

## **The complaint**

Mr and Mrs C have complained about the decision AXA Insurance UK Plc came to on liability under their motor policy following damage to their car in an accident.

## **What happened**

Mrs C a named driver on the policy was driving the car behind an HGV truck on 21 February 2023. Another HGV came from the opposite direction and both HGV's collided with their door mirrors. The debris from the mirrors and brackets hit Mrs C's car causing damage to the windscreen and body work. Mrs C said she was not involved in any collision with either of the HGVs. The oncoming HGV just drove on and didn't stop. The police attended and took the details of all the vehicles involved to include the details of the HGV which Mrs C had obtained which had failed to stop.

Mr C reported the accident to AXA later that evening given all the police incident numbers and details and was told by AXA's adviser that it couldn't obtain any police report. Given the circumstances of the accident Mr C said he was informed it was likely the claim would be a non-fault claim with his No Claim Discount (NCD) being restored plus his excess being refunded in due course. This was confirmed by AXA in its letter of 22 February 2023. Mr C heard nothing further about the status of his claim. On 15 October 2023 he received his renewal invitation from AXA, he then found out the claim status had changed to 'fault' and his premium had increased by 300% from just over £300 to £946. Mr C was very aggrieved about the lack of communication over the fact the claim was now deemed a 'fault' claim and the fact the claim affected his other insurance policies and their premium amount. So, he complained.

AXA said it couldn't access the police report. However, Mr C said this was because AXA told the police in error that he was driving rather than Mrs C. AXA finally issued its final response letter on 13 December 2023.

AXA said it couldn't get the police report but it noted its error in the details it used to obtain it so it said it would try again and look to recover its costs. But as it couldn't recover its outlay therefore the claim was marked as 'fault'. So, it didn't uphold his complaint. It did however pay him £25 compensation for the delay in providing its final response letter.

On this basis Mr C brought their complaint to us. Once we had informed AXA Mr C had brought their complaint here, AXA made a proactive settlement offer of £150 compensation for its failure to request the police report properly. It also said it had contacted the insurers of the HGV that didn't leave the scene of the accident who said their insured wasn't to blame and as there was no damage, they hadn't contacted the insurers of the other HGV driver who had left the scene of the accident. AXA confirmed it now had the details of this other HGV driver and it would make enquiries once it received the full police report with the hope of getting its costs of Mr C's claim reimbursed which would then reinstate the NCD, with the premium being re-calculated.

Mr C refused this proactive offer. So, the investigator proceeded to investigate the complaint. She was of the view that she couldn't interfere with AXA's decision on liability. She noted that as Mr C had paid extra to protect his NCD this hadn't been affected in his renewal invite, so the rise in premium wasn't as the result of anything to do with the NCD. She also thought AXA should pay Mr and Mrs C the sum of £400 compensation for the distress it had caused them.

AXA accepted the investigator's recommendations. Mr C did not. He believed that as AXA had never bothered to properly get the police report, it simply didn't investigate liability properly. Therefore, it remained unfair that this claim was being recorded as a fault claim. He also noted that AXA further erroneously decided his claim from the damage to his car was split into two claims, one for the windscreen damage and the other for the bodywork damage which considering both areas of damaged happened in the same circumstances he considered was extremely unfair as his record now shows two claims instead of just one. So, on this basis Mr C's complaint was passed to me to decide.

I issued a provisional decision on 7 January, and I said the following:

*'Having done so I'm considering upholding this complaint for substantially different reasons to that of the investigator.'*

*AXA like every motor insurer retains the ability to decide liability for any accident as it thinks fit. This is a standard clause in all motor insurance policies, so I don't find it unusual. However, AXA is under a duty to come to its decision on liability reasonably and fairly, taking into account the circumstances of the accident and the risk of not being successful. I've seen no evidence that this is the case here, as AXA has yet to obtain the police report coherently and make its further investigations into liability. I consider that is grossly unfair on Mr and Mrs C considering this accident took place in February 2023 so nearly two years ago. Further just because one of the parties doesn't agree it was liable for causing the accident doesn't mean that AXA has no ability to pursue that party regardless of what it says concerning how the accident was caused. It can of course pursue the other driver or drivers to court, if necessary, on behalf of its policyholder. It depends on the circumstances of the accident.*

