

The complaint

Mr B has complained that AXA Insurance UK Plc unfairly and unreasonably refused to deal with his claim under his motor policy following an accident.

References to AXA include all its agents.

What happened

Mr B said he was involved in an incident on the evening of 19 February 2024. He said a diversion caused him to drive on an unfamiliar road where his car suffered damage from potholes plus floodwater given a very persistent highwater table in February 2024. He said he lost control of the car which caused him a personal injury and his car was undriveable afterwards.

He complained he wasn't recovered by the entity who should have recovered him under his policy and had to drive home in 'limp mode', with his car smelling of burning oil and with him also feeling very unwell.

As a consequence of making his claim to AXA, its agents who I will call C collected the car. Mr B was upset his car was driven onto the ramp as there was a lot of smoke coming from it. Mr B said C didn't inspect his car but nonetheless said it was repairable but thought it was suspected mechanical failure.

Later in March his car was taken to an approved repairer who I shall call E. Mr B said E told him his car was showing five fault codes, concerning the info display module, ignition cycle malfunction, exhaust gas recirculation, glow plug control circuits for cylinders 1 to 4, intake manifold valve. Mr B believes these five fault codes occurred in the accident on 19 February. This is because his car was working fine before that and wasn't driveable afterwards. Mr B complained that no physical examination of his car was ever undertaken by either C or E. Both simply analysed the fault codes.

AXA said that because there was no damage to the wheels or suspension these faults couldn't be related to pothole damage. Therefore, AXA concluded that the engine problems Mr B's car suffered were mechanical and electrical and so are excluded by the policy terms. Mr B then suggested to AXA that given the excessive wet weather conditions around the time of 19 February 2024 and before, would this have affected his car? He felt AXA felt that as Mr B's car was a SUV it was unlikely as the engine is mounted higher.

Mr B then went to his own garage who suggested that the following should be assessed and repaired where damaged – fuel injector; ECG control valve; EGR valve; suction control valve; all sensors including MAF, turbo, pre and post exhaust; piston rings; internal engine – leaky valves, air intake valve, DPF (not a serviceable item); inlet manifold; fuel injectors – fuel flow rate; replace the ECU itself if it's not correctly diagnosing the problem.

Mr B also sent in his V5 which has been returned to him defaced and it now needs to be replaced.

Mr B paid for some repairs himself, including a new DMF flywheel, a worn clutch and four glow plugs costing £1,625.

He said his car was noted to have left-and right-hand side impact fault codes, and the left wheel bearing needed replacement. The wheel bearing replacement cost £398 in order to pass the MOT. He said a photo of the air intake manifold appears to have watermarks. The garage told him that water can come into the engine from the bottom through the air intake manifold. Which Mr B noted AXA's engineer's disputed saying it could only come in from the top. His car had an advisory oil leak issue on his MOT for the first time. He also wanted confirmation that his No Claims Discount wouldn't be affected.

Mr B decided that as he was getting nowhere with AXA, he then brought his complaint to us. Ultimately the investigator didn't think it should be upheld in so far as AXA needed to pay Mr B for the repair costs he has spent on his car. As the breakdown element of his policy was underwritten by a different entity Mr B needs to make a separate complaint about that aspect.

She felt the fault codes detailed on the car by Mr B's own repairer were historical fault codes, therefore it wasn't clear they were caused by the accident. She felt given there were no new fault codes when C drove Mr B's car on to the tow truck there was nothing to show further damage occurred.

She said as the pictures of the manifold looked normal to AXA that meant it was likely to be normal. Also, she was persuaded by AXA that if there was water ingress, that then would cause a hydraulic lock to occur, which hadn't happened. So, she was persuaded that as there was no evidence of flood in the manifold or damage typical of a flood, there didn't appear to be damage from any water Mr B might have driven through.

AXA said its engineer confirmed the wheels, tyres, and air filter and DMF had not sustained accident-related damage. So, it considered that the fact Mr B had to replace the DMF was more likely mechanical/electrical breakdown or wear and tear which is excluded by the policy. AXA further said the DMF acts as a torsional damper which is house between the gearbox and the engine. So as there was no external damage to the engine or gearbox it couldn't relate the DMF damage to the accident or flood issues.

The investigator noted Mr B had no external damage to his car, plus he had no expert report of his own to explain the issues were related to the accident or flood damage. So, in the absence of anything to show AXA's refusal to pay his claim was incorrect, there was no reason to think it was incorrect.

She explained that a courtesy car is only provided when AXA is happy a valid claim has been met. Here AXA refused to consider Mr B's claim as it didn't think it was a valid claim which could be met by the policy's provisions. She also didn't think AXA had acted outside the policy terms concerning the NCD issues.

