

## **The complaint**

Mr H has complained about AXA Insurance UK Plc's handling of a claim on his motor insurance policy.

## **What happened**

Mr H's car hit a pedestrian while he was reversing. The pedestrian made a personal injury claim against Mr H's policy. One of AXA's field service agents interviewed Mr H. During that interview the field service agent recorded that Mr H said he was traveling between business appointments at the time of the incident; although he later said that wasn't the case.

AXA said that as Mr H's policy didn't cover him to use his car for business it wouldn't cover the claim. Eventually the pedestrian's solicitor issued a court claim against Mr H. AXA were joined as defendants in that claim but told Mr H he should seek his own legal representation.

Mr H didn't think AXA had dealt with him fairly and brought his complaint to us. One of our investigators looked into it. He felt it was more likely than not that on the day in question Mr H was using his car for business purposes, as well as some social use, but that still constituted business use, which AXA had said wasn't covered by the policy. Our investigator also noted that, had Mr H included business use when he took the policy out, then his premium would only have increased slightly, from £607.88 to £619.43. In those circumstances our investigator said that the fair thing for AXA to do would be to cover the costs of the claim on a proportionate basis. He added that AXA should pay Mr H £250 to compensate him for his trouble and upset.

Both Mr H and AXA agreed to the investigator's recommendations to settle the claim. But Mr H added that he thought AXA should also cover the legal costs he incurred in defending it. Our investigator looked into the matter further. He agreed with Mr H that AXA should cover his legal costs amounting to £7,430.30. AXA didn't agree that it should cover those costs. Mr H also made some further points about the impact of AXA's handling of the matter on him. The case was passed to me 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 going to uphold it. My award to put things right will be the same as our investigator recommended for largely the same reasons.

Both AXA and Mr H have agreed that a reasonable outcome to the complaint about the claim, as recommended by our investigator, would be for AXA to settle it on a proportionate basis. That means that AXA would need to settle the claim based on the percentage of the premium Mr H actually paid for his cover compared with what it would have cost if he'd included business use from the outset. I understand that percentage to be around 98%. And as both Mr H and AXA agree on that point I don't intend to revisit our investigator's reasons in coming to that recommendation.

What principally remains at issue here is the matter of Mr H's legal expenses. I've seen that in June 2021 AXA advised Mr H that it wasn't able to represent him in the matter and that he should seek his own legal advice. So, that's what Mr H did. And given that the solicitors representing the pedestrian concerned had issued court proceedings directly against Mr H, I think that was reasonable action for him to take, especially when advised to do so by AXA. But, if AXA had agreed to give him cover, even on a proportionate basis at that time, then I don't think Mr H would have needed to instruct his own solicitors. That's because it's likely AXA would have taken over the defence of the claim at that point. And, in those circumstances, Mr H wouldn't have any cause to incur the legal costs that he did. So, I think it's fair in the specific circumstances of this case, that AXA reimburses Mr H the £7,430.30 that he's paid to fund his legal defence.

Mr H also told us that he's found the whole situation incredibly stressful. And he said the matter had caused him to go off sick from work. He's shown us a copy of a medical certificate that says he was signed off work sick because of anxiety, although – unsurprisingly – the certificate doesn't say what was specifically causing that anxiety. However, I don't doubt that the matter was a cause of significant concern for Mr H. But, when considering if compensation is due, and, if so how much, I have to consider all the circumstances of this case in the round. And that includes keeping in mind that it's more likely than not that Mr H was using his car for a purpose that wasn't actually covered by the policy. And had that not happened it's likely that AXA would have covered his claim without issue. In those circumstances it seems likely that the level of anxiety Mr H faced may well have been significantly reduced. So, in the specific circumstances of this case, I can't fairly say that it's AXA's fault alone that Mr H experienced the levels of stress that he did. That said I think AXA could have acted sooner than it did. And in those circumstances I think it's fair that AXA pays Mr H £250 compensation for his trouble and upset.

### **My final decision**

For the reasons set out above I uphold this complaint. I require AXA Insurance UK Plc to:

- Cover Mr H's claim on a proportionate basis, as described above.
- Reimburse him the £7,430.30 he incurred in legal expenses.
- Pay him £250 compensation for his trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 April 2022.

Joe Scott  
**Ombudsman**