

The complaint

Mr W complains that AXA Insurance Plc mishandled two claims on his motor insurance policy.

What happened

In August 2021 and June 2022, Mr W had a vehicle insured on a comprehensive policy with AXA.

Unfortunately, he reported that on 25 August 2021, a third party's car had his car while it was towing a caravan on a road.

Unfortunately, Mr W later reported that on 21 June 2022, a lorry had hit his car at a roundabout.

By July 2023, Mr W had complained to AXA that it was treating him as responsible for the first accident.

By a final response dated 17 October 2023, AXA turned down the complaint about the first accident.

Mr W brought his complaint about both accidents to us in mid-March 2024.

Our investigator didn't recommend that the complaint should be upheld. He thought that AXA made the correct decisions for each claim.

Mr W disagreed with the investigator's opinion. He asked for an ombudsman to review the complaint. His daughter says, in summary, that:

First accident

- Mr W was towing a caravan. He was coming out of a car park, turning right into the middle of three lanes of a one-way road.
- Traffic lights ahead were red. Two cars stopped to allow him to pull out.
- He was entitled to start his manoeuvre.
- He was only just hanging over the dividing line between the middle lane and the third lane.
- The lights were just changing to green.
- Mr W had nowhere to go.
- The third party came flying down the road.

- Mr W's friend was on the pavement.
- AXA are blaming Mr W because of his age.
- Anyone looking at the facts cannot possibly say that the accident was totally Mr W's fault.

Second accident

- Mr W was stationary in the right-hand lane of the roundabout and the Lorry came up in the left-hand lane and hit his car.
- The scuffs on the lorry go from front to back and the door on the cab has damage where the door was dragged backwards.
- The scuffs that are visible on the car go forwards.
- Anyone looking at the facts cannot possibly say that Mr W was as responsible as the lorry driver.

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.

Accidents generally

Most motor insurance policies contain a term allowing the insurer to decide how best to deal with a claim involving a third party. The effect of this is that – on a question of liability – the insurer's view will prevail over its policyholder's view. However, I will consider whether the insurer has applied such a term fairly.

A motor insurer may make an outlay on a claim, typically for the cost of repairs. Where it has made such an outlay, it's common practice for that insurer to treat the claim as a fault claim against its policyholder unless and until the insurer recovers its outlay in full, typically from a third party. There may be a number of reasons why the insurer doesn't recover its outlay.

If the insurer agrees with a third party's insurer to split liability, e.g. 50/50, then neither insurer will recover its outlay in full.

First accident

I'm satisfied that AXA took into account the report of the accident from Mr W and that he had a witness to the accident.

However, the third party's insurer made a claim and AXA had to decide whether to settle it or to defend it. AXA considered that a court wouldn't regard the witness as wholly independent.

Mr W or his daughter has said that the third party was in the "third lane". But I think they are counting from the right rather than from the left lane. The damage was to the offside of the third party's car and the nearside of his car. So the third party was in the left lane.

AXA decided not to incur the risk and cost of defending the third party's claim.

Mr W had been towing a caravan into the middle lane in front of vehicles that had stopped in the right and middle lanes. That put him in a position that must've impaired his line of sight into the left lane.

So I don't consider that AXA treated him unfairly by its decision to accept liability.

I would add that a 50/50 or other split liability wouldn't have had any less effect on Mr W's claims record or his premiums.

I also note that Mr W didn't complain about the outcome of the first accident until after the second accident.

Second accident

I'm satisfied that AXA took into account the report of the accident from Mr W.

However, the third party's insurer made a claim and AXA had to decide whether to settle it or to defend it. AXA decided not to incur the risk and cost of defending the third party's claim.

AXA took into account the nature and location of the damage to the nearside of Mr W's car and the offside of the lorry. AXA noted that the lorry was left-hand drive. However, AXA later said that photographs of such damage are often inconclusive.

I accept that the nature of the damage shows that Mr W's car was moving more slowly than the lorry at the moment of impact. However, I don't consider that the nature of the damage shows the road positioning or manoeuvres of each vehicle.

So I don't consider that AXA treated Mr W unfairly by its decision to split liability 50/50.

I would add that a split liability which attributed a smaller percentage liability to Mr W (e.g. 30/70) wouldn't have had any less effect on Mr W's claims record or his premiums.

Conclusion

I don't underestimate the effect of AXA's decisions on Mr W.

However, I haven't found that they were decisions that treated him unfairly. So I don't find it fair and reasonable to direct AXA to do any more in response to this complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct AXA Insurance Plc to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 December 2024.

Christopher Gilbert

Ombudsman