

The complaint

Mr S complains that AXA Insurance UK Plc unfairly avoided his commercial property insurance policy and didn't deal with a claim he made following a fire.

Reference to AXA includes its agents

What happened

Mr S held a commercial property insurance policy with AXA. Following a fire at the property, he made a claim for the damage.

When investigating the claim, AXA thought Mr S had failed to make a fair presentation of the risk when taking the policy out. It said he'd not made a fair presentation about the number of bedrooms in the property, or what the property was being used for. It said these were qualifying breaches of the Insurance Act 2015. It said these breaches entitled it to avoid Mr S's policy – or put a different way, act like it didn't exist. And because it had avoided his policy, there was no policy Mr S could claim from, it didn't deal with his claim.

Mr S didn't agree, he maintained he'd given a fair presentation and thought AXA should deal with his claim. AXA didn't change its stance, so he brought his complaint to us.

One of our Investigators didn't recommend it be upheld. She thought Mr S hadn't made a fair presentation of the number of bedrooms in the property, and she was satisfied AXA's actions were in line with the Insurance Act 2015.

Mr S didn't agree and asked for an ombudsman's 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.

Having done so, I'm not upholding it. I'll explain why.

- I've considered all the evidence provided, and I'm satisfied Mr S saying the property had five bedrooms isn't a fair presentation of the risk. I'm satisfied he was asked a clear question about the number of bedrooms the property had. A fair presentation of the risk would have been to declare six bedrooms. The plan from AXA's loss assessor, and Mr S's own testimony in a signed statement show the number of bedrooms in the property is six. I find that the most persuasive evidence.
- AXA has shown underwriting evidence confirming had it known the property had six bedrooms, it wouldn't have insured Mr S. I appreciate Mr S has said other insurers would have, that may be the case, but AXA has shown it wouldn't have been one of them.
- Considering the above two points, I'm satisfied Mr S's failure to make a fair

presentation of the risk constitutes a qualifying breach of the Insurance Act 2015.

- AXA has treated this breach as neither deliberate nor reckless, and because that's the most favourable outcome for Mr S, I'm not going to interfere with that decision.
- The remedy for a neither deliberate nor reckless breach of the Insurance Act 2015, when the insurer wouldn't have offered cover if a fair presentation had been made allows AXA to avoid the policy and not deal with any claims. But it must return any premium paid for the avoided policy. That's what's happened here, so I'm satisfied AXA's actions are fair and in line with the Act.
- Our Investigator didn't touch on the allegation AXA made in relation to the property being used as a house of multiple occupancy (HMO). They did so because they were satisfied AXA's decision relating to the presentation of the bedrooms was enough to justify AXA's actions. And I'm satisfied that's reasonable.
- But, I'm also satisfied AXA's allegation is fair. Again, Mr S was asked a clear question about the use of the house and stated it wasn't used as an HMO. The evidence I've seen, on balance, indicates it was more likely than not being used as an HMO.
- AXA has also shown it wouldn't have offered cover if Mr S had said the policy was being used as an HMO. So, like the presentation of the bedrooms, I'm satisfied Mr S's presentation of the use of the property wasn't a fair one. And that failure constitutes a qualifying breach of the Act, allowing AXA to take the action it has as set out above.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 January 2024.

Joe Thornley
Ombudsman