

## The complaint

Mr S has complained that AXA Insurance UK plc ('AXA') wrongly settled a third-party claim under his motor insurance policy which deprived him of his no claims discount ('NCD') and referred outstanding premiums to a debt collection agency.

## What happened

Mr S took out an insurance policy with AXA in May 2019. Mr S said that he sold his car in December 2019. Two days later, the car was involved in an accident and a third party made a claim on Mr S's policy. Mr S hadn't immediately cancelled his policy with AXA, however did so within a month.

Mr S sent documents to AXA regarding the sale of his car. AXA didn't consider this documentary evidence to be sufficient to prove the sale and accepted the claim against his policy. This has affected Mr S's NCD and he received correspondence from a debt collection agency for non-payment of premiums for the remainder of the policy year of £446.17.

Mr S complained to AXA, however it didn't uphold his complaint, so Mr S complained to this service. It was our investigator's view that AXA hadn't acted unfairly or unreasonably in its handling of Mr S's complaint. He thought that AXA had the right to investigate the facts and to decide whether to settle a claim. He said that AXA's responsibility was to cover the claim given that Mr S's insurance was still running. Finally, he said that when a claim has been made and paid out, then the whole yearly premium was owed.

Mr S remained unhappy with this response to his complaint and the matter was referred to me to make a decision in my role as Ombudsman.

In January 2022, I issued a provisional decision for this complaint and explained why I intended to uphold Mr S's complaint as follows; -

*'I've come to the provisional conclusion that AXA has not treated Mr S in a fair and reasonable way in all respects and I'll explain why.'*

*The policy terms and conditions here are based on standard ones which usually allow the insurer to decide how to settle a claim if a third-party makes a claim against the policy of one of its policyholders. In this case, the relevant provision states; 'We will... have the right to take over and deal with the defence or settlement of any claim in the name of the person making a claim under this policy'. Here, the claim was made by a third party and not by Mr S under the policy. I have however, for the purposes of this provisional decision, assumed that the clause was intended to apply in the circumstances which have arisen.*

*AXA considered that it had insufficient evidence of the sale of Mr S's vehicle in December 2019 as it was a cash sale, no bank statement evidence was available, the note of sale was hand-written, as were the details of the new owner in the transfer of registered keeper form (the 'V5'). It had also requested, but not received, further information from the third-party insurers, to include details of any witness, CCTV footage, dashcam evidence and the relevant police report.*

*Mr S stated that he provided all the evidence he had, which included a DVLA acknowledgment, printed by the DVLA in January 2020. This showed that he was no longer the registered owner.*

*I have no reason to doubt that the hand-written note of sale and V5 form were completed on the date of sale. The sale took place a week before Christmas and the DVLA acknowledgement was printed just over a week after the New Year. I consider that these timescales are reasonable, bearing in mind the time of year. In the circumstances, I consider that it's more likely than not that the sale took place when Mr S said that it happened.*

*AXA has referred to the fact that Mr S didn't cancel his insurance immediately following the sale of his car. Mr S explained that this was because he was going to wait until he replaced his vehicle to do so. It was Mr S's duty to inform AXA as soon as reasonably possible of any change of circumstances, such as sale of a car and it's unfortunate that he didn't do so. I note however that the accident took place very shortly after Mr S said he'd sold the car. In the circumstances, although Mr S didn't comply with his duty, it's likely that reasonably prompt compliance would not have changed the way in which AXA handled the matter.*

*Whilst I note that AXA considered it had insufficient evidence to challenge a claim by the third-party insurers, I don't consider that it fully and properly explored the circumstances. It hadn't received or chased the third-party insurers for full details of the incident before accepting liability.*

*In all the circumstances, I conclude on a provisional basis that Mr S hasn't been treated fairly and reasonably by AXA in recording an incident against his policy. This has resulted in his NCD being affected by the incident (even though Mr S's policy schedule shows that his 10 years' NCD was protected). In addition, this resulted in premiums being levied for the period following cancellation of the policy and referral to a debt collection agency.*

*Finally, Mr S states that AXA's handling of this matter has caused him stress and upset. I note that AXA provided £50 in compensation for a delay in responding to his complaint. In the light of my provisional findings however, I'm minded to recommend that further modest compensation is paid to Mr S by AXA, due to the stress and upset caused by the consequences of AXA's actions for an extended period.'*

I said that I was minded to issue a final decision to require AXA to; -

- 'Record on its systems the fact that a claim was incorrectly recorded against Mr S's policy.

- Issue a letter to Mr S which he may share with any current or future insurers and any debt recovery agents, to confirm that the incident was recorded against his policy in error.

- refund any additional premiums Mr S has paid to his insurers as a result of this claim, (within 28 days of Mr S's providing proof of such additional payments), and

- Pay Mr S an additional sum of compensation in the sum of £100 for the distress and upset caused by AXA's handling of this claim'.

In my provisional decision, I also asked both AXA and Mr S if they had any further comments or evidence they would like me to consider before I made a final 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.

Neither Mr S nor AXA have any further information or evidence to add following receipt of the provisional decision, and both parties accept the recommendations.

In all the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter.

## **My final decision**

I uphold Mr S's complaint for the reasons given above and require AXA Insurance UK plc to:

- Record on its systems the fact that a claim was incorrectly recorded against Mr S's policy.
- Issue a letter to Mr S which he may share with any current or future insurers and any debt recovery agents, to confirm that the incident was recorded against his policy in error.
- refund any additional premiums Mr S has paid to his insurers as a result of this claim, (within 28 days of Mr S's providing proof of such additional payments), and
- Pay Mr S an additional sum of compensation in the sum of £100 for the distress and upset caused by AXA's handling of this claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 March 2022.

Claire Jones  
**Ombudsman**