*Here, we have Mrs C driving behind an HGV lorry whose wing mirror clipped or was clipped by the oncoming HGV wing mirror, causing debris from the wing mirrors and their brackets to badly damage Mrs C's car. Quite obviously Mrs C couldn't be at fault for causing this damage to her car, one or both of the HGV's drivers were instead. In situations like this the law and countless court judgements decree that both insurers for the HGVs pay the costs of Mrs C's claim and then fight it out amongst themselves as to what proportion they should each bear. It's the same situation encountered when a passenger in a car, claims personal injury or other heads of damage from both the other driver and the driver of the car in which they were a passenger. Both drivers insurers settle the passenger's claim together to stop costs accruing and then sort out the split on liability between themselves as obviously the passenger can't be held responsible.*

*What is clear to me here, is that Mrs C cannot be held liable for the damage to her car given the specific circumstances of how the damage to her car occurred. Therefore, it is simply not good enough that AXA has done so little to protect its policyholders Mr and Mrs C here. Quite obviously an HGV is very likely to be insured and indeed AXA are now aware of the insurers of the HGV which failed to stop.*

*It is correct and also standard industry practice that if an insurer cannot get all of its costs recovered, a policyholder's claim is marked as 'a fault' claim on their insurance*

record. This can happen with all manner of hit and run accidents where the drivers can never be identified and with vandalism claims. Most notably where an insurer makes no concession for this type of claim. These days many insurers do make such concessions for these types of issues in favour of their policyholder including AXA in its policy with Mr C. Obviously in either case above, the policyholder wasn't and couldn't be held at fault in the normal meaning of the word for causing the damage either.

However, an insurer can't simply not investigate a claim coherently by not asking for a police report properly and sit back and do nothing to protect their policyholder as AXA has done here. More so given the circumstances, given Mrs C managed to obtain some of the information of the HGV which didn't stop at the scene and indeed gave all that information to the police too and I understand such information was also made available to AXA. To do nothing with this information given the circumstances of this accident is simply not fair, not reasonable and against all insurance industry standards applicable to include treating its customers fairly and most importantly its overarching Consumer Duty. It can never be the case that Mrs C is at fault for the damage to her car. Clearly either or both drivers of the HGVs are instead. Both insurers are now known to AXA so it simply must pursue its claim on behalf of Mr and Mrs C.

I also don't consider it's at all fair or reasonable that AXA appears to have recorded two claims against Mr and Mrs C arising out of this one accident. The windscreen and body work damage was caused by the same debris hitting the car, it cannot therefore be set out in two claims as Mr C has now said is the case. That is an unwarranted disadvantage to Mr and Mrs C also. Therefore, only one claim and one excess should be recorded for the damage to Mr and Mrs C's car from this accident. AXA should refund the second excess it mostly likely charged Mr and Mrs C too. It's clear Mr C protected his NCD. However, the fact that an accident occurred can and very often does affect the premium amount. It depends on each insurers individual underwriting guide how and by how much. It's obviously going to be greater in most circumstances if the claim or indeed claims are labelled as 'fault' claims too.

On that basis I consider AXA should now remove the labelling of the fault claim(s) arising out of this incident from Mr and Mrs C's insurance record. This is solely because the cause of the damage to the car can never be the fault of Mrs C given the circumstances and both drivers of the HGVs are now known to AXA. It should recalculate the premium it charged Mr C on renewal in October 2023 and refund him the difference with interest. It should also recalculate the premium Mr and Mrs C are now paying with their new insurers and refund the difference again with interest. AXA should be well aware of our stance on this issue too.

I consider the lack of investigation by AXA has put Mr and Mrs C to some considerable distress and upset. I've also noted that throughout this both Mr and Mrs C have suffered health issues which no doubt were exacerbated by their frustration over this issue. But considering the length of time this has gone on for, with so little progress from AXA despite having the correct information to obtain the police report and get on with pursuing both insurers of the HGVs, I don't consider the £400 compensation suggested by the investigator to be enough. Therefore, in line with our approach to such matters as more detailed on our website, I intend to award Mr and Mrs C the total sum of £550 compensation in addition to the £25 AXA has already paid them.'

