DRN-4213858

The complaint

Mr P has complained about his car insurer AXA Insurance UK Plc in respect of how it handled and proposed settling a claim following an accident Mrs P had abroad where the car suffered further damage during repatriation.

What happened

Mrs P had an accident in August 2022 whilst driving abroad in Europe. She had some difficulty getting assistance from AXA and the car was taken to a local garage. Mrs P was told that the European garage was awaiting authorisation from AXA and she later flew home. AXA decided to bring the car back to the UK for repair and it was late September 2022 by the time it reached an AXA approved garage.

Further damage, in addition to the accident repairs was noted to the car. And when AXA's engineer considered the repair details, it was decided that the car was a total loss. An initial total loss settlement offer was made to Mr P. Mr P felt the decision to declare the car a total loss was made on incorrect details – such as the costs to repair the further damage and the car's mileage (recorded by the car in kilometres but referenced by AXA's engineer as miles).

AXA reviewed the matter again. That resulted in it increasing its market value assessment twice (£21,500 increased to £22,500 and finally to £24,000). But it remained of the view that the car was a total loss.

Mr P was unhappy about a number of issues, including that he was having to continue to pay the finance for his damaged car. AXA, through to and including correspondence on 20 December 2022, provided its responses to Mr P's concerns. It accepted there had been some poor communication by parts of AXA during the early stages of the claim. Along with other failures which had caused upset. It offered a total of £700 compensation. But AXA remained of the view that settling for the car as a total loss, based on a market value for it being £24,000 and where only accident related repairs had been taken into account by it, was fair and reasonable. Mr P complained to the Financial Ombudsman Service.

Our Investigator felt that AXA had acted fairly and reasonably in settling the claim as it had. And that AXA had responded fairly and reasonably to Mr P's complaints, including in it paying £700 compensation. So she didn't think it should have to do anything more.

Mr P was unhappy. He maintained that AXA had acted poorly. He was adamant that further, non-accident related damage had been taken into account by AXA when reaching its total loss decision. He reiterated that he wanted the car repaired, or a settlement of £27,500, Also, £28 a day for his vehicle hire costs incurred because he had only had a courtesy car for 35 days. He said he also wanted satisfactory compensation, £2,500, for the upset that had been caused and £500 to cover legal fees. His complaint was passed to me for an Ombudsman's decision.

I was minded to uphold it, directing AXA to make a further payment to Mr P. But I was satisfied that its decision to view the car as a total loss, and the value it attributed for that,

was fair and reasonable. So I issued a provisional decision to explain my views to both parties, My provisional findings were:

"Accident damage or damage in transit

There is no dispute that the car was damaged in transit. AXA accepts that happened and that it is responsible for it. It has also said that its total loss decision was based only on accident/incident damage – the damage in transit didn't affect that. Mr P doesn't agree and thinks AXA has overlooked or ignored that some damage on its estimate for repair of incident damage, which caused it to decide the car was a total loss, is more likely to have occurred in transit.

AXA's garage completed two repair estimates. One was essentially for paint damage, and came to a few thousand pounds, and if the car needed re-spraying that would increase. That is what AXA accepts as being the damage caused to the car whilst it was in its care on its way back to the UK. The other estimate was for £12,275 and that included structural work. AXA thinks everything in that estimate is accident related. Mr P disagrees. He thinks the car was evidently very badly handled in transit and that it's likely that certain structural damage only occurred due to the way the car was handled after it left the European garage.

In support of that view Mr P has relied heavily on the content of the European garage's estimate. It totalled just over €8,000 and didn't include everything on AXA's £12,275 estimate. He thinks that the absence of work on the European estimate – such as any replacement of structural parts, means if they now need replacing, that must be because of further damage sustained in transit. I'm not persuaded that is most likely. The European garage has confirmed that the estimate it created was largely based on disassembly costs, and that further assessment of internal parts like the steering rack (mentioned specifically by the European garage and AXA's engineer), would only have taken place after dismantling. So it isn't fair to conclude, in my view, that just because the steering rack wasn't on the European estimate, it's most likely that it wasn't damaged in the incident. Which also means it can't fairly be concluded, from its absence on the European estimate, that structural damage most likely occurred during transit.

