should meet the claim for loss of income from July to October 2021.

However, I am not making a formal finding on this point, as I do not think it is necessary to do so in order to fairly determine this complaint. I say this because, AXA said it was not prepared to make any further payments to Mr and Mrs H in any case until it had been able to complete its enquiries, including an interview with them. I will address this below.

Statement of fact

I have considered the documents from the time the policy was set up. The statement of fact said:

"This Statement of Facts will form the basis of any contract entered into with the Insurer in conjunction with the policy wording and schedule and will be relied upon in the event of any claim under the policy"

The quotation and any subsequently offered Insurance are strictly subject to agreement by the proposer with ALL of the following statements

The business:

• is open for continuous trading at the date of inception or subsequent renewal of the policy and throughout the year from the premises insured which will be attended every weekday other than half-day closing or public holidays or for a period not exceeding 21 consecutive days for the purpose of vacations of yourself...

All buildings or any part of the premises in which you and the business are situated in or operate from: ...

Are normally occupied overnight either by you or your family or the designated manager of the business or by an authorised responsible employee.

This quotation is valid for 30 days & is SUBJECT TO all items shown on the Statement of Facts being agreed, other than where accepted by Underwriters, in writing”.

The statement of fact also has additional conditions and exclusions relevant to this claim as follows:

“Guest house condition...

The premises are normally occupied by you or your family the designated manager of the business or by an authorized responsible employee...

If the Policyholder cannot comply with any of the above then the coverage will be prejudiced in the event of a loss.”

It also says:

“EXCLUSIONS

Businesses that operate on a seasonal basis.”

Mr and Mrs H are adamant they provided correct information when taking out the policy. They also say that the reference to the exclusion of businesses that operate seasonally means that such businesses are excluded from the statement that the insured business premises needs to be open all year round.

I do not agree with this interpretation. It seems reasonably clear to me that the insurance policy was offered on the understanding that the business would be open all year round and occupied by someone delegated by Mr and Mrs H; and that the policy excluded cover for businesses that operate seasonally.

AXA said that if it had known at the outset that S operated seasonally, it would not have offered the policy on the same terms. However, as it was satisfied that Mr and Mrs H's son lived at and managed the premises, as set out in their letter of April 2021, it agreed to proceed with the claim. AXA's action at this time seems reasonable to me.

When Mr and Mrs H made the additional claim for the period they were unwell, AXA queried why S had to close, given they had told it their son managed the business for them.

Mr and Mrs H say that AXA is simply finding excuses to reduce the settlement they are entitled to and it is wrong to request an interview and more information from them. I do not agree.

In April 2021, Mr and Mrs H had said: *“my son lives at ...[S], he manages this for us will report any problems straightaway to us”.*

There was no mention that in fact they had employed a different manager for S or that Mr and Mrs H managed the business day-to-day but their son lived there. The email was not unreasonably interpreted by AXA as meaning that Mr and Mrs H's son ran the business for them. So when they later said he did not run the business but merely occupied the property (albeit he could report any property issues to them) this raised queries which I think were justified.

During the phone call in February 2022, AXA discussed this with Mr and Mrs H. In response they said that their son lives at the property and it was his girlfriend that had been managing it but she had since got a different job.

AXA said it needs to understand what the relationship and role was of the son and girlfriend as a decision about the validity of the policy was made in reliance on Mr and Mrs H's earlier statement that their son lived at and managed the hotel. AXA asked that Mr and Mrs H to take part in an interview, so they could discuss the arrangements further and suggested it would want to see pay records and so on to substantiate what they said. AXA also said it would want to know how Mr and Mrs H's other hotel that they lived in, was affected if they were unable to work at S, and the impact on the income from S. AXA also queried why there was virtually no trading revenue for S from March 2020 to October 2021, when it was able to open.

While the occupant of the business does not need to manage it (it needs to be a family member or designated responsible staff member) given the query this raises, I think it was reasonable for AXA to ask for more information. The only evidence of the son's occupation of the property as far as I am aware, is Mr and Mrs H's statement and no corroborating evidence as far as I am aware has been provided. And AXA is entitled to satisfy itself that the business operated all year round.

I do not think AXA's queries were unreasonable, given that AXA's understanding when the policy was taken out was that Mr and Mrs H lived in and ran S and that prior to April 2021 didn't apparently know they lived and ran a different property, albeit in the same road.

Mr and Mrs H objected to any further investigation. AXA therefore proposed that it would make one further interim payment but would make no more payments until it was satisfied that it would have provided the insurance and if so on what terms.

I do not think this offer was unreasonable in the circumstances.

Mr and Mrs H say they were effectively being blackmailed and this is a criminal offence. I have no criminal jurisdiction and we do not make findings on criminal law. However, it seems to me this was an offer and part of a negotiation. Mr and Mrs H may not have liked the way it was put to them and felt it was unreasonable but I do not think it was unreasonable or unfair to put this to them.

I have listened to the call and agree that AXA's position could have been communicated better but do not think the actual proposal itself was unfair or unreasonable, given the queries that have arisen and that AXA is asking for information that would be easily provided by Mr and Mrs H. While I can understand why Mr and Mrs H may feel this is unfair, I think it is information AXA is entitled to ask for. AXA has offered £500 compensation for the way the call was handled and I think this is reasonable. If Mr and Mrs H are unwilling to provide it and cooperate with further investigation, then I do not consider I can reasonably require AXA to make any further payment to them.

Deduction of government grants and other issues

Mr and Mrs H have also complained of delay, and deductions from interim payments made so far. Mr and Mrs H say it took from April 2020 to July 2021 to get full indemnity for the first year's loss (the period March 2020 to March 2021).

They have also said that some Government grants were deducted incorrectly. AXA's notes appear to show that the Government grants were not deducted from any settlement.

However, given the queries about the cover in place, I do not consider I can fairly reach a finding about delays or whether any deductions have been made that shouldn't have been. I say this because the further enquiries AXA wants to make could result in it being entitled to adjust the settlement it has already made. I do not therefore think it is fair to make any compensatory award for delay in settlements, or deductions from settlements (even if I think such an award were warranted, which I have not determined) that might not have been correctly payable under the policy in the first place.

The rules under which this service operates are based on equitable principles. One of the fundamental principles of equity is that he who seeks relief from equity must also comply with any equitable requirements on their part. So in this case, if Mr and Mrs H want compensation for something they think AXA has done wrong, they must recognise the right of AXA to satisfy itself that the policy cover is valid.

Having considered everything, and based on the information currently available, I do not think I can reasonably ask AXA to make any further payment to Mr and Mrs H.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 28 August 2023.

Harriet McCarthy
Ombudsman