Mr C accepted my provisional decision in the main.

However, he said he had no record of ever receiving or being awarded £25 by AXA. So, he thought unless AXA can show his bank did receive this £25, the compensation should be increased by this amount also.

He confirmed that AXA has now corrected the issue where it split the claim into two, one for windscreen and one for the bodywork, now it has confirmed he only has one claim. And it paid him £50 compensation for this, which he didn't think was a reasonable enough amount because of all the extra work this caused him for all the insurance renewals he had to make since February 2023. He wanted documentary proof that this change is made on the relevant databases which is shared between insurance companies.

He remained aggrieved that AXA has not refunded the excess yet either.

He explained that in addition to the car involved in the accident Mr C has another seven vehicles all of which are insured. So, the renewals of all these vehicles have been affected by this claim which increased the cost of the relevant premium and will do so for years to come. This hasn't been captured in the award I proposed either. He felt it should be because it was a direct financial loss for him.

He explained that his insurance cover whether by renewal or purchase of a new policy has been impacted by the fact that the policies are in his name with Mrs C as named driver, so they are penalised twice, as Mrs C has to declare she had an accident, and he has to declare he had a claim. So that inflates the premiums which is surely an unfair practice consequently.

AXA agreed with my provisional decision except that it said it couldn't work out the amount any other insurer would have increased the premium by, for the purposes of the recording of the claim as fault, as it wouldn't have access to all the relevant information to do so. But it remained happy to pay 8% simple on those amounts when the amounts so charged was known.

Consequently, I issued a second provisional decision 27 January, and I said the following:

*'Having done so again, I'm afraid it's necessary for me to provide a second provisional decision on this matter. I do apologise given it's dragging this matter out somewhat, but part of what I must say below changes some of the outcome for Mr and Mrs C so therefore under our rules a second provisional decision is required so that both parties can consider the changes. There is also a change for AXA too so likewise, both parties must be permitted to consider that change too.'*

*First, I will deal with some of the issues Mr C has raised.*

*I consider that AXA does need to refund the excess it took for one of the two claims with interest. As Mr C said it has now agreed it wasn't necessary to make Mr C make two claims for the damage to his car not just one. So, it was never the case Mr C should have been charged two excesses. I note Mr C said AXA said it would agree to do this later and simply paid him £50 compensation instead. I consider AXA needs to make it clear what excesses Mr C was charged and what needs to be refunded with interest. I've not been privy to the correspondence between AXA and Mr C on this point. Sometimes with windscreen claims no excess is charged anyway. If that's the case, then it could be that the £50 compensation is adequate. Otherwise, AXA needs to detail the excess taken, the refund made, and the interest paid.*

*Otherwise, the remaining excess Mr C paid for the claim (not two claims) is an*

*uninsured loss, so it never gets refunded as such by the policyholder's insurer, it gets refunded by the other driver's insurers only when it's the case the other driver is liable for the accident. Here given the circumstances of how the accident occurred, it's likely the excess for the remaining one claim is eventually going to be refunded by the other insurers of both HGVs.*

*But essentially under the policy that exists between Mr C and AXA as it's an uninsured loss there is no contractual duty for AXA to refund it. Therefore, I can't ask AXA to refund it here until it's got it back from the insurers of the HGVs for Mr and Mrs C. And we know AXA hasn't yet got all of that sorted out yet. In the case where no other driver was involved in an accident and the car was repaired, the policyholder always has to pay the excess. Even in circumstances where the insurer might have dealt badly with the claim too. Sometimes the insurer might increase the compensation payable by the excess amount, but in contract law technically it doesn't have to refund the excess.*

*However, in these circumstances AXA might also decide to refund it now, as technical further compensation to Mr and Mrs C given it's so likely the HGVs insurers will be reimbursing AXA for its claim costs to Mr and Mrs C. But essentially and technically I can't ask that it does that, solely because it's an uninsured loss and not a loss insured under this or any motor policy. So, it's part of Mr and Mrs C's uninsured losses for the HGVs insurers to consider and refund, not AXA.*

