

## **The complaint**

Miss W has complained about the way AXA Insurance UK Plc handled her claim under her motor policy following an accident.

## **What happened**

Miss W was involved in an accident on 12 March 2023. Initially AXA told her it thought it should be settled on a 50/50 liability basis given the circumstances of the accident. However, the other driver's insurers wouldn't agree. So, on that basis AXA passed the liability issue to solicitors who I shall call H who could then issue court proceedings over the matter with the view of claiming the other driver was 100% to blame.

So, Miss W was expecting H to issue the court proceedings to sort the matter out. However, in May 2024, Miss W then discovered her claim was going to be settled on a 50/50 basis. This greatly upset Miss W. She had registered her car as off road (SORN) as she felt the increased premium was too expensive due to her claim. So, she complained to AXA. AXA delayed in dealing with her complaint within the eight weeks' time period. Therefore, she brought her complaint to us. On doing that, Miss W told us her ideal solution would be for the claim to be marked as non-fault, her excess of £100 refunded and compensation for the inconvenience caused. Shortly after Miss W brought her complaint to us in July, AXA issued its final response letter on 29 July 2024 and paid her £325 compensation for the distress, trouble and upset it caused her and the delay in dealing with her complaint.

On being notified by us that we now needed its file to investigate Miss W's complaint, AXA made a proactive offer. Namely that it would increase the compensation from £325 to £750. It would allow the No Claims Discount (NCD) and reimburse her excess of £100.

Due to our rules on such proactive offers the investigator was duty bound to let Miss W know about this, which she did. Ultimately Miss W didn't accept the offer. She said the case was far more complicated than just this to include issues with a Subject Access Request to AXA plus there were similar issues with the solicitors H and their handling of the matter.

So therefore, as per our rules the investigator investigated Mrs W's complaint and issued her view. She said the evidence shows that the other driver's insurers refused AXA's offer to settle the matter on a 50/50 liability basis so that's why AXA sent the case off to H the solicitors. However later and well beyond any time limits it should have adhered to, the other driver's insurers then put a note on the portal that it would accept a 50/50 liability split. However, there was no reason for AXA to have checked this since the offer was aborted because the other driver's insurers had already refused this settlement. AXA then found out about this in May 2024 and proceeded to settle the claim on a 50/50 basis. AXA then said it thought it should have just continued with the legal action and its instructions to H the solicitors. Which is why it raised the compensation level to £750, plus allowed her NCD, and refunded her excess of £100. The investigator thought this was reasonable.

Miss W ultimately didn't agree. Consequently, her complaint 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.

#### *What I can deal with*

I do appreciate Miss W's ill health issues and I can see from her correspondence with the investigator, the toll this matter has taken on her. However, I'm afraid I can't deal with all the issues Miss W has now raised given our rules. I'll now explain.

Under the rules of this service, I only have authority to deal with what AXA did in relation to Miss W's claim concerning the car accident. Therefore, I can't deal with any issues concerning Miss W's Subject Access Request to AXA under the Data Protection Act 2018 which implements the General Data Protection Regulation (GDPR). That comes under the Information Commissioner's remit. So, if Miss W continues to have issues or complaints concerning how her Subject Access Request was delayed or dealt with to include presenting all the documents in quite a mess – she must take that to the Information Commissioner who can assess that complaint. I cannot get involved with it.

Also, under our rules I can't consider anything H the solicitors said, did or didn't do as that must be dealt with by the Legal Ombudsman Service which is a completely separate service to this one with different rules and regulations too. So again, I will not be considering any part of Miss W's complaint which concerns anything to do with H the solicitors and what they did or didn't do to include any issues concerning Miss W's Subject Access Request to them. Again, that can only be dealt with by the Legal Ombudsman Service or if it's about the fact they didn't provide any documents under Miss W's Subject Access Request, that again can only be dealt with by the Information Commissioner.

Further this service is not here to act on a consumer's behalf so as to get a better outcome for the consumer from the business. I note in reading the file that Miss W complained to the investigator she hadn't done enough for her. We are independent of both consumers and businesses and our role is solely to investigate what if anything the business might have done wrong. Our role is not to get a better outcome for a consumer regardless of anything else.