I've then considered AXA's engineer's view on the estimate for £12,275. The engineer has considered the content of the estimate and the photos of the car. He's clearly taken into account the circumstances of the incident and the agreed damage which resulted from that. The engineer concluded that the location of the disputed damage, along with how that presents in the car – for example part of the suspension having been forced through the internal bodywork of the car – makes it all indicative of damage which is consistent with that which he'd expect to see from the incident. What he says seems to make sense. And I've seen nothing from a similarly qualified individual in challenge of that. I think I have to mention here that whilst it is accepted that damage has been caused to the car in transit – no-one really knows what happened to it. So it would take a significant leap of logic to conclude that major structural damage was more likely to have occurred during an episode that nothing is known about, than it is to have done during an incident, the circumstances of which are known and where an expert has considered that alongside the damage and determined that the damage is consistent with the known incident. I think AXA's view that the estimate for £12,275 is for repairing damage subject of the insured incident is fair and reasonable. It was this estimate upon which it based its total loss decision.

Total loss

AXA had decided to bring the car back to the UK on the day it was advised of the claim. That may well be part of its normal process – and I can understand that AXA would want to have an insured vehicle assessed by one of its approved garages and/or its own engineer. But

here the broker interceded and asked AXA to authorise the European garage to inspect the car and produce an estimate. AXA did so but by 30 August 2022 an estimate for repair was outstanding. Based on this, I'm not convinced that progressing the claim with the car via the European garage would have meant an overall improved claim journey. In any event, AXA noted that if/when an estimate was received, it would need to be in English or be sent for translation. It decided to revert to its original plan and bring the car back to the UK. I don't think that was an unreasonable decision. And from its notes I think it's fair to say that, at that stage, it hoped the car would be repairable. However, once AXA's garage assessed the car, and its engineer reviewed that estimate, the prospect arose of it being a total loss (rather than it being repairable). There was also a complication because of the car being damaged in transit whilst in AXA's care.

I think AXA has, at times, given mixed messages about the transit damage. Some of its communication has not been clear, suggesting that the cost of the transit damage had been taken into account when reaching the total loss decision. I can understand why that would concern Mr P. And I'll take that upset into account when considering compensation. But I'm satisfied, as I've explained above, that AXA only took into account incident related damage when making its total loss decision.

That said, it is clear to me that the initial total loss assessment was somewhat flawed. The photo of the car's dashboard clearly shows an odometer reading in kilometres. Yet the engineer completing the total loss assessment assumed the odometer reading recorded on the repair estimate was in miles. I can see why that assumption could be made – only the numbers were recorded on the estimate, no measurement, and miles are the most common measurement seen in the UK. But there were photos clearly showing the measurement was in kilometres. I think it was an avoidable error on the engineer's part. And it affected the value determined for the car, because converting the odometer reading into miles showed the car hadn't travelled so far, meaning it would have a greater value. Yet the percentage of the value represented by the repair cost was explained to Mr P by the engineer as being the reason for the total loss decision (56%, based on the initial flawed valuation, which could easily increase to 60% or more once repairs started). I accept that the flawed valuation gave Mr P cause for concern about the decision to view the car as a total loss.

AXA though revised the initial value. Albeit only upon challenge from Mr P (and his broker). The final value AXA set on for the car was £24,000. It reviewed an industry trade guide which returned a value of £22,500. This service usually finds use of guides such as this the most reliable way of determining the market value for a car. But Mr P remained unhappy with that value. A further review was undertaken and AXA's engineer decided to speak to a manufacturer dealer with a view to considering current, likely achievable sale prices for cars such as Mr P's, with the particular package Mr P had on his car and when sold by the specific manufacturer dealer, as opposed to manufacturer dealers for other cars. Based on my knowledge of the industry guides, those are factors they might not take into account. It was the dealer's view that a car like Mr P's, sold in that way, was worth £24,000. So, on this occasion, those factors did mean the initial values generated weren't reflective of the likely market value for Mr P's car. I think it was reasonable for AXA to rely on the further evidence gathered by the engineer and that, in doing so, it's fairly determined the likely market value for Mr P's car.

I know Mr P asked AXA, if it was insisting on settling the claim as one of total loss, to pay £27,500 as the market value for the car. This was based on sale adverts he had seen and copied to AXA. But I'm not persuaded those adverts are compelling evidence which makes me think it would be fair to require AXA to increase the market value to that sum. Especially in light of the fact that I've explained above why I feel its assessment of the market value as being £24,000 is fair and reasonable.

So the estimate of £12,275 was 51% of AXA's reasonably determined market value for the car, £24,000. I know that when the percentage was slightly higher (56%), AXA was concerned about it breaching 60% if further damage became apparent once the repairs began. I don't think the reduction of 5% based on the slightly increased market value is so significant it makes it unlikely the 60% limit AXA was concerned about would be breached. Where significant structural damage has occurred it is often the case that once repairs begin and a car is dismantled, further incident related damage is found which pushes up the repair cost. So most insurers will be reluctant to start structural repairs if the initial estimate is at or above 50% of the market value. An insurer though will also be keen to limit its overall claim outlay – and that is not an unreasonable thing for it to do. Here, once AXA had revised its market value settlement, it found that significant parts likely needed for repair – if it chose to go ahead with that – weren't currently available. And there was no likely date for them to become available. AXA was concerned that might have meant a repair programme lasting several months whilst parts were waited on. That would have increased both the inconvenience to Mr P and the overall claim costs. I think that was a reasonable concern for AXA and it wasn't unreasonable for it to seek to avoid that, especially given the likelihood of other damage being found once repairs started, by settling the claim as one of total loss.