*Secondly, regardless of whose fault any accident causing a claim to be made on a policy is, it remains a matter of record that the policyholder Mr C made a claim and that sadly the driver Mrs C has been involved in an accident. Claims, regardless of fault, get rated by insurers as the statistics tell them somehow that if you've been involved in one accident, you're nevertheless more likely to get involved in another accident. So, insurers can rate (as in potentially increase the premium) on that basis alone if they wish to, and most motor insurers do that. It's not the situation that they only rate claims on the basis of fault, they can, if they wish, rate it on just the fact the accident occurred and/or just the fact a claim was also made. They can further rate on it on whether, it was a fault claim or not, too.*

*This is permitted by the regulations under which all insurers operate which is authorised by the Financial Conduct Authority (FCA). I and no one else in this Service can interfere with that as we're not the regulator, the FCA is. Insurers are always entitled to decide what risks they want to cover and which they don't. That's part of their commercial discretion, also permitted by the FCA. So, for example, some insurers don't want to provide cover for people whose policy was cancelled for whatever reason, so there is no requirement for a particular insurer to accept that risk. Or certain vehicles are on the list of cars they don't want to insure, so they can decline to offer any cover for those. Likewise, some insurers providing cover for inexperienced drivers require all their policyholders to have a telematics device fitted to their car. Those insurers are utterly permitted to decide that too.*

*The main requirement is that the particular insurer must treat all people in similar circumstances the same. So here it's always going to be the case that Mrs C has to disclose she's had an accident for so long as it's required (most insurers require disclosure for five years from the date of the accident) and Mr C likewise is always going to have to disclose the fact as a policyholder he has a claim, but the relevant question asked gives the time period that that insurer has decided to rate it for.*

*So, AXA hasn't done anything wrong in Mr C finding out he must disclose the existence of this claim to all the other insurers of his cars, or that Mrs C is having to*

*disclose the fact she was involved in an accident. That was always going to be the case regardless of what AXA did or didn't do wrong here. Mr and Mrs C might find this unfair, but the FCA regulations allow insurers to do this, and certainly I can't do anything about that in deciding this complaint.*

*So therefore, as regards Mr C's other vehicles he was always going to have to disclose the claim and that the accident occurred when he was renewing his cover. The only difference this complaint is making, is that now he doesn't have to additionally disclose the claim was a fault one, or that he has two claims either, as the remaining claim is going to be marked as non-fault instead. So, AXA wasn't at fault for all this extra hassle when dealing with the renewal of all these other policies, AXA is only technically responsible for any rating and more so any actual increase in premium those other insurers made on the basis this one claim was recorded as a fault claim, not a non-fault claim and nothing more.*

*I also appreciate Mr C in owning seven other vehicles has quite a lot of admin work to do too. But AXA didn't cause this accident or the damage to the car, the other HGVs' drivers did. Also, it is of course Mr C's choice to own seven other vehicles all of which require insuring too, so inevitably on that basis there is a substantial amount of admin involved regardless.*

*That brings me on to the issue that AXA disagreed with in my provisional decision. I made an error saying that AXA needed to physically refund the extra premium the other insurers might have charged Mr C because it recorded the claim as a fault claim. Actually, it doesn't. In real terms AXA wouldn't be privy to the rating percentages any of these other insurers have possibly charged Mr C for the fact the claim was recorded, as fault. Those sorts of rating percentages are commercially sensitive data that insurers don't share amongst themselves as they are in competition with each other for one thing. So, I am really sorry for this error and any confusion it caused both Mr and Mrs C and AXA.*

*What must happen is that Mr C must go back to all the insurers and ask if they charged him extra for the fact the claim was rated as 'fault' only. If they did, then he asks that insurer to refund him that amount. Then once the amount is known, he needs to tell that to AXA who has agreed to add 8% interest on that amount any other insurer refunds Mr C. Mr C may find some of his other insurers didn't rate it, they merely rated on the claim and the accident, but it is for those insurers to explain that to Mr C. Insurers are well used to being asked for these refunds from policyholders when a claim might get downgraded from 'fault' to 'non fault' in circumstances where the other driver insurers admitted liability, so it's not an unusual occurrence or indeed an occurrence made worse by my error here, either, thankfully.*

