

The complaint

A, a charity, complain that AXA Insurance UK Plc unfairly declined a claim under their management liability policy.

Where I refer to AXA, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I only intend to provide a summary of the key events here.

A were the subject of an investigation by the Charity Commission in 2020, which concluded with no further action being taken against them. They made a claim under their policy and cover was provided for their costs.

Following this, A made an application to a lottery fund for a grant. This was declined because the funders had concerns over A's previous grant management.

A asked AXA if it would cover the costs of dealing with the relationship breakdown, but AXA declined on the basis that there was no insured event under the policy. A disagree – they say it's clear the funders had carried out an investigation into the charity so there should be cover under the same policy section as their previous claim.

A raised a complaint. AXA maintained its decision but awarded £25 compensation for the delays in providing a final response to the complaint. A remained dissatisfied, so they brought the following complaint points to our service:

- Claims decision – A believe they have a legitimate claim under their policy.
- Customer service – A were unhappy with the legal practice appointed by AXA who appeared to speak on AXA's behalf and act in its best interests.
- Complaint handling – AXA didn't send A its complaints policy or speak to them in order to understand their dissatisfaction. A says they've had a lack of voice in the process.
- Compensation – A are more interested in why there were delays in issuing the final response letter rather than receiving £25 compensation.

Our Investigator didn't uphold the complaint as he didn't think AXA had done anything wrong or unfair. As A didn't agree, the complaint has been passed to me to decide.

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'd like to reassure A that whilst I'm aware I may have condensed some of the complaint points in far less detail and in my own words, I've read and considered everything they've told us. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail they would like, in order to reach what I think is a fair outcome. This isn't meant as a discourtesy, but it simply reflects the informal nature of our service.

The terms and conditions of A's policy say:

"Investigation costs cover

We will pay for your investigation costs caused by an investigation against you which you first notified as being required during the period of insurance."

The policy provides the following definitions:

"Investigation

Any official hearing, investigation, examination, official enquiry or enquiry into your or an insured person's business carried out by any government department, regulator or third party with legal rights to do so.

Investigation does not include any routine regulatory supervision, enquiry or compliance review, any internal investigation or any investigation into the business activities of your industry which is not related only to your or any insured person's conduct."

"Investigation costs

Legal and other professional costs and expenses agreed with us in writing, incurred directly by you or an insured person in preparing for and attending any investigation.

This does not include salary or any other additional costs of yours."

I understand that A's grant application was declined over concerns about their management of previous grants. A says this implies an investigation has been carried out into their activities as a charity. I can see in an email that the funders say:

"During the assessment of grant applications we carry out a review of the application history of an organisation, its contacts and management committees. We have identified concerns relating to these checks which means that we are unable to progress your application further. Unfortunately, we are not able to provide further information concerning these matters as this would potentially reveal personal data and potentially be in breach of data protection laws. We appreciate that this decision may be disappointing and hope you are able to make alternative arrangements to deliver your project"

This email implies that the review carried out was a standard part of the grant application process, rather than an investigation as defined by the policy terms. But even if I was persuaded this was an investigation, I'm not satisfied that there have been any investigation costs. I say this because A haven't been asked to participate in the process in any way, say for example by attending a hearing or submitting information required by the funders when doing their review.

I appreciate A want to engage with the funders, through legal representation, to resolve the issues. But the policy is clear about what type of costs it will cover relating to an investigation and this engagement doesn't fall within the cover available.

As such, I'm satisfied AXA's decision to decline the claim was in line with the policy terms and it wasn't unfair.

A are unhappy with the legal practice appointed by AXA to run the claim. To clarify, our service isn't generally able to look into the actions of a firm of solicitors as they have their own regulations and governing body. But I can consider any actions the legal practice took under powers delegated to it by AXA, since AXA remains responsible for something done on its behalf.

I understand much of A's complaint is that they appeared to speak on AXA's behalf and were serving AXA's best interests in declining cover.

AXA instructed the legal practice to handle the claim which included delegated authority to make decisions on funding, which isn't unusual and I don't consider it to be unfair. AXA has confirmed it agrees with the legal practice's decision and, as I've explained above, so do I.

And finally, A is unhappy with AXA's complaint handling. They say they weren't provided with AXA's complaint policy but I can see that details of how to make a complaint and what to expect are set out in the policy's terms and conditions, so I'm not persuaded A has been impacted or prevented from making a complaint.

A say they had a lack of voice in the complaint process, but I can see that they emailed AXA with the details of their complaint and if there was anything else they wanted to put forward they were able to send further emails.

I understand A want to know why there were delays in issuing a response to their complaint. The complaint handling rules set by the financial regulator allow AXA up to eight weeks to issue a final response, before our service is able to become involved. I can see that it took AXA slightly over eight weeks to issue its response, but I can't see that this small delay caused any detrimental impact to A and I don't think the reasons for it make any difference to A's position. Should A wish to accept AXA's offer of £25, they should contact AXA directly.

Overall, I'm satisfied AXA handled the complaint fairly and I'm not asking it to do anything more in this regard.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 11 August 2023.

Sheryl Sibley
Ombudsman