I know Mr P feels that parts were only unavailable because AXA had delayed the claim. I'm not persuaded that is the case. I'm generally aware that there has been some difficulty for a while with availability of parts. And AXA's file here includes comment that that is being caused by the war in Ukraine. As AXA did not look to order parts in the early stages of the claim, it isn't clear whether the parts in question would have been available then. But I'm mindful that the war in question escalated in February 2022, many months before Mr P's car was damaged and the claim to AXA was made. Taking everything into account, I'm not convinced that if delays and errors on AXA's part had been avoided; such that the reasonable market value for Mr P's car of £24,000 had been applied to the claim even as early as September 2022, that the repair situation or the total loss outcome would likely have been any different.

<u>Loss of use/car hire</u>

I understand that Mrs P, before her return to the UK, hired another car to use. But she returned to the UK at the end of August. And, once home, Mr P had another car available for use but which wasn't always suitable for his work. Further, that for a period he paid to use a work's van – but there came a point when this was no longer an option. I understand that Mr P would, therefore, like AXA to pay a sum equivalent to £28 a day to cover costs incurred from 1 September 2022 onwards, less costs for 35 days where he did have the benefit of a courtesy car.

The period during which Mr P had a courtesy car began on 6 October 2022. But this seems to have been arranged by/provided via Mr P's broker. It wasn't something AXA did for Mr P. So I've considered whether, under the policy, AXA should have provided a courtesy car for Mr P to use.

Mr P's policy with AXA only offers the benefit of a courtesy car when a car is "undergoing repair". Strictly speaking, Mr P's car was never undergoing repair. AXA thought it would be repairing it when it transported the car back from Europe – but the repairs never started because the UK assessment showed the car was a prospective total loss. And the policy says a courtesy car will not be provided when the car is deemed a total loss. So the policy did not entitle Mr P to the use of a courtesy car.

I've also considered though whether, given AXA's claim handling, it should reasonably have offered a courtesy car or if it should cover any of Mr P's costs for staying mobile. In that respect I've also thought about Mr P's costs from the on-going finance agreement.

Financial impact of poor claim handling, including delays

AXA was told of the incident on 15 August 2022. As I noted above, it started to arrange repatriation of the car that same day. However, that was then held when the broker asked for the European garage to be authorised. Mrs P returned to the UK on 30 August and on 31 August the decision was made to bring the car back to the UK – it was due to arrive on 8 September 2022. However, by 7 September 2022 the car hadn't left its European location as a UK delivery address had not been decided upon. It was only on 20 September that it arrived at AXA's garage and it was 14 October 2022 before it was fully assessed. As mentioned above, there were then errors with that assessment and delays occurred when AXA was reviewing its position too. Meaning the reasonable market value wasn't set until December 2022. I think that all took too long, that the whole process could have been managed better and, if it had been, the car could have been back in the UK and assessed, with a reasonable market value applied by mid-September 2022.

I'll certainly take the frustration and inconvenience caused to Mr P as a result of this poor handling into account when I look at compensation. However, I don't think it would be fair or reasonable, even though AXA has handled things poorly, for me to make it pay Mr P anything for not having use of his own car after 15 September, or in respect of the on-going cost of the car's finance (interest). Simply put, even if AXA had handled the claim such that its total loss decision, with a reasonable market value, was put forward in mid-September 2022, I don't think that would have changed anything.

In saying that I'm mindful of how strongly Mr P feels about the disputed repairs and the market value for the car. He's said that AXA's actions aren't even vaguely acceptable. Mr P said to our Investigator, in response to her view issued in April 2023, that he feels the total loss decision should be set aside. In light of that I can't reasonably conclude that if AXA had made that total loss decision earlier, based on the reasonable market value, which I've found was £24,000, Mr P would have accepted that and acted to allow the finance for the car to be settled or part settled by AXA paying the total loss settlement to it. And only in being free of that agreement could Mr P reasonably look to replace his car. So, I think, even if AXA had done what it should've, the finance agreement would still have continued and Mr P would still have been without a car. AXA failed Mr P – but I don't think its failure caused him to suffer any loss in these respects that, but for its failure, he would not otherwise have incurred.

