

The complaint

Mrs L complains about AXA Insurance UK Plc (“AXA”) and the information provided to her at the time she notified them about her involvement in a non-fault road traffic accident in 2019.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Mrs L held a motor insurance policy, underwritten by AXA, when she was involved in an accident that wasn’t her fault. So, she contacted them to make a claim.

As the accident wasn’t her fault, AXA warm transferred Mrs L to an Accident Management Company (“AMC”) who I’ll refer to as “E”, to manage her claim and provide her with a hire car on a credit hire basis, with E seeking to reclaim these costs back from the third-party insurer (“TPI”).

But E was unable to recoup the hire costs from the TPI. So, in 2023, they contacted Mrs L asking for her cooperation in issuing legal proceedings against the TPI. Mrs L was confused as to why she was being asked to cooperate and after querying this with E and AXA, she realised she had entered into a credit hire agreement with E without her knowledge. So, she complained to AXA about this, and the information they supplied at the time of the accident.

AXA accepted they could’ve been clearer with Mrs L during the referral process and more recently in 2023 when she queried why she was being asked to cooperate with legal proceedings. So, they put forward an offer of £250 to apologise and recognise the above. Our service put this offer to Mrs L, but she declined it. So, we continued with our investigation.

Our investigator looked into the complaint and upheld it. They didn’t think AXA had reasonably informed Mrs L about the credit hire referral, and its potential implications. And they thought that, if AXA had, Mrs L would most likely have rejected the option of credit hire and utilised the courtesy car entitlement on her own policy instead. So, they thought Mrs L should be compensated for the impact she’s been caused by this, including the need for her to now cooperate with legal proceedings.

But they thought the £250 offered by AXA was fair to recognise the above, considering E had confirmed Mrs L wouldn’t financially impacted by the proceedings as long as she cooperated which she has since agreed to do. So, this was a payment our investigator recommended AXA pay.

Mrs L didn’t agree, providing several comments setting out why. These included, and are not limited to, her continued belief that the £250 didn’t fairly consider the mental and physically impacted caused to her when she discovered there were legal proceedings she needed to comply with, and the future impact this may have on her. Mrs L also queried why she didn’t receive the monetary value of the courtesy car included within her cover that she wasn’t able to use as well as setting out in detail why she thought the compensatory offer should be increased. Our investigator considered and responded to Mrs L’s comments but ultimately,

their view remained unchanged. Mrs L continued to disagree and so, the complaint has been passed to me for a decision.

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 upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, I think it would be useful for me to set out clearly what I've been able to consider, and how. My decision here focuses solely on the actions of AXA and the service they provided to Mrs L directly in their role as the policy underwriter. So, in this situation, my decision focuses solely on the actions they took, and information they provided, when transferring Mrs L to E.

E are an entirely separate business, who were instructed by Mrs L under a separate credit hire agreement. So, I'm unable to consider the merits of any complaint Mrs L has regarding the way E managed her claim under this agreement, the way this agreement was signed or the way in which they intend to recoup their costs from the TPI. This is also the case for any issues Mrs L has regarding the solicitors instructed by E to issue legal proceedings. Any concerns about a solicitor would need to be directed to the Legal Ombudsman, who would be able to advise what next steps are available regarding these issues, if any.

My decision is also unable to comment on, or consider, any previous complaints Mrs L raised with AXA in 2020, and around that time, as they fall outside of the time limits set by the industry regulator for us to consider. So, while I appreciate why Mrs L feel these complaints paint a picture of the service AXA have provided, they haven't impacted the decision I've reached as the complaints and issues contained within them fall outside of our service's jurisdiction.

And in this situation, for the complaint I can consider which centres around AXA's referral to E and the information they provided Mrs L at the time this took place, I note AXA have themselves accepted they acted unreasonably, putting forward a compensatory offer to recognise this, and the inconvenience this caused.

So, as AXA have accepted failure here, I think it's reasonable for me to assume the complaint itself is no longer in dispute and I don't intend to discuss the merits in detail. But for completeness, I want to confirm I have listened to the call between Mrs L and AXA where she was transferred to E. And considering this, alongside AXA's policy documentation, I don't think it was made reasonably clear to Mrs L what the referral entailed and that she would be instructing E on an agreement separate to her own insurance policy.

