

The complaint

Dr A and Mr M complain about how AXA Insurance UK Plc (AXA) dealt with a claim under their motor insurance policy following an accident. They are unhappy at liability for the claim, the impact on their No Claims Discount (NCD) and how the claim was handled.

References to AXA in this decision include their agents.

What happened

In April 2021, Dr A and Mr M were involved in a collision with a third party vehicle on a roundabout. Dr A and Mr M agreed with the third party that neither would pursue a claim for damage to their vehicles and Dr A and Mr M made a payment for damage to the third party vehicle (who subsequently sent an email confirming they would make no further claim). But the third party (driver and passenger) subsequently made a claim through a solicitor against Dr A and Mr M to AXA, as their insurer, for personal injuries they said were sustained in the accident. A separate claim for vehicle damage was made to AXA by the third party insurer.

AXA decided to deal with the third party claims under the terms of the policy in order to reduce the risk of escalating claim costs. They were satisfied details of the accident contained in the third party claims were consistent with what Dr A and Mr M had told AXA about the accident and that the personal injury claims were supported by medical evidence.

Dr A and Mr M were unhappy at AXA's decision to settle the claims without – as they maintained – telling them (they only found out when they came to renew their policy). Had AXA told them, they would have made personal injury claims of their own. They also maintained the third party had told them they (Dr A and Mr M) wouldn't be held liable for any other costs arising from the accident. Dr A and Mr M also maintained they'd told AXA at the time about the accident and what had happened (their private settlement of the damage to the third party vehicle). Dr A and Mr M were also unhappy that AXA settling the third party claims meant the loss of their NCD as well as the way AXA had handled the claim, including a lack of updates and communication. So, they complained to AXA.

In their final response, issued in February 2022, AXA upheld the complaint in part. On the issue of their decision on liability, AXA acknowledged Dr A and Mr M thought the third party driver at fault for the accident. But AXA referred to the policy wording about their (AXA's) ability to take over, defend and settle a claim as they saw fit.. AXA referred to the accident circumstances (a collision on a roundabout with no witnesses or dashcam footage) and said they couldn't defend the case should it go to court. It would be their word against the third party's word and the outcome would be a 50/50 split of liability at best. AXA dealt with the third-party claim under the policy terms to reduce the risk of escalating claim costs. So, AXA didn't uphold this aspect of the complaint. AXA also said that recording the claim as a fault claim reflected their settlement of third party costs. Which in turn would affect Dr A and Mr M's NCD. So, AXA didn't uphold this aspect of the complaint.

On the contact and support from AXA during the claim, AXA accepted Dr A and Mr M had to chase them for updates and had experienced excessive times on hold when calling AXA. AXA accepted they hadn't been proactive in keeping Dr A and Mr M updated and didn't at

times respond to requests for callbacks. AXA upheld this aspect of the complaint, apologised and awarded £175 compensation (including a £25 goodwill gesture for failing to respond to Dr A and Mr M's complaint within the relevant timescales).

Dr A and Mr M then complained to this Service (June 2024). While this date was more than six months after AXA issued their final response, AXA sent the final response to an incorrect email address. We considered this exceptional circumstances and so the complaint was one this Service could consider. AXA didn't challenge this conclusion. Dr A and Mr M were unhappy at AXA's handling of the claim, settling the third party claims and the impact on their NCD.

Our investigator didn't uphold the complaint, concluding AXA hadn't done anything wrong. On the third party claims, a claim had been made to AXA, by the third party insurer (and a claim for personal injury) despite what Dr A and Mr M said they were told by the third party. In the absence of any evidence such as CCTV or dashcam footage, it was reasonable for AXA to settle the claim from the other insurer on a 50/50 split of liability. In turn, that would make the claim a fault claim (as AXA hadn't recovered all their claim costs). That would also affect Dr A and Mr M's NCD. While complaint handling wasn't a regulated activity, the investigator thought the £150 awarded by AXA for the shortcomings in their service fair and reasonable.

Dr A and Mr M disagreed with the investigator's view and asked that an ombudsman consider the complaint. In disagreeing, they made several points. These included: poor communication from AXA (including misdirected communications); AXA saying they could settle the incident privately with the third party; failure by AXA to investigate suspected fraud; AXA settling the claims without consulting them; and the impact of AXA's settling the claims on their NCD.

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.

My role here is to decide whether AXA have acted fairly towards Dr A and Mr M.

The key issue in Dr A and Mr M's complaint is AXA settling the claims made by the third party solicitor (for personal injury) and the third party insurer (for vehicle damage) without telling them. They say they settled the damage to the third party vehicle directly (paying them £650) and the third party told them (Dr A and Mr M) they wouldn't be liable for any other costs. Dr A and Mr M are also unhappy at how AXA handled the claims and their communication with them during the claim process.

