

The complaint

Mr P complains about AXA Insurance UK Plc (“AXA”) and their decision to settle a claim he made on his motor insurance on a 50/50 split liability basis. Mr P also complains about the service provided to him by AXA during the claim process.

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, Mr P held a motor insurance policy, underwritten by AXA, when he was involved in a road traffic accident. So, he contacted AXA to make a claim on this policy.

Mr P made it clear to AXA he felt the third-party driver was at fault for the accident. But AXA settled the claim on a 50/50 split liability basis. Mr P was unhappy about this, and the service he received from AXA during the claim process. So, he raised several complaints about the above. In total, AXA offered Mr P a total of £500 in compensation to recognise their service failures. But they felt they had acted fairly in the way they chose to settle the claim. Mr P remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into Mr P’s complaint and upheld it. They thought AXA had failed to make Mr P reasonably aware of their intention to settle the claim on a split liability basis. And they didn’t think they had seen evidence to show Mr P had been refunded 50% of the excess he paid, as he should’ve done. So, they recommended AXA pay Mr P a further £350 in compensation, as well as refunding Mr P £550, 50% of the excess he paid, plus 8% simple interest on this refund calculated from January 2023 to the date of payment.

But they thought the £500 already offered by AXA fairly compensated Mr P for AXA’s failure in communication and other service failings. And they explained why they thought AXA had acted fairly, and in line with the policy, when deciding to settle the claim as they did.

AXA accepted these recommendations. But Mr P didn’t, providing several comments explaining why. These included, and are not limited to, Mr P’s continued belief that the liability decision was unfair and that this continued to impact his premium prices. So, because of this and the impact he felt he’d been caused by AXA’s failures, Mr P didn’t think the recommended compensation was enough. Nor did he think this would prevent AXA from providing the same level of service to another customer in the future. As Mr P didn’t agree, 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, in line with our service’s informal approach. 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 this decision, I think it would be useful for me to set out what I've been able to consider, and how. I want to make it clear that it's not my role, nor the role of our service, to re-underwrite Mr P's claim, as we are an alternative to the courts and don't have the expertise to do so. Because of this, I won't be speculating on who I think was liable for the accident, or how I think the claim should've been settled.

Instead, it is my role to consider the actions AXA took to decide whether I think they were both fair and reasonable. When doing so, I've considered all the evidence and information available and thought about what I think another insurer is most likely to have done, in the same situation.

I note that AXA have accepted all of the recommendations put forward by our investigator. And this follows on from AXA's own complaint response, where they accepted there had been service failings and offered compensation to recognise the same. So, because of this, I think it's reasonable for me to assume that AXA have accepted they failed to communicate reasonably with Mr P and that this impacted the service he received overall during the claim. I think they have also accepted they failed to make Mr P aware of their intention to settle the claim on a 50/50 basis, and how this would impact him moving forward, meaning he lost the opportunity to reiterate his view on the accident circumstances. And finally, I think they have also accepted Mr P didn't receive a 50% refund of the excess he paid. So, as I think these errors have been accepted, I don't intend to discuss the merits of these issues in any further detail and I will return to them when I think about what AXA should reasonably do to put things right.

Instead, I've focused on what I think does remain in dispute, which is the way AXA chose to settle Mr P's claim. I want to reassure Mr P I've considered all the comments he's put forward alongside all of the evidence available to me, and AXA at the time of their decision. This includes the dashcam footage provided by the third-party insurer ("TPI").

Having done so, I'm unable to say AXA acted unfairly or unreasonably when choosing to settle the claim as they did. It's clearly set out within the terms and conditions of the policy Mr P held that AXA "*may take over, defend or settle the claim*". So, I think AXA acted within the policy when doing so, with or without Mr P's agreement.

And having reviewed the information available to me, I do think they conducted a sufficient investigation before doing so. I can see initially they followed Mr P's wishes, based on his version of events, seeking full recovery of Mr P's claim. But the TPI returned explaining they felt Mr P was fully responsible, providing dashcam footage they felt supported their position. I can see AXA considered this footage and, considering both parties felt the other was fully responsible, chose to offer settlement on a 50/50 basis. Considering the TPI had made it clear their intention to litigate and seek legal proceedings, I don't think this was an unfair position for AXA to take considering the information available to them at the time, and I think another insurer is likely to have taken a similar view, as they also have a duty to mitigate the cost of a claim. And legal proceedings would increase the claim costs.