So, what I will consider in this decision is what AXA did wrong, given the terms and conditions of the policy following Miss W presenting her claim to it and whether or not it has done enough to now put things right. There's no dispute that AXA has admitted and acknowledged its service to Miss W fell well below its standards too.

#### *What the policy says*

The first place therefore to start this analysis is what the policy says. Like every other motor policy, Miss W's policy with AXA says the following on page 11 under the heading '*Claims conditions*':

#### ***'What we will do***

*We will:*

...

- *have the right to take over and deal with the defence or settlement of any claim in the name of the person making a claim under this policy. We may also pursue any claim to recover any amount due from a third party in the name of anyone claiming cover under this policy.'*

This is a standard clause in virtually every single motor policy. It permits the insurer to have control of the claim. This is permitted by the regulator – the Financial Conduct Authority. So, I don't find it unusual or significant. Essentially, it's the insurer only, who is permitted to make the decision on whether a claim is fault, or non-fault or like in Miss W's case split liability on a 50/50 basis. Obviously, insurers have to come to this decision reasonably bearing in mind the specific circumstances of how the accident with the other driver occurred, but essentially, it's the insurer's decision and not the consumer's as to how a claim following an accident is recorded. The reason for this is quite simple, insurers deal with such claims daily and obviously have far more experience in knowing how a court might view the circumstances. And of course, it's the insurer who indemnifies the policyholder from claims from other drivers, so its funds are at risk too. When any of us take out a motor policy we are in effect agreeing to this clause also.

So here AXA was always entitled to decide whether and by how much it thought Miss W might be liable for the accident.

#### *AXA's thoughts on liability the whole way through*

As Miss W is aware, from the outset AXA always thought a court would decide this case on a 50/50 basis between Miss W and the other driver. That's why it put this offer to the other driver's insurers in the portal. The portal AXA used is a regulatory tool to help limit issues that need to be dealt with in court amongst other things. So, AXA did nothing wrong in using it in the way it did.

It's got nothing whatsoever to do with AXA that the other driver's insurers decided at that time to reject AXA's offer. That's clearly not AXA's fault.

However, because the other driver's insurers did initially reject AXA's offer in September 2023, AXA then 'aborted' its offer on the portal and instructed solicitors to deal with the matter to include going to court. Because it 'aborted' its offer then AXA wouldn't receive any notifications that the other driver's insurers might have responded differently later. Which is precisely what happened here. AXA didn't know until much later namely November 2023 that the other driver's insurers had decided to accept its offer of 50/50 split liability on the portal. At that stage because H solicitors had been instructed it wasn't actioned in order to see what happened in the court proceedings. It was only later in May 2024 H solicitors notified AXA that the other driver's insurers told them they had accepted the 50/50 liability split. Then, AXA felt as it had always thought the matter should be settled on a 50/50 basis anyway, so it was better it should now be settled on that basis. Which was what AXA did.

What AXA did wrong at that time was to fail to inform Miss W of this. Miss W was still labouring under the information she had received from H solicitors who had told her they were pursuing the other driver for full liability and if they were successful that would mean Miss W would get her excess back and the claim would be a non-fault accident on her insurance record. So, when Miss W heard from H solicitors, they were no longer pursuing the case and it was settled on a 50/50 basis, it's no wonder Miss W was both dreadfully upset and angry and indeed confused.

#### *AXA's ultimate decision on liability*

AXA has told us that consequently it doesn't think it has treated Miss W fairly. It thinks that because it had instructed H solicitors it should have let the court case run to its conclusion. It's still of the view that it would have been very likely the court would have decided it was a 50/50 liability case but given the mess it made of things from Miss W's point of view, it thought it was appropriate to allow Miss W's NCD and refund the excess she paid. Nonetheless Miss W would always have a claim on her insurance record as she had been involved in the accident regardless.

I agree with AXA that it did unnecessarily confuse matters at this point with Miss W leading to significant trouble and upset and indeed distress. And that's clearly wrong. However, I consider the fact it allowed her NCD and refunded the excess she paid to be very appropriate in these circumstances, given the other driver's insurers had accepted the other driver was 50% to blame too.