*This obviously causes Mr C further admin work given he must contact all of these insurers, but I consider AXA's agreement now to add the 8% interest to the refunds to be adequate compensation for that extra admin. AXA is right that only the other insurers can provide this information, so had I not made this error Mr C would have known when he received the first provisional decision that he had to do this too. For the avoidance of any doubt AXA remains responsible for any additional premium it charged Mr C for the fact this claim was recorded as fault when he renewed his policy with it as well.*

*Therefore lastly, I note Mr C's concerns about the compensation payable. First, I agree AXA needs to show Mr C's bank account actually received the amount of £25 it paid him when it issued the final response letter on 13 December 2023.*

*And secondly, I've now explained that unfortunately because the claim and the accident always needed to be disclosed on any vehicles' renewal including for this car, Mr and Mrs C were always going to have to disclose that and that wasn't AXA's fault either. So, there is no reason for AXA to compensate Mr and Mrs C for this.*

*Likewise, I consider the agreement by AXA to pay 8% interest on any of the refunds Mr C gets from his other insurers as regards the fault claim now being recorded as a non-fault claim is adequate compensation. So, there isn't any further heads of complaint to which extra compensation now needs to be paid.*

*In the provisional decision I raised the compensation to £550. This is the compensation for the actual trouble and upset AXA caused Mr and Mrs C in the gross delay in dealing with their claim and not pursuing the insurers of the HGVs' drivers. I remain of the view this is adequate compensation. Compensation is not intended to fine or punish the insurer, it's to compensate solely for the trouble and upset caused. I raised it in part considering the ill health of both Mr and Mrs C too as I didn't think the £400 suggested by the investigator was sufficient to cover that. Our website details our stance on compensation in more depth. I consider that the sum of £550 remains fair and reasonable here consequently.'*

AXA agreed with my provisional decision.

Mr C said the following:

- He was charged £75 for the windscreen claim.
- He was concerned that AXA was not being given any guidelines in calculating the excessive premium it charged him on renewal given its rating of fault for this accident. Its percentage increase was almost 300% given the rise in premium for 2022 to 2023 was only £344.76 whereas the rise for 2023 to 2024 was £946.05. He noted the ABI said premiums rose by 25% in 2023 in comparison to 2022. He felt instead AXA should use the ABI figure as allowing it to stipulate the figure didn't seem fair or impartial. He specifically said '*allowing AXA to stipulate a figure would not seem to be fair or impartial. If the ABI figure were used, it would equate to an annual premium for 2023 of £430.95 meaning an overcharge of £515.10. As we purchased the insurance on monthly payments, AXA applied a fixed interest rate of 7.5%, APR-19.26% to this sum. This means we paid an additional £38.62 on that overcharge. We need AXA to factor that into the refund plus the 8% interest that you have proposed.*'
- He didn't agree with my comments about the compensation covering everything. He didn't think it was a justification of Mr C having to spend more of his time pursuing other insurance companies to obtain information to supply to AXA. His stress in having to deal with this is significant and to propose he spends yet more time is inequitable. He understood why AXA wouldn't know the exact amounts, he believed there would be some sort of benchmark figure. So, it was not something he was willing to undertake.
- Otherwise, he agreed with the rest of my decision.
- However, he would like to know what AXA are doing about the claim. He would like that in writing if possible. He wants to know if both insurers have been contacted and where is AXA at as regards recouping its costs. Is it bringing a case against those other insurers? And when did they obtain the police report?

## **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 again, I now remain of the view that the outcome as detailed in my second provisional decision remains the fairer and more reasonable.

The redress takes account of the refund of the second excess by AXA.

As regards the refund of premium that AXA must give to Mr and Mrs C, AXA like every other motor insurer operates its actuarial ratings for things like a fault claim according to its underwriting guide. Its underwriting guide is commercially sensitive given it forms the basis of its premium calculations and so its competitiveness with other motor insurers. It's not something I can ask AXA to disclose to Mr C either for those reasons.

However, under the FCA regulations AXA is not permitted to single out any consumer or policyholder and treat them differently to anyone else in the same situation. So here it can't not refund Mr C the exact amount of extra premium, it charged him for rating the claim as fault, that it had decided wrongly to put on his and Mrs C's insurance record. The rating for this will be a finite amount according to its underwriting guide. It's not a 'guess in the air' scenario. All this comes under the FCA edict of 'treating its consumers fairly' and indeed now the overarching Consumer Duty.

