

The complaint

Mrs P represents a hire car business that I will refer to as T in my decision.

T complains about AXA Insurance UK Plc's handling of a claim and acceptance of liability under its commercial motor insurance policy.

What happened

T made a claim to AXA in September 2018. This followed an accident involving a collision with another car. T thought the other driver was at fault and supplied photos and an account of the incident to AXA. T says a duplicate claims form had to be submitted because the business lost the first one. And says the communication throughout the claim was poor.

AXA provided a settlement payment to T, minus £350 excess, as the car was considered a total loss. After several months T says the third party produced a witness. T raised concerns with AXA as it believed there was no-one around at the time of the incident. She thought the claim should be pursued in court, but AXA didn't do this.

In October 2019 T received notice that following arbitration the third party had been found to be at fault for the accident. T says it took until October 2020 to have the excess fee returned. In 2021 T found out AXA had accepted liability for the claim and its previous communication had been a mistake. T says this has impacted on the 2021 premium, increasing it by around £1,000. T asks for £2,000 compensation for stress and the financial impact.

AXA says a mistake was made following the arbitration which meant the wrong outcome was relayed to T. It says it should've investigated T's concerns about the witness prior to the arbitration taking place. It says if the witness statement had been discarded it still thinks the outcome would have been a 50/50 split in liability, as it was T's word against the other party.

AXA says T's policy excess is payable, even in the event of a 50/50 split, but it won't pursue this payment in light of its error when confirming the wrong outcome. It also offered £100 for any distress and inconvenience it caused. AXA says had the claim been settled on a 50/50 liability basis T's renewal premium will have been cheaper because of the reduced settlement cost. It says it will refund £220.68 back to T to reflect this.

T didn't think this was fair and referred the complaint to our service. Our investigator didn't uphold T's complaint. She says T's policy allows AXA to decide how best to handle the claim. She thought it had done enough to put things right for T by not claiming back the excess charge, paying £100 compensation, and refunding part of the renewal premium.

T didn't agree this was fair and says the witness wouldn't have attended had AXA taken the matter to court. T says the 2021/2022 premium is the one most affected not the 2020/2021 premium and asked for an ombudsman to review her complaint.

It has been passed to me to decide.

I issued a provisional decision in June 2022 explaining that I was intending to uphold T's complaint. Here's what I said:

provisional findings

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 have decided to uphold T's complaint. Let me explain.

My role is to consider whether AXA handled the claim in a fair and reasonable manner. It isn't to decide who is at fault for an accident.

I have read T's policy terms to understand what is expected to happen. The terms say:

"We have full discretion over managing proceedings and settling claims."

This means that it's for AXA to decide how to deal with T's claim. Most motor insurance policies contain this term. But we still expect any decision on liability to be based on the facts and evidence. In this case AXA explains the claim was decided by arbitration and T was considered at fault for the accident.

It was for AXA to ultimately decide how to handle the claim, so I don't think it acted unreasonably here. However, I have thought about its comments that it didn't investigate T's concerns about the third-party's witness. And what impact this is likely to have had.

I have read the statement provided by the third-party witness. This says T was at fault for the accident, having crossed the centre line and collided with the third-party's car on the other side of the road.

AXA says that if the witness statement was discounted – so not to have been considered during the arbitration - the probable outcome would have been a 50/50 split. I acknowledge T's view that the claim should've been decided in court. But the policy terms give AXA the discretion on how to settle the claim.

On balance I think AXA's view is reasonable. Based on the available evidence a split liability decision was probably the best outcome T could expect even if the witness statement had been discounted from consideration. I say this because there is no independent witness to support T's account and T and the third party blame each other. I think AXA's view is persuasive that it will have been difficult to have argued this was a no-fault claim based on this evidence.

I have thought about how AXA has recorded this claim on the Consumer Underwriting Exchange (CUE) database. All insurers signed up to CUE record any incident that occurs on the database. This information is then visible to other insurers. When a claim is settled it will always show as a 'fault claim' on the data base whether this is full liability or 50/50. So, in T's case a fault claim has to be recorded, this doesn't change if the liability is split.

