

The complaint

Mr P complains about AXA Insurance UK Plc's ("AXA") delay in obtaining a police report.

What happened

Mr P was involved in a car accident in June 2018 which he reported to AXA. At that point Mr P didn't have details of the third party involved in the accident so AXA requested the police report to get these details. Mr P chased AXA on a number of occasions but was told they still hadn't received the police report. By early 2021, AXA still hadn't received the police report so Mr P complained about the delay. Mr P explained he wanted to pursue a personal injury claim but was prevented from doing so until AXA obtained the police report. Mr P also complained that he had been told by AXA he would need to instruct his own solicitor to pursue a claim. Mr P said this was unreasonable as he can't go to a solicitor without the third party details and he also feels this is unfair as he has legal cover so AXA should arrange a solicitor to deal with any claim.

AXA responded and said they understand Mr P is unhappy at being told to speak with his own solicitor about pursuing a personal injury claim. AXA say, at this point, they didn't have the third party's vehicle registration on file so they weren't able to instruct a solicitor. AXA said, they did later get this information but this wasn't a requirement under Mr P's policy conditions as they are only required to provide legal cover where they have a reasonable prospect of success. They acknowledged Mr P was unhappy with the delay in them obtaining the police report to gather information about the third party and this meant the limitation period to make a claim against the third party had now run out. AXA accepted they had caused some delay but the bulk of the delay was caused by the police as they didn't respond to AXA's correspondence in a timely manner and didn't initially accept the reference number they provided Mr P for the incident. AXA said, in addition to this, the police notified them there was a new process in place for insurers requesting a police report but the process wasn't made clear to AXA. AXA accepted they weren't as proactive in chasing the police for a response as they could've been and offered Mr P £400 compensation.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr P and AXA on 2 February 2022. In my provisional decision I said as follows:

"The delays in this matter have left Mr P in a position where the limitation period to claim for personal injury has expired – so, as things stand, Mr P can't now claim against the third party for injuries he says he sustained. AXA accept they weren't as proactive as they could've been when chasing the police for the report. They agree they were responsible for some delays which includes raising payment for the report. AXA say their delay was small compared to the delays caused by the police. So, I've looked into this further to see how much of the delay is attributable to AXA.

Mr P reported the accident to AXA on 21 June 2018 and it's noted at this point that he doesn't have any details for the third-party. AXA contacted the police on 2 July to request the report and then sent a letter by post on 11 September to request a copy of the police report. The letter has been stamped to show it was received by the police on 19 September. The police respond on 26 September to say it can take up

to 12 weeks for information to be made available for release. They explain there's a new process for insurers requesting information and ask AXA to complete a disclosure form which can be found by following a link they attach.

AXA email the police on 7 January 2019 and ask for a crime reference number for the incident. AXA email again on 11 February to say they've been asked for a crime reference number but they only have an incident number. They ask the police how they would go about getting a crime reference number in order to request the police report. The police respond on 28 February asking AXA to complete a disclosure form. The police email on 30 April and apologise for the delay in responding which they say is due to a backlog of requests. The police say they can't find a completed disclosure form or payment of a search fee. They say they require this first before they're able to confirm the availability of the information AXA have requested. AXA send a disclosure form to the police on 22 August. The police email AXA on 19 September attaching details of their search fee. The police say a payment of £35.20 is required before any further action is taken. They also say a copy of the full report will incur a further charge.

I can see AXA have provided a screenshot from their system showing a payment of £35.20 was made to the police for the search fee on 3 March 2020 and they then chased the police for the report on 23 July. The police respond on the same day and say their records show they're awaiting payment of the search fee. They ask for further information to help them locate the payment, this includes their reference. AXA respond on 28 August with the further information requested. The police respond on 2 September and confirm receipt of the search fee and also confirm a full police report is available at a cost of £100.70. The police provide details of how the payment should be made. AXA chase for an update on 21 September and the police respond the same day to say any payments for September 2020 requests are being processed and this can take 4-6 weeks for these to be cleared. The police say they will respond as soon as possible. AXA chase on 13 and 23 October and the police respond to confirm they have received the search fee and they're now awaiting a response to the request. AXA chase again on 4 November. The police respond on 5 November and confirm a police report is available but they require £100.70 for this to be released. They provide details of how to make payment.