And, considering Mrs L's testimony of what she understood at the time, compared to the actions she's taken since and the wording within her own insurance policy, I'm satisfied that had Mrs L been made aware E would be acting for her under a separate credit hire agreement, she would've refused this option. This is because I think Mrs L was always under the impression she was claiming on her own insurance policy, and that this policy itself had courtesy car cover included which would've provided her with a replacement car whether or not her car was deemed a total loss. So, while I recognise Mrs L using E protected her no

claims discount and prevented her from paying an excess initially, I'm still persuaded that, on the balance of probability, Mrs L would've chosen to claim through her own insurance as I think it's clear she had no intention of entering into an agreement that could, in a certain scenario, leave her responsible for hire car charges when she was entitled to a courtesy car anyway.

So, because of all the above, I think it's accepted that AXA acted unfairly when referring Mrs L to E. And I've then turned to what I think is the main area that remains in dispute, which is what AXA should do to put things right.

Putting things right

When thinking about what I think AXA should do to put things right, any award or direction is intended to place Mrs L back in the position she would've been in, had AXA acted fairly in the first place.

In this situation, had AXA acted fairly I think they would've been clearer about what a referral to E would mean for Mrs L, including the benefits and potential negative implications. And as I've already set out above, I think had they done so, Mrs L would've most likely, on the balance of probability, chosen to claim through her insurance policy directly with AXA.

Had she done so, this would've resulted in her not entering into a credit hire agreement with E. But crucially, as Mrs L did enter into a legal binding contract with E, and E doesn't fall within our service's jurisdiction when operating as an AMC, our service is unable to impact or in any way affect this agreement. So, there isn't a way in which I can place Mrs L in a position where this agreement wasn't entered into, or costs incurred under it. And so, Mrs L will need to cooperate with E and their solicitors to ensure she is acting within the terms of the agreement.

But I must consider that had Mrs L not entered into the agreement with E, when the TPI refused to pay the hire costs E incurred, Mrs L wouldn't have needed to cooperate with E and their solicitors through legal proceedings. I don't doubt the worry and inconvenience this has caused Mrs L, both when she was made aware there were legal proceedings she would need to be involved in and moving forwards as she co-operates with E and their requests. So, I think she should be compensated for the above.

AXA have offered Mrs L a payment of £250 to recognise the above, and this is an offer our investigator endorsed, setting out why they felt it was reasonable. Having considered this offer, I think it is a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think it fairly recognises the distress caused to Mrs L when she discovered she was needed to cooperate with legal proceedings, and the confusion she faced trying to understand why this was. And I think it also fairly reflects the time and effort Mrs L may need to provide to answer any requests made by E and their solicitors.

But I think it also fairly reflects the fact that Mrs L did enter into a separate credit hire agreement and that there was an expectation on her to understand the agreement she was entering into before signing any documentation. I appreciate Mrs L feels E failed to make this clear, but that isn't the fault or responsibility of AXA.

I think it also reflects the fact that, while legal proceedings are potentially being raised by E to recoup their costs, this is to recoup costs of a hire car Mrs L did have access to and utilise

under the credit hire agreement provided to her. And I think it takes into consideration the confirmation from E that as long as Mrs L cooperates, she will not be impacted financially by these proceedings as well as the fact that should proceedings take place, Mrs E will be supported by E's solicitors through this process.

So, while I do appreciate this is unlikely to be the outcome Mrs L was hoping for, I think the £250 is a fair compensatory payment to recognise the distress and inconvenience caused to Mrs L, that AXA are responsible for, so this is a payment I'm directing them to make.

I want to reassure Mrs L I've considered all the comments she's made, even if I haven't referred to them directly. And specifically, I want to reassure her I did consider her comment about the monetary value of the courtesy car cover on her policy that she was unable to utilise, which I note she raised on multiple occasions. But crucially, as Mrs L used E on a credit hire basis, Mrs L essentially didn't claim on her own policy. And this avoided any impact on her no claims discount, and any payment of her policy related excess. So, as Mrs L didn't claim on her policy, I wouldn't expect AXA to provide Mrs L with the monetary value of any cover Mrs L held.

My final decision

For the reasons outlined above, I uphold Mrs L's complaint about AXA Insurance UK Plc and I direct them to take the following action:

- Pay Mrs L £250 compensation to recognise the distress and inconvenience caused to her by their poor credit hire referral.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 25 September 2024.

Josh Haskey
Ombudsman