In its final response to T's complaint AXA says:

"I have discussed the matter with underwriting and they have informed me that the full cost of the claim was taken into consideration at renewal for the period 2020/2021. Had they only taken 50% of the cost into consideration, which as I stated, is what I believe the probable outcome to have been, then your premium would have reduced by £220.68. I shall therefore be refunding you that amount."

I think it was fair for AXA to provide the difference in premium to reflect the reduced cost of the claim if it was treated as a 50/50 split liability.

I acknowledge T's comments that the premiums with the new insurer are much higher and that this is because of the claim from September 2018. I asked AXA whether it had recorded the cost of this claim in line with its view that liability should have been on a 50/50 split basis. It says it hasn't done this but rather the full cost of the claim has been recorded against this incident.

Claims history and the costs involved in settling a claim are something an insurer will consider when calculating risk and the level at which it sets premiums. In the circumstances I think it's fair that the records AXA holds, and those on the CUE database, show that liability for the September 2018 claim should have been on a 50/50 basis. The cost recorded to settle the claim should accurately reflect this. T will then be able to contact the new insurer to discuss its premium, and the impact the lower claim cost from 2018 should have on this.

It's clear that this matter has caused T inconvenience given AXA's failure to investigate the claim correctly and the inaccurate communication about the outcome. In addition, it hasn't updated the claims record to reflect the reduced cost given its view that a 50/50 outcome was appropriate. This has caused further issues and potentially resulted in a higher premium with the new insurer.

Having considered these points, I think AXA behaved fairly by not pursuing the £350 excess charge in addition to paying a further £100 in compensation. In these circumstances, I think £450 fairly acknowledges the impact caused by these issues. But I don't think AXA behaved fairly when recording the full cost of the September 2018 claim against T.

I said I was intending to uphold the complaint and AXA Insurance UK Plc should:

- provide confirmation to T that the cost of the September 2018 claim has been amended to reflect a 50/50 liability basis.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

AXA initially responded to say it was considering my provisional decision and would provide a response. But it hasn't provided any comments or further information for me to consider within the timeframe advised.

T responded to say that the way in which AXA dismissed the concerns raised was inappropriate and this continued for a long period of time. It says this has had an impact on the business and caused stress and anxiety. It says this was especially the case regarding the incorrect arbitration outcome, when it found out nearly a year later that it was being held liable.

T says it has had a commercial policy in place for 25 years and if the policy is loaded then this impacts on all the vehicles not just one that may have had a problem. It says this will have a financial impact on the policy. It says it would like the outcome to be re-assessed in light of this. Also, that it has paid at least £1,000 more in premiums due to the fault being recorded incorrectly.

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.

I acknowledge T's comments about how AXA dismissed its concerns and that this went on for a long period.

In my provisional decision I accepted AXA didn't investigate T's claim correctly and provided inaccurate information. This caused inconvenience. I acknowledge the time it took before T became aware of the at-fault decision. But I thought by paying £100 compensation and not pursuing the £350 policy excess AXA had reasonably acknowledged the impact caused by these issues. T is a business, so we wouldn't consider awarding compensation for stress and anxiety in the way we might do for an individual. So, although I can understand the strong view T holds that more compensation is warranted, I'm not persuaded to change my decision in relation to this point.

I understand T's concern about the impact the at-fault claim has had on the cost of future insurance premiums. In my provisional decision I said that I thought a split liability decision was likely to be the best outcome T could've achieved. I said this because there was no independent witness to support T's account and both parties blamed each other.

In my decision I explained the CUE database will show an at-fault claim whether this is full liability or a 50/50 split. So, I didn't think this needed to be changed. But I said it was fair for AXA to amend the records to show the cost of the claim reflected a 50/50 liability split.

I acknowledge T's comments that the insurance premium is now over £1,000 more expensive. I don't dispute this. In my provisional decision I said that once the records are amended, T can contact its current insurer to discuss the reduced cost claim and the impact this has on its premium. If T accepts my decision, I'm satisfied that the CUE records will fairly reflect the circumstances of the claim.

For the reasons I've explained above, and in my provisional decision, I uphold T's complaint, but I'm not persuaded to change the findings set out in my provisional decision.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that AXA Insurance UK Plc should:

- provide confirmation to T that the cost of the September 2018 claim has been amended to reflect a 50/50 liability basis.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 17 August 2022.

Mike Waldron
Ombudsman