AXA say the policy gives them the right to take over, defend and settle any claims made. And that the circumstances of the accident mean they wouldn't have been able to defend the claim should it go to court. And recording the claim as a fault claim reflected their settlement of the claim. But AXA do accept shortcomings in keeping Dr A and Mr M updated and didn't respond to requests for callbacks. They awarded £150 compensation for the shortcomings. On the first issue, AXA settling the claims received from the third party and the third party insurer, AXA refer to the following policy terms and conditions in their final response, under the heading *General conditions applying to all sections of your policy*:

"5. Claims

If you or your car are involved in any type of incident, accident, claim or loss regardless of fault you must:

- a) *Tell us as soon as possible. If your car has been stolen, you must advise the police and co-operate fully with their investigations;*
- b) *Give us full control of the claim including the uplift storage and repair of your car. We may take over, defend or settle the claim, or take up claim in your name; you must not negotiate regarding any claim, settle any claim without our written permission or admit liability for any claim, unless we ask you to do so...*

This provision is standard in insurance policies and not unusual in this case. Dr A and Mr M say they told AXA about the accident when it happened and were told by AXA there was no need to do anything as the matter had been settled by Dr A and Mr M with the third party. AXA haven't provided the call recording(s) that support Dr A and Mr M's position, though I have listened to a recording in which Dr A and Mr M seem to indicate they didn't need to tell AXA about an incident if it wasn't their fault.

However, even accepting what Dr A and Mr M have said, it doesn't mean AXA wouldn't then have to consider any claims that subsequently were received. In this case a claim from the third party insurer for vehicle damage and a separate claim for personal injury. While Dr A and Mr M maintain the third party said they would not be liable for any other costs (I've seen an email to Dr A and Mr M to this effect) that wouldn't be enforceable and ultimately a civil matter between Dr A and Mr M and the third party. AXA also saw the third party email and concluded it didn't explicitly refer to any personal injury claims (and wouldn't have waived the right of a second third party to make a personal injury claim). So, they had to deal with the claims as legitimate.

Having received the claims, the above term then provides for AXA to defend and settle those claims as they saw fit. In this case, AXA assessed the chances of defending the claims and decided that, for the vehicle damage claim, they wouldn't be able to defend it should it proceed to court given the absence of any independent evidence (such as dashcam footage or CCTV) that supported Dr A and Mr M's view they weren't to blame for the accident. I recognise the strength of feeling on the part of Dr A and Mr M, but that doesn't make AXA's decision to settle the claim unfair or unreasonable. I've also noted that while they believe they weren't at fault for the accident, Dr A and Mr M told AXA there were no witnesses so it would have resulted in a 50/50 split of liability (which would mean a fault claim recorded).

Similarly, from what I've seen, the personal injury claims (the third party and a second individual) were both supported by medical evidence that AXA assessed and decided to settle the claims. AXA made offers based on their assessment that were accepted. Our role as a Service isn't to assess claims, rather it's to decide whether a business has acted reasonably, in this case to settle the claim on the basis of the evidence presented to support it. So, I can't conclude AXA acted unfairly or unreasonably.

Dr A and Mr M say that had they known the third party was going to make personal injury claims, they would have made personal injury claims of their own. While I don't doubt what they've said, that wouldn't be an issue for AXA, whose responsibility was to assess the claim received from the third party.

Dr A and Mr M also say AXA didn't investigate what they (Dr A and Mr M) say was suspected fraud, which I take to mean the third party. However, as part of their assessment of the claims received, AXA did assess the evidence supporting those claims, including (for example) the medical evidence (reports) provided. I've also seen the reports provided. Had AXA any doubts over the veracity of the claims and the evidence supporting them, I would have expected them to challenge the third party. AXA's claim notes indicate they assessed the supporting evidence, including the medical reports for the personal injury claims and accepted their validity.

On the issue of Dr A and Mr M's NCD, as claims had been received and settled, then this would have affected their NCD entitlement. And as Dr A and Mr M indicated they settled (so they thought) the incident directly with the third party partly because they thought it likely any claim would be split 50/50 on liability, then it would similarly have affected their NCD. So, I can't conclude AXA acted unfairly or unreasonably on this aspect.

Turning to the handling of the claim, AXA accept Dr A and Mr M had to chase them for updates and experienced excessive times on hold when calling AXA. AXA also accept they weren't proactive in keeping Dr A and Mr M updated and didn't at times respond to requests for callbacks. AXA upheld this aspect of the complaint, apologised and awarded £175 compensation. Looking at AXA's case notes, they support AXA's acceptance of shortcomings in their handling of the claims and communication with Dr A and Mr M.

I've also considered that, even had AXA been more proactive in communicating with Dr A and Mr M about the claims received and dealt with, this wouldn't have been likely to have changed their decisions to settle the claims. Dr A and Mr M say they weren't responsible for the accident, but as I've noted, the likelihood was that any claim would have been likely to have been settled on at least a 50/50 split of liability. And the personal injury claims were assessed on the basis of supporting medical evidence (and confirmation the injuries were sustained in the collision with Dr A and Mr M's vehicle, not a second accident the third party was involved with the day after the collision with Dr A and Mr M).

Taking all these points into account, I've concluded Dr A and Mr M did suffer some distress and inconvenience from AXA's handling of the claims and their acknowledged shortcomings in communication. Having regard also to the published guidance on this Service's approach to awards for distress and inconvenience, together with the circumstances of the case, I've concluded AXA's award of £150 compensation was fair and reasonable, so I won't be asking them to make a further award.

Taking all these points into account, I think AXA have acted fairly and reasonably, so I won't be asking them to do anything further.

My final decision

For the reasons set out above, it's my final decision not to uphold Dr A and Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mr M to accept or reject my decision before 19 February 2025.

Paul King
Ombudsman