She did feel AXA's service to Mr B fell short. E gave conflicting information to Mr B about his complaint which mismanaged his expectations. Further AXA's communication with Mr B was poor which meant he had to chase AXA. And she agreed his V5 had been defaced and needed replacement. So, she thought AXA should pass his complaint about the breakdown recovery to that provider to address. And that it should pay Mr B £150 compensation to include the cost of replacing the V5.

Mr B didn't agree, he felt E said his claim would be upheld in good faith but in any event his complaint about AXA was about his claim. He felt it was frustrating the breakdown issue

needed to be a second complaint. He said the fault codes were found by his own garage after the AXA, C and E had seen his car. But E missed out the further fault codes his own garage found. He believed that because his car didn't have a physical inspection, AXA's conclusions were wrong. He believes the system of only doing desktop investigations is unfair. How would these faults occur if it were not during the accident. The same accident which caused him personal injury. He also assumed we would have access to the relevant meteorological data to see a spike in insurance claims over the stormy weather on 17 and 18 February 2024.

Mr B explained his garage just fixed what needed fixing after his accident. He feels given that AXA merely did desktop investigations they didn't find the damage caused in the accident.

AXA were happy to accept the investigator's recommendations to pay compensation to Mr B.

So as Mr B didn't agree, his 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.

Mr B's repair claim

The policy between Mr B and AXA details how to claim under the policy. Under Section A – Damage it says the following:

'What is covered under this section

We will pay for loss of or damage to

- ***Your car***

....

What is not covered under this section

...

- *Loss or damage caused by rust, corrosion, wear and tear or loss of value including following repair.*

...

- *Loss or damage caused by any mechanical, electrical, computer breakdown, failure or breakage.'*

So essentially Mr B, as the policyholder, has to ensure the claim being made is not from either of the above exclusions. AXA believes from its desktop investigations by C and by E that Mr B hasn't shown the damage he believes was sustained by his car on the evening of 19 February 2024, for reasons I will consider further below. But essentially the burden of proof is on Mr B not AXA to provide proof that his car was damaged in the incident of 19 February or indeed possibly from water damage in the preceding days.

I don't at all doubt Mr B's claim that he suffered personal injury from driving down a badly potholed road and I don't at all doubt he ended up having to drive the car in effective limp mode afterwards. But as yet I'm not seeing any evidence that what is wrong with his car was a result of the potholed road rather than something failing at the same time due to wear and tear, or mechanical, electrical, computer breakdown, failure, or breakage.

Insurers are entitled to decide what risks they want to insure and what risks they don't want to insure. This is wholly permitted by the regulator, the Financial Conduct Authority (FCA). The exclusions I've detailed above are exclusions common to every other motor policy too, so I don't find them significant or unusual. The insured event has to be damage to the car that isn't from any of the relevant exclusions above. I don't consider Mr B has shown this adequately. As he said his own garage *'just repaired what needed repairing'*. But actually, what is needed to be known is why the varying things which needed to be repaired failed. If they failed because of the potholed road or alternatively some sort of water damage, where is that evidence?

AXA said it refused to pay the repair costs of Mr B's car because the fault codes which showed on the car didn't explain why they occurred just that these things were showing as fault. It didn't think the air filter showed the significant tide marks Mr B thought it did. It thought instead the photo showed normal usage. It explained that if there was water damage to the engine, that then would cause the engine to sustain a hydraulic lock which hasn't occurred. So, on that basis there wasn't evidence the engine had been damaged by flood water.

Turning to the dual mass flywheel DMF, AXA explained that the DMF, wheels, tyres and air filter had no accident-related damage. So as this DMF is housed between the gearbox and the engine, and because of that it couldn't relate the DMF damage to the potholed road or indeed water damage. Mr B is not claiming for the costs of the gear box which would most normally be a wear and tear issue in any event. Mr B hasn't proffered any evidence to show AXA is wrong. And without that and simply that his repairer *'just fixed what needed to be repaired'* to include the gearbox too, there is no evidence to show me AXA's view on what is wrong with Mr B's car was actually covered by this policy.

I consider it would be reasonable to see some damage from a badly potholed road concerning the wheels, tyres or even suspension. And/or it would be reasonable to see some evidence of water damage if the issue was that the car was affected by flood water. There is no dispute that Mr B's car wasn't damaged externally by either of the claimed events.