AXA chase on 19 November and the police respond the same day to confirm receipt of the search fee payment and refer to their email of 5 November requesting a payment of £100.70 for the police report. The police explain the £35.20 payment was their search fee to confirm they hold the requested information but there's a separate fee of £100.70 to release the report.

AXA responded on 2 February 2021 to confirm the payment hasn't yet been raised and ask whether the same account details should be used for this payment also. The police respond the following day to confirm the account details and AXA then pay the fee on 8 February and confirm this to the police on 15 March. AXA then chase on 28 May to say they have made payment. AXA then chase on 1 June and again on 2 June providing proof of payment. The police respond on 3 June to confirm receipt of the payment and to say they have asked their internal team to send the report that day. AXA responded the following day asking if the report can be sent by email or if they could have details of the third party. The police respond on 7 June to say they don't send disclosure information by email. The report is then received by AXA on 14 June.

The information shows the police provided AXA with details on how to submit a request for information. The police provide clarity in April 2019 but the disclosure

form isn't sent by AXA until around four months later. The police then provide details of the search fee which needs to be paid but this isn't paid by AXA until over five months later. And, following payment, AXA don't then chase until over four months later. There's then an issue with the police being unable to locate the payment but AXA don't respond until a month later with the further information requested by the police. At the start of September 2020 the police confirm a full report is available together with payment details. It's not clear why AXA then chase the police for the report as the next steps, as set out by the police, are for AXA to pay the fee for the full report. Another email is sent at the start of November with details of the fee to be paid. This fee isn't then paid by AXA until three months later – and five months after first being notified of the fee to be paid for the report. AXA then chase about a month later and again 10 weeks later. By this point, the limitation period for Mr P to claim is only a few days away.

Taking this all into account, I think there have been significant delays by AXA and I don't agree with AXA's comment that these delays are small in comparison to the delay caused by the police. The delays by AXA I have highlighted above amount to around 21 months. The information shows AXA were aware as far back as August 2018 that Mr P was intending to pursue a personal injury claim and required the third-party details to take this forward. So, there should've been much more urgency on the part of AXA to get the report. The information shows, when the fee is paid for the police report, it's received by AXA four months later. So, I believe, it's more likely than not, had the fee for the report been paid when AXA first received information about the fee in September 2020, the report would've been received around January 2021 – leaving sufficient time for a solicitor to consider the merits of a potential personal injury claim on behalf of Mr P.

I can see, as the limitation period was approaching, AXA contact their solicitors to see what steps can be taken in relation to Mr P's personal injury claim. AXA discuss whether protective proceedings can be issued to prevent Mr P from losing his opportunity to claim but the solicitors advise they can't issue protective proceedings without details of the third party. The solicitors explain they require the third party's details by 11 June if they are to deal with the personal injury claim. They then email AXA again on 14 June to say they have closed their file as the third-party details haven't been received.

I think it's important to add, it's not my role to determine whether any personal injury claim would've been successful and, if so, what damages Mr P might've received.

It's clear though that, as things stand, Mr P has lost his opportunity to claim – and I think AXA are largely responsible for this. While I accept the delay isn't down to them alone, I think there is significant blame attributable to them as Mr P is their customer so they have a duty to act fairly and promptly. And they're fully aware why he needs the third-party details. From reviewing all the information, I can't say they've acted promptly in relation to obtaining the police report.

I think it's right that AXA should compensate Mr P for the loss of opportunity of pursuing a claim and the significant upset and frustration caused by their delays. The information from AXA shows Mr P was regularly contacting AXA for updates and being told AXA are still waiting for the police report. This was even on occasions when there was action for AXA to take. For example, Mr P calls AXA in early March 2020 and is told AXA are awaiting the police report, but at that point in time AXA hadn't yet paid the search fee. It's clear Mr P was becoming increasingly frustrated and this then led to his complaint. Mr P has described the injuries he sustained as a result of the accident and he says he's still affected by those injuries now. It's

understandable that Mr P is very upset and frustrated at the fact that he may not ever know whether there was a personal injury claim to pursue and whether he could've recovered damages for his injuries. As mentioned above, I can't say whether he would've been successful in a claim, but it doesn't change the fact that he has been deeply impacted by AXA's delays.

