

The complaint

Mr B complains that AXA Insurance UK Plc avoided his home insurance policy and declined his claim.

What happened

Mr B was away on holiday when he received a call to say there was an escape of water at his house. Mr B returned home and discovered it was a severe flood and the house was beginning to move. He therefore contacted AXA to claim on his policy for the escape of water and possible subsidence.

AXA inspected the property and said it didn't think it was subsidence due to the damage sustained. Not long after AXA inspected the house, the side of the house collapsed causing extensive damage.

When AXA reviewed the claim, it discovered Mr B had applied for planning permission to build other houses on his land. During this process the local authority had required Mr B to have a report on his house. The report had been completed a few years before and highlighted that Mr B's house had moved and needed work to bring the house up to a stable and safe condition. As none of the work recommended had been completed AXA didn't think Mr B had taken reasonable care not to make a misrepresentation when taking out the policy, as he said it hadn't had any structural movement and was in a good state of repair. Because of this it avoided his policy and declined his claim.

Mr B didn't think this was fair and complained. He said the property had stood for over 150 years and while he agreed it needed work, he didn't have any concern the property wasn't safe to live in. AXA reviewed the complaint and maintained its position. As Mr B didn't agree he referred his complaint here.

Our investigator reviewed the complaint and found that if AXA had been made aware of the condition of Mr B's house, it wouldn't have offered cover. She therefore didn't think AXA had done anything wrong by avoiding the policy. Mr B didn't agree. He said he was unable to now live in the property and it had only collapsed due to the escape of water. He also said the claim not being paid had a significant impact on him.

As Mr B didn't agree the complaint has come 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.

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 thinks Mr B failed to take reasonable care not to make a misrepresentation when he took out the policy online in 2020 and when it renewed each year until the claim in 2022.

I've looked at the online sales channel and the renewal documents Mr B was sent and asked to check each year. Within these Mr B is asked "Is the property in a good state of repair and will it be kept so during the policy term?" to which Mr B's answer is "Yes". He was also asked whether the property had in the last ten years "Suffered any structural movement of settlement, subsidence, landslip or heave?" to which Mr B replied "No".

AXA has provided the report done on Mr B's house in 2017 where it says:

"There is a vertical fracture apparent where the partition wall of the lounge meets the rear wall. A corresponding crack in the ceiling line suggests outward bowing of the first-floor wall. It appears that the first floor needs to be tied to the rear wall using BAT M305 straps, or similar method of tying."

I've also noted at the end of the report it says:

"I have estimated a total net base cost of repairs of £167,000 to bring the buildings to a stable and safe condition and to extend the functional life of the buildings by undertaking fundamental repairs to the building fabric."

When considering the contents of the report, I'm satisfied AXA has acted fairly and reasonably by saying Mr B failed to take reasonable care not to make a misrepresentation when answering those questions. I've therefore looked at what AXA would have done if Mr B had answered those questions correctly.

AXA has provided evidence in the form of its underwriting criteria to show that if Mr B had answered those questions correctly it wouldn't have offered cover. This means I'm satisfied Mr B's misrepresentation was a qualifying one.

AXA has said Mr B's misrepresentation was careless and refunded his premium. This is in line with the remedies available under CIDRA for a careless misrepresentation.

I appreciate the significant impact this claim has had on Mr B, and while I understand the difficult situation, he is now in. I'm not persuaded AXA has acted unfairly by avoiding his policy for the reasons given. I'm therefore not going to tell AXA to do anything else.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 November 2023.

Alex Newman
Ombudsman