

The complaint

Mr P complains that AXA Insurance UK Plc is responsible for poor service in connection with his claim under a motor insurance policy.

What happened

The subject matter of the claim and the complaint is a car made by a premium-brand manufacturer in 2011.

The car was a cabriolet or convertible. One of its features was that along the top of the windscreen was a spoiler or wind deflector, to reduce buffeting and noise when the car was being driven with the roof open.

In the centre console between the front seats was a hinged cover over the switches or buttons to open or close the roof, to open or close all the windows at once, and to deploy or retract the wind deflector.

In the centre console in front of the hinged cover was a rotary controller for the multi-media infotainment system.

Mr P acquired the car in 2019.

For the year from August 2021, Mr P had the car insured on a comprehensive policy with AXA.

Unfortunately, in late December 2021, Mr P reported that a third party had hit and damaged the rear of the car on a motorway. AXA arranged for the car to go in to one of its approved repairers. AXA provided Mr P with a hire car.

The repairer did some repairs. In April 2022, the repairer told Mr P that the spoiler wouldn't retract. The repairer sent the car to a garage franchised by the manufacturer.

Mr P complained to AXA that the spoiler had been working before the car went to the repairer, so AXA should repair it. He also complained about difficulty in communicating with AXA.

By late May 2022, AXA had got an engineer to inspect and report on the car.

Mr P had to give the hire car back. In about June 2022, the repairer returned the car without fixing the issue with the spoiler. Mr P complained to AXA that the rotary controller also wasn't working.

By a final response dated August 2022, AXA upheld Mr P's complaint about communication and said it was sending a cheque for £225.00 compensation. AXA didn't uphold the complaint about the wind deflector (and didn't mention the complaint about the rotary controller).

Mr P asked us to investigate.

Our investigator recommended that the complaint should be upheld in part. She said that without evidence the fault was due to wear and tear, she wasn't satisfied it wasn't caused while in the care of the authorised repairer. She recommended that AXA should arrange or cover the costs of repair to the wind deflector and rotary controller.

The investigator thought that £225.00 compensation offered for poor service and delays was reasonable.

Mr P accepted the investigator's opinion. He added that the constant opening and closing of the wind deflector has in his opinion made a considerable impact on the performance and life span of the car's battery, which he has had to replace.

AXA disagreed with the investigator's opinion. It asked for an ombudsman to review the complaint. It says, in summary, that:

- Mr P hadn't previously raised battery issues.
- The engineer said there was a fault with a small electronic sensor for the spoiler. No mechanic would try to dismantle a small sensor and diagnose its fault.
- The franchised garage said this was a common fault with these vehicles.
- There's no evidence that the repairer damaged the spoiler.
- The engineer did not interfere with or damage the controller.
- The issues with the spoiler and the rotary controller were wear and tear.

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.

General

The Financial Ombudsman Service is bound by the Financial Conduct Authority's dispute resolution rules. One of those rules has the effect that – before we may investigate a complaint – the consumer must first have made that complaint to the regulated firm and waited for up to eight weeks for a final response.

Battery

Mr P hadn't made a complaint about the battery at the time of the final response in August 2022. He only made that complaint, through us, in late December 2022.

AXA has said that it will respond separately to that complaint. I consider that, under the rules, I can't deal with that complaint in this decision.

Shortcomings in Communication

In my view, the accident and the need to make a claim were bound to cause some distress and inconvenience to Mr P.

However, I accept his statements that AXA didn't communicate as well as it should've done. I accept that the impact on Mr P was that he had to spend time and endure frustration in chasing for updates.

That said, AXA paid £225.00 compensation for that. I'm satisfied that was as much as I would've directed if AXA hadn't made such payment. And Mr P accepted the investigator's opinion. So I don't find it fair and reasonable to direct AXA to pay any more compensation for distress and inconvenience.

Spoiler

Mr P has provided a photograph of the car with the spoiler retracted after the accident. In any event I accept his statement that there was no fault with the spoiler before the accident or immediately afterwards before the car went to the approved repairer.

I accept that the fault arose while the car was with the approved repairer. That wouldn't be enough to persuade me that it was fair and reasonable to direct AXA to fix that fault. I say that because it's possible for a part to fail without any act or omission of the repairer.

However, the engineer's report included the following:

"An ECU Interrogation may ascertain the date or mileage that the fault occurred, however we can not guarantee this due to a age of the vehicle and possible electronic system checks and resets having been carried out during and after the repairs were completed."

From that, and from the absence of evidence from the electronic control unit, I find it more likely than not that the repairer had carried out electronic system checks and resets. And I find it more likely than not that it was such checks and resets that caused the failure of the spoiler control.

So I find it fair and reasonable to direct AXA to repair the spoiler control or (if it prefers) to reimburse Mr P for the cost of such repair.

Rotary Controller

I accept the engineer's statement that he didn't work on or damage the rotary controller. But his recent statement included the following:

"I would draw to your attention that once the fault with the air deflector was may made apparent to [the repairer] they may have worked within the area of the front spoiler control switch to investigate the fault, likewise [the franchised garage] may have done the same."

Also, nobody had reported an issue with the rotary controller until after the car had been to the franchised garage and the repairer had returned it to Mr P. So I find it more likely than not that the repairer or the franchised garage damaged the rotary controller in an unsuccessful attempt to fix the spoiler control.

I hold AXA responsible for the acts of the repairer and the franchised garage. So I find it fair and reasonable to direct AXA to repair the rotary controller or (if it prefers) to reimburse Mr P for the cost of such repair.

Putting things right

As I've said, I find it fair and reasonable to direct AXA Insurance UK Plc to repair the spoiler control and the rotary controller or (if it prefers) to reimburse Mr P for the cost of such repairs.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct AXA Insurance UK Plc to repair the spoiler control and the rotary controller or (if it prefers) to reimburse Mr P for the cost of such repairs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 30 March 2023.

Christopher Gilbert

Ombudsman