

The complaint

Miss S is unhappy with how AXA Insurance Designated Activity Company (AXA) settled a third-party claim against her car insurance policy.

What happened

Miss S had a car insurance policy with AXA and added a named driver to the policy.

In May 2019, the named driver was involved in an accident with a third party and AXA told Miss S it was investigating the accident reported by the third-party's insurer (TPI).

AXA initially told Miss S in May 2020 it had settled the claim with her no claims bonus (NCB) reinstated. After it reopened the claim, it told Miss S again in June 2021 it had settled the claim with her NCB reinstated. In both instances, it was because the TPI hadn't made further contact.

But in June 2024, following further contact from the TPI, AXA told Miss S it had settled and paid the third-party's claim (the claim) based on partial liability (50/50). It said Miss S's NCB would be affected as a result of the claim. Miss S complained following this letter, and about AXA's lack of communication.

AXA issued a complaint response in June 2024. It apologised for not keeping Miss S informed. But it said it had settled based on partial liability because it felt this was the best possible outcome if the claim was to go to court.

Miss S referred her complaint to the Financial Ombudsman Service. She said AXA didn't keep her updated, and told her twice previously the claim had been settled. She said she wasn't given the opportunity to provide additional evidence. She didn't agree to being held liable and wanted her NCB reinstated.

The Investigator partially upheld the complaint. They said the terms allowed AXA to settle the claim how it saw fit, and it hadn't acted unfairly in settling the claim. They said the NCB had been reduced in line with the policy wording. But because they said AXA had communicated poorly, they recommended it pay Miss S £250 compensation for the distress and inconvenience caused by this.

AXA accepted, but Miss S didn't. She said she was not the driver at the time of the accident and AXA didn't properly investigate the claim. She said 'settled' in legal terms meant full and final and under the statute of limitations, AXA wasn't required to settle the claim.

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.

Miss S has provided a lot of information in support of her complaint. I assure Miss S that I've taken everything she's provided into account. But in this decision I've focused on what I think are the key issues in this complaint. No discourtesy is intended by this, it simply reflects the

informal nature of the way that the Financial Ombudsman Service reviews complaints.

I should first explain that this service isn't able to say who's at fault for causing an accident, or to what extent, as that is the responsibility of the courts. Our role is to look at whether AXA carried out a fair investigation, reviewed all the evidence it has and come to a reasonable decision.

Miss S's policy, like all other car insurance policies, allowed AXA to defend or settle any claim involving an insured driver. So it was entitled to settle the claim, on the best terms it thought fit. It didn't need Miss S's authorisation to do so, and it had the ultimate and final say in how to settle a claim. But it needed to exercise this right fairly and reasonably, taking into account everything both parties had provided.

In this case, AXA reviewed the evidence it was provided, including the named driver's testimony at the time and photographs of the damage from both parties. AXA wrote to the TPI saying the damage wasn't consistent with the accident circumstances as described. But I can see the TPI proposed a split liability (50/50), and provided evidence of an engineer's opinion the damage was consistent with the accident circumstances.

I appreciate Miss S wanted the opportunity to contest the matter in court, possibly for a more favourable split in liability. But AXA is entitled to take a pragmatic approach to claim handling, and it ultimately felt a split liability (50/50) would be the best possible outcome. Because I think it carried out a fair investigation and reviewed the information it was given, I think it acted fairly and reached a reasonable decision.

Miss S says she was not given the opportunity to provide additional evidence, but I've not seen enough to persuade me she would've been able to provide additional evidence that would've changed AXA's decision.

Miss S also pointed out that she was not the driver. But because the accident involved a named driver under Miss S's policy, I don't think AXA acted unfairly in dealing with the claim under Miss S's policy. AXA's reference to Miss S in its communications doesn't change this.

Miss S said the statute of limitation in the circumstances was three years from the date of the accident in May 2019, so AXA wasn't required to settle the claim when it did, in around June 2024. AXA pointed out this was a damage only claim, so the third-party would have had six years to issue proceedings if they wished. AXA explained that the three-year period applied to a claim for injury, which wasn't relevant in the circumstances. I'm satisfied with AXA's explanation, and this is in line with what I understand about the limits that apply. So I don't think it acted unfairly in settling the claim.

Miss S said 'settled' in legal terms has a particular meaning. But our service isn't able to make a finding on whether a party has breached the law, or misused a legal term – that is the responsibility of the courts. And I don't think AXA acted unfairly in reopening the claim. I say this because the TPI provided expert opinion the damage was consistent with the accident circumstances, having already made clear its intention to issue legal proceedings if the matter wasn't resolved.

The terms of Miss S's policy also explain that if AXA makes any payments it is unable to recover, the claim will count against Miss S's NCB, regardless of fault. So in the circumstances, I don't think AXA acted unfairly in saying Miss S's NCB would be affected. But if she's concerned AXA didn't apply any reduction of the NCB fairly, she can raise this separately with AXA.

I agree with the Investigator that AXA communicated poorly with Miss S. I can see it was the

TPI that caused delay in the claim being settled. But I consider AXA should've done more to explain to Miss S the claim could be reopened, in the instances it informed her it had been settled. And I don't think it acted fairly in not informing Miss S the claim had been reopened, prior to it settling the claim, in around June 2024. I think this caused Miss S avoidable distress and inconvenience. But I think the £250 the Investigator recommended is fair compensation in the circumstances, so this is what I will direct AXA to pay.

My final decision

My final decision is that I partially uphold this complaint.

I require AXA Insurance Designated Activity Company to:

- Pay Miss S £250 compensation, if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 4 April 2025.

Monjur Alam
Ombudsman