I can appreciate and understand Mr B's frustration that AXA merely instructed C and E to provide desktop reports and indeed AXA's own engineer merely reviewed these too. I have no authority to comment on the system AXA (and indeed many other insurers) employed to ascertain any damage to Mr B's car. That is a matter for the FCA and the regulations. If there was evidence before me to show why the repairs Mr B had to pay for came from either the potholed road and/or water damage in the preceding days, then I would consider it. But there isn't any such evidence.

This service does not employ motor engineers to essentially do something which would be similar to yet another desktop review of the damage to Mr B's car. Instead, our role is to assess based on all the evidence available, whether AXA was reasonable in its decision to refuse to pay Mr B's claim or not, having regard to the terms and conditions of the policy. On the basis of the evidence available to me, there is nothing to show AXA has been unreasonable. Therefore, I don't consider it has done anything wrong in refusing to pay Mr B's claim. In other words, I don't consider Mr B has discharged his burden of proof that his claim was a claim which could be covered by the terms of this policy.

It is the reality that any policyholder first has to show his claim is covered by the provisions of the policy. AXA here has clearly said it's not, for reasons that reasonably show it was more likely more of a mechanical fault which is clearly excluded from cover by this policy and virtually every other motor policy too.

Mr B's complaint about the recovery of his car on the night of 19 February 2024

There is no dispute that Mr B's car broke down on this evening and that he called the recovery assistance telephone line to have his car recovered. Mr B has complained that the recovery was grossly delayed and given he was injured he felt he simply had to drive his car home in limp mode.

The policy clearly details the provision of breakdown cover is provided by another company as are some other benefits available under the policy. These are 'opt in' further benefits which come at a cost of a further premium too. I can only decide a complaint against one business at a time given the rules under which this service operates. Much of that is a consequence of how any decision affects any business also.

So, the entity who provides the breakdown cover under Mr B's policy remains responsible if anything goes wrong with the provision of that service. AXA is not involved in its service standards or anything else. Therefore, if Mr B wants to complain about that, he must raise that complaint to that entity. If it doesn't resolve his complaint over that satisfactorily, Mr B remains free to bring that complaint to us. But that complaint given our rules cannot be contained in this complaint against AXA.

AXA's duty however is to pass Mr B's complaint about this to the correct provider. It's not appropriate for Mr B's complaint over this aspect to be simply ignored.

Courtesy car

As the investigator explained the courtesy car element is only applicable when a valid claim has been made. Sadly, for Mr B that didn't occur here as he didn't choose the further opt in benefit for this otherwise or pay the additional premium for it.

So, since AXA decided Mr B's claim was excluded under the policy terms, and it wasn't repairing his car, then it didn't need to have its approved repairers provide a courtesy car for Mr B.

No Claims Discount (NCD)

Any claim changes the risk profile of the policyholder to an insurer in actuarial terms. Hence why they are noted on individual's insurance records, which in turn affects the premium amount payable. Most insurers offer some form of NCD protection dependent on the number of claims made. Mr B availed of AXA's NCD protection which says the following:

'If you have chosen to protect your NCD (PNCD) then, in the event of one claim on your policy in any period of insurance (up to a maximum of two claims in any consecutive three year period of insurance), your NCD will not be changed at your next policy renewal, after which your NCD will be reduced for each further claim in accordance with our declared scale.'

There is nothing before me to show AXA has deviated from this in its treatment of Mr B.

AXA's service to Mr B

Regardless of whether a claim is valid or not, there is an expectation that any insurer will provide a clear and cogent service to its policyholder, namely Mr B here.

There is no doubt E an agent of AXA misled Mr B about both his claim and his complaint and wrongly confused the issue for Mr B. I consider that E as AXA's agent should have retained that call recording. As it didn't, I agree with the investigator that Mr B requires to be compensated for this.

AXA's direct communication with Mr B was at times tardy causing Mr B to have to chase. I consider the tone its engineer took with Mr B to be overly defensive also, rather than helping Mr B to understand the stance taken. Both of these caused Mr B considerable upset too. There is also no doubt his V5 was returned to him defaced by either C or AXA. And it's right AXA therefore pay Mr B the cost of replacing it which I understand is about £25.

The investigator considered AXA should pay Mr B the sum of £150 compensation to cover both the upset caused and the cost of the replacement V5. I consider this amount is fair and reasonable and in line with our established approach on these matters, which is more fully detailed on our website.

My final decision

So, for these reasons, it's my final decision that I uphold this case in part.

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

- Facilitate and pass Mr B's complaint to the relevant entity if he wishes to continue to complain about the recovery service he received on the evening of 19 February 2024, ensuring Mr B has the relevant contact details.
- Pay Mr B the sum of £150 compensation which includes the £25 replacement V5 cost

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 March 2025.

Rona Doyle
Ombudsman