

The complaint

Mr R complains about AXA Insurance UK Plc's handling of a claim under his motor insurance policy. He says it shouldn't have settled a claim made by another party after his vehicle was involved in an accident.

References to AXA include its agents.

What happened

In late 2019, AXA was informed that Mr R's car was involved in an accident, causing damage to another vehicle. The driver of the other vehicle made a claim for the costs of repair and a replacement vehicle. They also made a claim for personal injury.

Mr R says AXA accepted the other driver's claim without asking him about the incident. He says he only became aware of the claim after receiving his motor insurance quote which showed an accident had been added to his policy. He complained that AXA had paid out on a fraudulent claim.

AXA said it had sent Mr R an accident report form to fill out which detailed his account of the incident. It said it had settled the other party's costs without admitting liability. It did this to avoid litigation and it meant if it found the other party was at fault it would be able to recover the costs from them. Having reviewed the documents sent from the other party, AXA didn't see cause for concern with regards to the vehicle damage. It said it had repudiated the personal injury claim as it didn't believe it to be legitimate.

AXA said it understood Mr R's car had been pushed into other driver's vehicle by another party behind it. It hadn't been able to recover AXA's costs from them as it didn't have any details for that vehicle. It had a legal liability to cover the claim for the vehicle in front. AXA had the right to settle the claim as it saw fit. AXA said the claim had been correctly deemed as a fault claim because it wasn't able to recover any of its costs.

AXA said it wasn't able to release the engineer reports Mr R had requested as it would be a breach of GDPR (General Data Protection Regulation).

AXA acknowledged there had been some issues with the customer service it had provided to Mr R. It said it was sending Mr R a cheque for £150 in recognition for the inconvenience this had caused. Mr R says he didn't receive the cheque and AXA has told us that although the payment was raised, it didn't go through.

Our investigator looked into Mr R's concerns and concluded that AXA's decision to settle the claim was fair and reasonable, in line with the terms of the policy. He thought the £150 AXA said it would pay for customer service issues was sufficient to put things right.

Mr R disagreed with our investigator's view and asked for the matter to be referred to an ombudsman. So, his 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.

Having done so, I've reached broadly the same conclusions as our investigator. I'll explain why.

It's not my role, or the role of this service, to decide if the other driver's claim was genuine or to determine the amount AXA should have paid in relation to their claim. What I've needed to decide is whether or not AXA has acted fairly and reasonably and in line with the policy's terms and conditions.

The policy's terms and conditions say that AXA has "*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...*"

Similar provisions are found in most motor insurance policies, so I don't find this unusual. It means AXA is entitled to decide whether to defend a claim or settle it.

While AXA didn't need Mr R's consent to deal with the claim, I'd expect it to let him know about it to allow him to defend his position. I can see AXA sent Mr R a letter in December 2019, which was around two months after the incident. The letter included the date and alleged circumstances of the incident and explained that AXA had a very short timescale to respond to the other side. AXA asked Mr R to call urgently and said if it didn't hear back within seven days, it would accept liability on his behalf and deal with the third party's claim in full.

Mr R says he didn't receive the letter at the time. He's told us he was away for work and has questioned why AXA didn't contact him by telephone or email. According to AXA's records Mr R called a week after the date of the letter and the claim was validated at this point. But Mr R doesn't appear to have any recollection of this phone call and AXA hasn't been able to locate a recording of it.

From what I've seen, I think AXA did attempt to make Mr R aware of the incident before it settled the other driver's claim. It's possible AXA didn't communicate with Mr R as clearly as it should have done. But I don't think better communication with Mr R would have made a difference to AXA's decision to settle the other driver's claim.

Both parties have confirmed that Mr R's car was being driven by his sister, Miss R, who is a named driver on the policy. Mr R and Miss R completed an accident report form (ARF) in June 2020, which confirms the circumstances of the accident. The ARF says Mr R's car was pushed into the other driver's vehicle by a third car who struck it from the rear.

According to the ARF, there was no damage to the car at the front. But it also says that nobody got out of the cars and the first and third cars drove away. I appreciate Miss R might not have observed any damage to the car in front of her at the time. But she doesn't appear to have inspected the car, and in any event, AXA has said that the full extent of damage may not have been known until assessed by a repairer.

I understand Mr R's frustration that he hasn't had sight of an engineer's report showing damage to the other driver's car. But AXA says the amount it paid out on the claim is reasonable and indicative of the damage the incident would have caused. While I appreciate Mr R has concerns that the other driver's claim might be fraudulent, I haven't seen evidence to show this.

AXA has explained to Mr R, that in these circumstances it has a legal liability to cover the claim for the vehicle in front. Without details of the third vehicle (who hit the rear of Mr R's car) AXA isn't able to recover its costs from them.

The terms of the policy allow AXA to make the decision about whether to settle a claim or dispute it. Given the circumstances of the accident, I don't think AXA's decision to settle the claim was unreasonable. As an insurer, AXA is likely to have experience of how the matter would be viewed if it went to court.

It is no doubt frustrating for Mr R for a fault claim to be recorded when he wasn't to blame for the accident. Unfortunately, this has resulted in him needing to pay higher premiums. But I'm satisfied that AXA has recorded the claim correctly because it hasn't been able to recover its costs. So, while I empathise with Mr R, I can't say AXA has acted unfairly.

AXA has acknowledged some issues with the customer service it provided to Mr R. It says it didn't contact him proactively and Mr R found it difficult to contact it. There were long hold times and delays in responding to emails. I think the £150 AXA said it would pay Mr R for the inconvenience he experienced because of this is fair and reasonable. But both parties have confirmed the £150 cheque wasn't sent to him. So, AXA should send Mr R another cheque or payment by a different method.

Putting things right

AXA should pay Mr R £150 for trouble and upset.

My final decision

AXA Insurance UK Plc has already made an offer to pay £150 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that AXA Insurance UK Plc should pay Mr R £150.

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

Anne Muscroft
Ombudsman