I understand Mr P is likely to disagree with this. And that he's pointed to the hire car company's successful full recovery. But crucially, AXA couldn't have been aware of this at the time they chose to offer a 50/50 settlement. So, I don't think this impacts the decision I've reached on AXA's choice at that time.

And even if AXA had taken a different decision, and pursued full recovery through legal proceedings, I have no way of knowing for certain that this would've been successful. While I appreciate why Mr P will disagree with this, considering the hire car company's successful recovery, I don't think I'm able to say for certain that any legal action taken by AXA would've led to the same outcome.

So, while I do appreciate Mr P's strong feelings regarding the liability decision, I can't say AXA have acted unfairly and unreasonably here. And so, it follows that AXA have acted reasonably when recording the claim on the CUE database as a fault claim, as this is standard industry approach when an insurer has been unable to recover all of the costs they incurred. This also means I'm unable to say AXA are responsible, or should compensate Mr P for, his increase premiums since the claim was recorded.

I've then turned to what I think AXA should do to put things right for their failures that have already been accepted.

Putting things right

When thinking about what AXA should do to put things right, any award or direction is intended to place Mr P back in the position he would've been in, had AXA acted fairly in the first place. Crucially, it is not designed to punish a business or act as a deterrent for them to alter their processes to prevent similar instances happening to other customers, as Mr P has suggested in his comments to us, as we are both independent and impartial.

Had AXA acted fairly, I think AXA would've been more open, and more proactive, in making Mr P aware of their intention to settle the claim on a 50/50 basis. And by not doing so, I think Mr P lost the opportunity to make further representations on why he felt the third-party was at fault. While I don't think I have evidence that shows Mr P would've been able to provide substantive evidence that would've have a material impact on AXA's liability decision, I do think Mr P would've been left feeling frustrated by this loss of opportunity and he should be compensated for this. Our investigator recommended AXA pay £250 to recognise the above, which AXA accepted. And I think this recommendation 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. So, this is one I'm now directing AXA to pay.

And as the claim was settled on a 50/50 basis, I would've expected AXA to ensure Mr P received a 50% refund of the excess he paid. AXA have been unable to evidence they did this and so, I think this refund should now be paid. And to recognise the time Mr P has been without access to these funds, in line with our services approach, I think 8% simple interest should be applied to this amount calculated from 26 January 2023, when it should've been made, to the date of payment. I also think a further compensatory payment is warranted here, to recognise the continued dialogue Mr P has had with AXA since this payment should've been made, where I think AXA had the ability to remedy this loss of funds sooner. Our investigator recommended AXA pay a further £100 compensation and again, I think this falls in line with our service's approach and what I would've directed. So, it's one I'm directing AXA to pay.

Finally, I note Mr P has made reference to continued service failings, including AXA's lack of communication, over the claim journey. And I think it's reasonable for me to say that, had AXA acted fairly, these failings would not have been apparent.

I've no doubt from the evidence I've seen, and Mr P's own testimony, that this claim process has been severely frustrating and inconvenient for him. So, I do think he should be compensated for this. But I must note that prior to our investigator's recommendations, AXA offered to pay Mr P £500 in compensation, issued over several cheques over a period of time. Having considered this amount, I think it is a fair one that fairly reflects the impact directly caused to Mr P, over the time frame he's pointed to. As I've explained above, I wouldn't expect, or direct, this payment to be increased in order to punish AXA for the errors they made and accepted by their own admittance. So, I won't be directing AXA to increase this offer, above what I've already directed earlier within this decision.

I recognise Mr P has stated he received, but didn't cash, the cheques AXA issued. I would expect AXA to honour the offer they made and so, Mr P should engage with AXA to ensure these cheques, and the payment they contained, are reissued should he now wish to accept them.

My final decision

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

- Refund Mr P 50% of the excess he paid, which amounts to £550;
- Apply 8% simple interest on this amount from 26 January 2023 to the date of payment; and
- Pay Mr P a further £350 compensation, on top of the £500 already offered to Mr P by AXA within their own complaints process.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 November 2024.

Josh Haskey
Ombudsman