I can appreciate Mr C's views on AXA's veracity here too. But the refund is something AXA knows how to do given the FCA's regulations on such things and furthermore its underwriting guide. Therefore, it's neither appropriate nor reasonable for me to use Mr C's ideas on how the refund should be calculated. AXA is fully aware of the general guidance issues on this type of thing provided by the FCA and indeed very well endorsed by this service.

I also understand Mr C's thoughts on having to deal with all his other insurers for his other cars. However, if he wants that refund from those insurers and wants AXA to pay the 8% simple interest on those refunds, then only Mr C can talk to those other insurers. There isn't a sort of benchmark figure that is applied across the board, as each insurer can rate things differently from any other insurer if it wants to as I explained in my second provisional decision. So only each insurer will know what it charged. It's up to each insurer to decide if they want to rate a 'fault claim' or not or indeed just rate on 'the claim' Mr C has instead or just that Mrs C was involved in 'an accident'.

It depends on each insurer's actuarial preferences on the matter. That is why we have comparative aggregator websites in order to buy motor insurance policies. The same cover can cost different amounts depending on how each insurer rates the information we individually give them. Some will rate my car type differently to others, and some would rate a claim differently to others, and of course some might rate a 'fault' claim differently to others. There is no ability for AXA to know all this as it's part of each insurer's individual underwriting guide. Further it would be unfair of me to make a 'guess' and impose that 'guess' on both Mr C and AXA. Whatever I might 'guess' might be completely wrong for both parties. None of that is at all fair or reasonable.

So, it remains that if Mr C wants these refunds and further wants AXA to pay 8% simple interest on the refund, then AXA must be provided with the precise refund each insurer of Mr C's other vehicles has provided.

As regards Mr C's ongoing loss of having to pay just one excess for his claim to repair his



car, this remains an uninsured loss payable by the HGVs insurers. So, I agree with Mr C that AXA should be updating him on its success or otherwise. I repeat here for clarity what I said in my second provisional decision.

*'However, in these circumstances AXA might also decide to refund it [the excess Mr C has paid] now, as technical further compensation to Mr and Mrs C given it's so likely the HGVs insurers will be reimbursing AXA for its claim costs to Mr and Mrs C. But essentially and technically I can't ask that it does that, solely because it's an uninsured loss and not a loss insured under this or any motor policy. So, it's part of Mr and Mrs C's uninsured losses for the HGVs insurers to consider and refund, not AXA.'*

## **My final decision**

So, for these reasons, it's my final decision that I now uphold this complaint.

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

- Ensure there is only one claim recorded for the damage caused by this accident and confirm this in writing to Mr and Mrs C refunding one excess if Mr and Mrs C paid two excesses. Interest of 8% simple per year should be added to the refund from the date Mr and Mrs C paid it to the date of the refund. Mr C has now confirmed AXA charged him £75 for the windscreen excess.
- Remove the recording of the fault claims concerning this incident from all internal and external databases, confirming to Mr and Mrs C in writing that this has now been done.
- Recalculate the premium it required Mr and Mrs C to pay in October 2023 and refund the difference to Mr and Mrs C. Interest should be added to this refund at 8% simple interest from the date Mr and Mrs C paid the premium to the date it refunds them.
- When or if Mr and Mrs C find out from their other insurers for their other cars what part of any premium increase was caused by the fact the claim was recorded as fault only, Mr and Mrs C should confirm the amounts of the refunds they received from the other insurers to AXA consequently. In order that AXA can add 8% simple interest from the date Mr and Mrs C paid the additional proportion of any such premium to the date AXA now pays this element of interest.
- If income tax is to be deducted from any of the interest, appropriate documentation should be provided to Mr and Mrs C for HMRC purposes.
- Pay Mr and Mrs C £550 as compensation only deducting the £25 it said it paid Mr and Mrs C if it shows Mr and Mrs C their bank account received this £25. AXA has paid Mr and Mrs C a further £50 compensation for yet another error and that £50 is additional to this compensation award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 3 March 2025.

Rona Doyle  
**Ombudsman**