Travel and subsistence payment

When Mrs P had the accident, she asked a part of AXA's business what they were covered for under the policy in terms of onward travel and accommodation costs in the event they couldn't get to their destination as planned. They were told £500. AXA later said that was incorrect – the maximum sum available was £300. Mr P was understandably frustrated that the wrong figure had been given, and AXA accepted it had made a mistake in this respect. It took that into account when offering compensation for upset. But I don't think that goes far enough. In difficult circumstances following the accident, I don't doubt that Mrs P relied upon the advice given. I think, pending Mrs P showing AXA proof of her costs incurred in the days after the accident, before AXA clarified the correct value, AXA should reimburse those up to £500, less any payment (likely £300) already made. To any costs paid over and above those initially settled, AXA should add interest from the date those over and above costs were incurred until the additional settlement is made.*

Compensation

AXA has previously accepted that it made some mistakes which caused upset. It's paid a total of £700 compensation. I've detailed some of the failures above, and where upset was

caused. Including that I've found above that AXA should have reached a reasonable settlement for the claim after about a month, meaning it delayed things by around three months. I think Mr P did have to go to some effort to reasonably challenge AXA on the things it got wrong. But I'm also mindful that his broker sometimes took up that challenge. Although that wouldn't have mitigated the worry Mr P felt when the original and flawed market value figure was discussed with him – or when AXA was unclear, on several occasions, about how the transit damage was being considered. Overall, though, in the circumstances here, I think £700 is fair and reasonable compensation – it's certainly the level of award I'd likely have made if AXA hadn't offered anything at all. So I'm not minded to make it pay anything more.

Legal fees

This service doesn't usually find it fair to award redress for legal fees. I've not seen any good reason to make me divert from that approach here."

AXA said it was happy to accept this decision. Mr P disputed it.

Mr P's reply centred on the disputed structural damage. He said:

- The steering rack and structural damage are separate issues.
- It is not clear if the steering rack was included within AXA's garage's repair estimate.
- The European garage said it wasn't clear the steering rack would need replacing.
- The European garage had also confirmed there was no structural damage.
- The structural damage is clearly visible as soon as the bonnet is lifted.
- This cannot have been missed by the European garage so must have only occurred during transit (after leaving the European garage).
- The structural damage repairs should have been excluded from the accident damage claim, meaning the car would not have been a total loss.

Mr P also said that he hadn't been able to find detail showing that the parts specific to the repair of his car had been affected by the war in the Ukraine. He said AXA's delay in paying the total loss settlement had caused a delay during which time interest rates and living costs had increased. So he said some of his costs incurred should be paid and asked if my reference to interest meant AXA would have to make an additional payment regarding the total loss settlement.

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.

The European garage did say no structural damage was noted when it had the car. But also that the estimate was based on a visual inspection only. It isn't clear what inspection was undertaken. There are no photos, for example, of the car whilst it was being inspected by the European garage. And in late August, whilst the car had been with the garage for some time, an estimate had still not been produced – seemingly due to the workload of the garage. The estimate was finally produced in December 2022, several months after the car had left the garage and been returned to the UK. In considering the damage and the likelihood of when it was caused, I still think it's important that AXA's engineer has considered the nature of the damage in question in light of the accident which occurred and has concluded that it's consistent with what would be expected. Whilst, on the other hand, it's not known if anything could have occurred to cause this type of damage to the car in transit. I'm not persuaded AXA acted unfairly or unreasonably.

I note that Mr P thinks the industry delays regarding parts may not have been affecting the specific parts necessary to repair his car. But I'm mindful that there has been a widespread problem in this respect. I remain of the view that it is not clear that the parts would likely have been available straightaway if AXA had first looked to order them in September 2022.

Regarding Mr P's comments about delay, living costs and interest, I'm not minded to revise my provisional findings. My point made provisionally was that if AXA had determined the reasonable settlement value as early as September 2022, Mr P would still not have accepted it. Rather he'd have challenged AXA's position – meaning his loan agreement would still not have been paid and his situation would not have been any different. My award of interest was specifically regarding travel and subsistence costs.

Having reviewed everything, Mr P's comments in reply have not changed my views on the complaint as set out provisionally. My provisional findings, along with my comments here, are now the findings of this my final decision.

Putting things right

I require AXA to review the costs incurred for travel and subsistence, making an additional payment for costs incurred up to a maximum total value of £500. To any additional settlement, interest* should be applied from the date of any of the costs which make up that settlement were incurred until the settlement is made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require AXA to take off tax from this interest. If asked, it must give Mr P a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint in part. I require AXA Insurance UK Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 July 2023.

Fiona Robinson
Ombudsman