

The complaint

Mrs L complains that AXA Insurance UK Plc (“AXA”) unfairly recorded her at-fault for an accident claim under her motor insurance policy.

What happened

In December 2023 Mrs L was involved in a car accident. She contacted AXA and received a letter that told her she wasn’t at fault. She says she heard nothing more. Mrs L subsequently learnt that she had been recorded ‘at-fault’ for the accident. She says AXA didn’t inform her of the liability outcome and she doesn’t believe she was at-fault.

AXA acknowledged that it hadn’t properly investigated the circumstances of the claim. It says it settled with the third-party’s insurer (TPI) to avoid further costs. AXA confirmed it will now engage with Mrs L and the TPI, in order to investigate the claim as it should have initially. It paid Mrs L £175 compensation for the confusion it caused and the poor standard of service.

Mrs L didn’t think she’d been treated fairly and referred the matter to our service. Our investigator didn’t uphold her complaint. She says it’s reasonable that AXA is now investigating the claim. If the liability decision changes, she says the business should refund any premiums Mrs L is owed plus 8% interest.

Our investigator agreed that it was reasonable for AXA to pay Mrs L compensation. She says £175 is fair and line with our services approach.

Mrs L didn’t agree with our investigator’s findings and asked for an ombudsman to consider her complaint.

It 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.

Having done so I’m upholding Mrs L’s complaint in part. Let me explain.

It’s not the role of this service to determine who is at fault for an accident. That’s a role for the courts. But we can consider whether AXA treated Mrs L fairly in its handling of her claim. I’ve focussed on that here.

After she reported the accident Mrs L received a letter from AXA dated 3 January 2024. This provided information about the claims process. Under the heading ‘Next Steps’ it says:

“Our assessment shows the other person or company is responsible for this incident. We’ll make every effort to reclaim the costs from them, but if we can’t, your no claims discount may be affected. Once we’ve confirmed we can reclaim the cost, we’ll refund your excess

and restore your no claims discount.”

Referring to AXA's claim records from the end of July 2024, Mrs L says she understood this to mean she wasn't at-fault for the accident. The records show AXA sent a letter to Mrs L on 6 June informing her the claim had been closed as *“all necessary payments have now been raised”*. It says her no-claims discount (NCD) has been affected because of this incident. The letter goes on to say that Mrs L has protected no-claims, which means her NCD won't change at her policy renewal. But it explains that her premium is affected by factors other than her NCD, which means her premium could still increase.

I can understand why Mrs L thought she wasn't being held responsible for the accident based on the letter she received in January 2024. However, the letter does explain that if AXA can't reclaim the costs from the other party this will impact Mrs L's NCD. I don't think this is particularly clear as Mrs L had a protected NCD. But it does indicate that the matter is ongoing as AXA had to reclaim its costs from the TPI.

It may be helpful to explain that liability in these circumstances relates to whether an insurer has incurred costs. So, if AXA is unable to recover the costs of the claim from the TPI, it will record the claim as 'at-fault'. AXA's policy terms allow it to decide how to deal with any given claim, it doesn't need the policyholder's permission. But this doesn't mean it can do anything it wants – it must still treat Mrs L fairly.

Having read the claim records, AXA didn't follow its established process to investigate Mrs L's claim. Only after her complaint did it provide Mrs L with its accident report form. She's since completed this with details of the accident, sketches showing how it happened, and photos of the damaged cars. But this information should've been requested at the time the claim was first reported. I can see the settlement with the TPI was completed on a without prejudice basis. This means that liability can still be disputed. I note Mrs L says the other driver had a dash-cam installed. I can't see that this was requested. Her testimony also differs from the other drivers as to how the accident occurred. Based on this it's clear that liability for the accident has yet to be properly considered. As no investigation was carried out by AXA I think it's offer to consider this now is appropriate.

I acknowledge what Mrs L says about her premium increasing as a result of how liability for the claim was recorded. I can understand her frustration. But the liability outcome isn't yet known. AXA needs to consider the evidence before deciding whether it can dispute liability with the TPI.

As I confirmed earlier it's for AXA to decide how to deal with this claim. But it must treat Mrs L fairly and investigate the matter fully before making this decision. In the event that the liability decision changes, AXA can calculate any premium refund Mrs L is owed. I agree with our investigator that it should add 8% simple interest for the period of the overpayment. If Mrs L isn't satisfied with how AXA deals with her claim, after it's investigated the matter, she can raise another complaint. If she remains dissatisfied with its response she can then ask our service to consider the matter.

I've thought about the impact all of this has had on Mrs L. She was caused confusion when told she was considered at-fault for the accident. Given the lack of explanation and engagement from AXA this is understandable. This caused Mrs L inconvenience in spending more time dealing with the matter. Mrs L was also caused frustration as she's adamant the other party was to blame for the accident. To put this right, it's reasonable that AXA pays her compensation. But I think the payment it's already made for £175 is fair. I note Mrs L's comments that she doesn't think it is. She references the increase in premiums she's had to pay. But in the event that the liability decision changes Mrs L will receive a premium refund. In any case this is separate to a compensation payment, which is intended to account for

distress, inconvenience and frustration, not financial loss. So, I won't be asking it to pay anymore.

My final decision

My final decision is that I'm upholding this complaint in part. AXA Insurance UK Ltd should:

- pay Mrs L 8% simple interest* on any premium refund she's owed for the period of the overpayment.

**If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs L how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 27 February 2025.

Mike Waldron
Ombudsman