

The complaint

Mr A has complained about the way AXA Insurance UK Plc dealt with and settled a claim his son Mr R as a named driver made. Mr R made a claim against Mr A's car insurance policy when he was involved in an incident with another car.

What happened

In May 2021 Mr R was involved in an incident with another car and he reported it to Mr A's insurer, AXA. Mr R said he didn't believe he was at fault for the incident and provided contact details for a witness.

AXA settled the claim as a fault claim in May 2022. It said it had received a witness statement from the third party insurer (TPI) which said Mr R was at fault for the incident.

Mr A as the policyholder complained to AXA in June 2022 about its decision. He said he only discovered it when looking to buy a policy for another car. Mr A thought the claim had been settled in Mr R's favour as he and Mr R hadn't heard from AXA in almost a year. He said AXA hadn't told them about the decision.

AXA upheld Mr A's complaint in part. It said it had received the witness statement from the TPI in August 2021 but hadn't taken any action until May 2022. It said it had called Mr R's witness twice in May and June 2021 and left a voice mail message. But he hadn't replied to AXA. It agreed to contact him again when Mr A complained. This time AXA was able to speak to the witness. But the witness said he couldn't remember the incident and asked not to be contacted again.

So AXA said it had reached the correct decision about liability for the incident - in light of the witness statement provided by the TPI.

AXA had sent Mr A a letter in May 2022 advising of its decision. But it accepted that it had caused undue delays and should have handled the claim better. For the distress and inconvenience caused, it paid Mr A compensation of £250.

Mr A remained unhappy and asked us to look at the complaint. He said the compensation award doesn't reflect the difference in premium price they are paying for insurance as a result of the fault claim.

Our Investigator recommended the complaint should be upheld. He didn't think AXA had properly investigated the claim before reaching its decision. He recommended AXA update the claim on external databases to allow the No Claims Bonus (NCB). He recommended AXA calculate and refund any additional policy costs and increase the compensation paid from £250 to £550, so an additional £300.

Mr A accepted the Investigator's view. AXA didn't agree. In summary it accepts it handled the claim poorly, but believes the outcome would have been the same even if it hadn't. It believes the witness statement provided by the TPI was compelling - and it had made attempts to contact Mr R's witness - and asked Mr R to complete an Accident Report Form (ARF) twice - but hadn't received a reply.

In light of the poor handling of the claim, AXA said it would increase the compensation award to a total of £400. But it said at best the claim would have most likely settled at shared liability on a 50% 50% basis. This means that if it had settled on this basis, the impact on the NCB and premium would have been the same.

So as AXA didn't agree, the case 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.

We don't decide liability as this is the role of the courts. But we can look at whether an insurer reached its decision reasonably and in line with the policy.

AXA, like most insurers, has a very common term which allows it to settle a claim in Mr R (or Mr A)'s name. This means AXA might make a decision Mr A and Mr R don't agree with, but the policy allows it. We don't disagree with this term in principle provided the insurer can show it has treated a customer fairly when applying it.

AXA accepts that it failed to act on a witness statement it received from the TPI in August 2021 until May 2022. Having reviewed it over eight months later, AXA reached the decision to settle the claim as a fault claim.

An insurer needs to show it has properly investigated a claim. As the Investigator pointed out, AXA didn't receive any evidence of the damage to the third party's car. This is a key part of evidence to help decide fault. The circumstances of the incident are that the cars collided on a roundabout. Mr R says he was correctly exiting the roundabout when the third party vehicle (TPV) failed to stop and collided into his car. The TPI witness says that the TPV had slowed down approaching the roundabout, and that Mr R was driving at speed, didn't indicate and attempted to undertake when the collision happened.

The TPI witness says he was a pedestrian who had seen the incident occur. Mr R says no pedestrian approached either party at the scene - and that the other driver left the scene long before he did. Mr R says his witness was another driver. So he doesn't agree that the TP witness statement is credible.

It's not for me to say whether this is the case. But I think AXA should have let Mr R and Mr A know about the TP witness statement before reaching its decision as it could have investigated further. And AXA hasn't shown that it obtained any evidence of vehicle damage to the TPV which I think was important evidence when deciding fault. It reached its decision without it. Although AXA says it called Mr R's witness twice and asked Mr R for an ARF, this was in May and June 2021, with no follow up until almost a year later - in response to the complaint - and after it had reached its decision.

So I don't think AXA reached its decision to settle the claim as a fault claim in a reasonable way - and I don't think it treated Mr R fairly. I therefore agree with the Investigator's recommendations to put things right which I've set out below.

My final decision

My final decision is that I uphold this complaint. I require AXA Insurance UK Plc to do the following:

- update the claim on any internal and external databases to allow the No Claims Bonus.
- If an increase in premium has been applied at renewal with AXA due to the way the claim has previously been recorded, to recalculate the premium and provide an

appropriate refund.

- Provide Mr R and Mr A with a letter confirming it settled the claim dated 13 May 2021 as a fault claim in error and updated the NCB accordingly so that they can show this to subsequent insurers.
- Pay a further £300 compensation for the distress and inconvenience caused, bringing the total award to £550.

AXA Insurance UK Plc must pay the compensation within 28 days of the date on which we tell it Mr A and Mr R accept my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mr R to accept or reject my decision before 18 September 2023.

Geraldine Newbold
Ombudsman