This is because it could never have been a given that Miss W would have won in court making her not liable at all, had AXA permitted the court action to continue. But obviously H solicitors would always proceed on that basis until the Judge decided the case. So, there was never any guarantee of the outcome. Given the matter has now been settled by AXA on the 50/50 basis, which it is wholly entitled to decide given the policy wording above, there is no evidence before me to show me that it is not a fair outcome. Therefore, I don't think this decision on liability is wrong.

#### *Increased premium issues*

In relation to Miss W's issues with premiums now being much more expensive, there are potentially a myriad of different reasons for this. Miss W has been involved in an accident which many insurers rate and so increase premiums as a result, regardless of who was at fault. Insurance premiums for everything, not just motor insurance, have increased across the board over the last couple of years too.

AXA's policy warns at page 24:

*'No claims bonus protection does not protect the overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault.'*

I understand Miss W has the services of a broker who can in any event advise her coherently on this. And additionally, AXA said it will ask her broker to recalculate premiums for Miss W to try and find a reduction.

I also understand Miss W might have registered her car as SORN for a time, given the cost of insurance. I consider this was Miss W's choice and I don't hold AXA responsible for this decision. As I said there are a myriad of reasons why premiums have increased, and Miss W has also been involved in an accident which regardless of fault might well have an effect on premium levels.

AXA has ensured Miss W's NCD is allowed which means essentially that even though the accident is now deemed a 50/50 split on liability she has her full NCD whether or not she protected it.

Therefore, I don't consider AXA has somehow influenced how expensive Miss W's renewal premium was going to be, I'm afraid it's more than likely other issues plus the fact Miss W was involved in an accident contributed to that.

So, I consider AXA hasn't done anything wrong here. Indeed, I consider it made cogent efforts to help Miss W instead.

### *Compensation for the trouble, upset and distress AXA caused*

On reading the case I can see that the whole thing has made Miss W very upset and distressed, more so given her health issues. I also appreciate and understand Miss W may be frustrated by my decision and the fact that I can't cover all the issues she wants covered. However, the issue to always remember in these situations is that the insurer wasn't involved in causing the accident. The circumstances and the other driver was how the accident occurred. And it's often very difficult to separate out who has caused what. Miss W is again reminded that here I'm not dealing with the upset caused by her Subject Access Requests to either AXA or H solicitors. I'm also not dealing with the upset caused by the increased premiums which Miss W said made her SORN her car for a time. I am merely dealing with how AXA dealt with the liability aspect of her claim.

I am solely dealing with the issue that despite instructing solicitors to go to court over liability, it nonetheless decided to settle on a 50/50 basis. I'm also dealing with the fact that AXA failed to communicate this to Miss W properly at the time too.

I have no authority or remit to fine or punish businesses when they do something wrong. So, I don't teach businesses lessons to try and ensure they never do this to anyone else, and the compensation award is not intended to 'hurt' or 'damage' the business concerned. It's simply to compensate for the upset caused.

Initially AXA paid Miss W £335 compensation by virtue of its final response letter on 29 July 2024. Then following Miss W bringing her complaint to us it issued a proactive settlement offer on 16 August 2024, essentially increasing that compensation to £750. Plus, it allowed her NCD and refunded her excess payment of £100.

Our approach to compensation awards is more fully detailed on our website. However, I consider AXA has offered the highest level of any award I would have considered here had it not already made the offer. Indeed, it's at the top end of the bracket I consider is the extent of the distress and upset it caused Miss W. Given Miss W's distress and upset more so given her health issues, I consider the compensation now offered to Miss W to be appropriate, fair, and reasonable taking into account all the circumstances including the fact it set her off down a path where she thought H solicitors would be going to court over the matter to its eventual settlement of liability instead. I consider it is adequate compensation for that time period too.

## **My final decision**

So, for these reasons, it's my final decision that I uphold this complaint on the basis of the proactive settlement offer.

I now require AXA Insurance UK Plc to do the following:

- Increase its compensation payment to a total of £750.
- Allow the NCD. AXA said it has done this already but if it hasn't it should now do so.
- Refund the excess payment of £100. AXA said it has done this already but if it hasn't it should do now do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 23 December 2024.

Rona Doyle  
**Ombudsman**