Taking this all into account I think compensation of £600 would be fair and reasonable in the circumstances and reflects the significant upset and frustration caused to Mr P as a result of the delay and the loss of opportunity to have a solicitor consider whether there were merits in pursuing a personal injury claim. I can see AXA have already paid £400 compensation to Mr P, so they would need to pay an additional £200 to bring the total to £600.

I note Mr P is unhappy AXA told him he could get his own solicitor to pursue a claim. I understand why this upset Mr P as he paid to have legal cover option included in his policy but I can't say AXA have made an error here. The terms and conditions say, under the heading 'Prospects of success', "We will only provide cover where your claim or any appeal you are pursuing or defending is more likely than not to be successful." The information shows AXA did speak with their solicitors but they advised they couldn't take any claim forward without the third-party details. So, when Mr P was told he could arrange his own solicitor, it was because AXA didn't feel there were reasonable prospects of success."

So, subject to any further comments from Mr P or AXA, my provisional decision was that I was minded to uphold this complaint and require AXA to pay compensation of £600 to Mr P.

Following my provisional decision, AXA responded to confirm they agree with the provisional decision. Mr P has responded to say the case now isn't based on AXA's delay but on their negligence to supply the product he purchased within his legal cover. Mr P says he has been on the police's website and can't see the process of obtaining a police report is difficult to follow. He says AXA are one of the largest insurers so they should've been familiar with the process. Mr P says the circumstances of the accident suggest he wasn't at fault so, had the third-party been identified sooner, his claim would have had good prospects of success. Mr P says it's now more than three years since the accident and he still suffers symptoms and feels AXA should pay for a medical assessment and then action any recommendations made. Mr P feels the £600 being recommended doesn't cover his injuries, medical appointments and other expenses. Mr P has also provided evidence of previous and future hospital appointments for the injuries he says he sustained from the accident.

Mr P has raised some questions for AXA about what legal advice they received. And, he questions why, given the time taken to get information, AXA didn't make a claim to a body that handles claims where the third-party can't be identified.

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've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

I am very sorry to hear about the impact the accident has had, and continues to have, on Mr P. An accident is a distressing event so we expect insurers to deal with things fairly and promptly to ensure their customers aren't caused further worry and upset. That hasn't

happened here as AXA have clearly caused significant delay in obtaining the police report. I agree with Mr P's point that the process for obtaining a police report was straightforward and, from what I've seen, the delays were caused primarily by AXA's lack of action rather than it being a complicated process.

I acknowledge Mr P's feelings about the prospects of success of a claim against the third-party but, as I've mentioned, I can't assess the prospects of success or even look into the merits of pursuing a claim. I acknowledge the loss of opportunity for Mr P – and that's what the compensation of £600 takes into account. Mr P has provided evidence of hospital appointments and I don't doubt he's still not fully recovered from the accident. But, these injuries relate to the accident and not the service provided by AXA. So, given that I can't say what the outcome of any claim would've been, I can't say AXA should be responsible for any expenses incurred for medical treatment.

I understand Mr P's point about why a claim wasn't submitted to the body which handles claims against untraced third parties but again I can't say what the outcome of this would've been. It might well have been the case that body could've decided that this isn't a claim which meets their criteria as there is a suggestion the third party has been identified in a police report.

Mr P has raised some questions for AXA about what legal advice they received. Looking at the information provided by AXA, it doesn't look like they received any advice on the merits of a claim and the advice they received was limited to the solicitor explaining they need the third party's details and also about whether protective proceedings could be issued. Mr P also asks about the impact on his no claims bonus, but he'll need to refer this to AXA.

Putting things right

I've taken the view that AXA have caused significant delays in obtaining the police report. So, AXA should pay Mr P compensation of £600 for the significant upset, frustration and loss of opportunity caused to Mr P. AXA say they have already paid £400 compensation to Mr P – if that is the case then they would need to pay an additional £200 to bring the total to £600.

My final decision

My final decision is that I uphold the complaint. AXA Insurance UK Plc must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 March 2022.

Paviter Dhaddy
Ombudsman