

## **The complaint**

Mr R complains about AXA Insurance UK Plc's (AXA) claim handling following an accident he was involved in. He's unhappy with its decision to pursue a 50/50 liability outcome, and its failure to assist him with a personal injury claim, under his motor insurance policy.

## **What happened**

Mr R was involved in a car accident. He says the other driver was at fault, but AXA decided to deal with the claim on a 50/50 split liability basis. As he wasn't satisfied he complained to the business.

In its final complaint response in January 2023 AXA says the circumstances of the accident show that liability should be placed equally between Mr R and the other driver. It says it has the right under its policy terms and conditions to decide how to proceed with the claim. AXA apologised for its long wait times when answering calls, and for a lack of proactivity in keeping Mr R updated. It paid him £100 compensation for this.

Mr R raised a further complaint regarding a personal injury claim he wanted to make in relation to his accident. He says no assistance was provided by AXA and he was told to appoint his own solicitor.

In its complaint response in September 2023 AXA says there was no cover under Mr R's policy regarding his own personal injury claim. It told him to contact his insurance broker if he thought this optional cover was meant to be included. AXA provided contact details for the Official Injury Claims Portal online for Mr R to use to progress his claim. It also suggested that he might want to seek his own legal representation.

AXA didn't think it had done anything wrong when it declined to deal with a personal injury claim for Mr R. But it did acknowledge a lack of communication on its part for which it paid £125 compensation plus £25 for a delay in responding to Mr R's complaint.

Mr R didn't think he'd been treated fairly and referred the matter to our service. Our investigator didn't uphold his complaint. He says the Financial Conduct Authority (FCA) dispute resolution or DISP rule 2.8.2R explains that a complaint must be referred to our service within six months of the business's final response letter. Mr R didn't refer his first complaint for around eight months. He says this means we can't consider the issues he raised in that complaint.

Mr R did refer his complaint on time in relation to his personal injury claim. So, our investigator was able to consider this issue. But he didn't uphold the complaint. He says Mr R's policy doesn't cover him for personal injury claims. This meant there was no requirement on the business to assist him. Our investigator thought AXA's delays in responding to emails and its lack of proactive updates warranted a compensation payment. But he says the payment AXA made was fair.

Mr R didn't agree with this outcome and asked for an ombudsman to consider his complaint

It 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.

Having done so I'm not upholding Mr R's complaint. I'm sorry to disappoint him but I'll explain why I think my decision is fair.

We can't consider every complaint that is brought to us. As our investigator explained the DISP rules set by the FCA determine what we can and can't consider. I'm not able to look at the issues Mr R raised in his first complaint as this wasn't referred to our service in time. This covers the initial handling of his claim and AXA's decision to pursue a 50/50 split liability outcome. I can, however, consider Mr R's concerns about his personal injury claim.

I've read Mr R's policy terms and conditions. I can see that section five refers to a limited payment that will be made in the event of, "*accidental bodily injury involving the insured car*". £5,000 is payable where an accident results in death, the loss of a limb, or irrecoverable loss of sight in one or both eyes. I haven't seen evidence that shows Mr R qualifies for a payment under these terms.

Under the heading, "*If you need to make a claim – Personal injury legal advice*" the terms say:

*"If you or any of your passengers are injured in an accident, and you have Motor Legal Assistance benefits please refer to your Motor Legal Assistance documents for full details on what to do next. Your Statement of Insurance will confirm if you have Motor Legal Assistance benefits."*

I've read the options Mr R selected when obtaining his policy. He didn't request motor legal assistance benefits which is offered as an optional extra.

In its final complaint response AXA directed Mr R to contact his insurance broker if he thought this cover should've been included. I think this was appropriate. AXA relied on the information Mr R's broker provided when setting up his policy. If the broker failed to include something Mr R had requested, he will need to raise a complaint with it directly.

I can see that AXA also provided details about how Mr R could pursue a claim online using the government portal for injury claims. Alternatively, it advised that he could seek his own legal representation. I'm satisfied that AXA provided the appropriate information here. Mr R can make an injury claim up to a set limit via the online portal. Otherwise, if his claim exceeds this limit, he'd need to seek legal advice and pursue the matter outside of the portal process.

Mr R doesn't have cover in place to provide legal assistance. Based on this evidence I can't see that AXA treated him unfairly when it declined to assist with his personal injury claim.

I've thought about Mr R's comments that he received a poor standard of service from AXA. This involved some lengthy waiting times when making contact by phone. Similarly, his emails weren't always responded to. The claim records AXA provided supports these points. This caused Mr R frustration and inconvenience. I think it's fair that the business provides a compensation payment to acknowledge these issues. But I think the payment it sent for £125 was reasonable, which was in addition to £25 for its delayed complaint response.

I've considered Mr R's concern that AXA told him in October 2023 that his claim had been settled on a 50/50 basis. But when he spoke to the third party's insurer it told him it hadn't agreed an outcome yet. As discussed, I must abide by the FCA's DISP rules when considering Mr R's complaint. The communication he's talked about happened after he received AXA's final complaint response. This means I can't consider it here. Mr R can raise this as a separate complaint should he wish to do so.

Having considered all of this I don't think AXA behaved unfairly when it declined to provide legal assistance to Mr R regarding his personal injury claim. The standard of service it provided was, at times, below that he should reasonably expect to receive. But I think it's done enough to put this right with the compensation it paid.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 March 2024.

Mike Waldron  
**Ombudsman**