

The complaint

Miss R complains about AXA Insurance UK Plc's ("AXA") handling of a claim made on her car insurance policy and the position it reached on liability.

What happened

Miss R was involved in a road traffic accident in July 2023, so she made a claim on her policy. Miss R says she was proceeding on a road with a car in front of her and a lorry behind her. She says the car in front braked heavily, so she braked and avoided hitting it. But the lorry behind her didn't respond in time and struck her car on the left-hand side.

AXA says it initially held the third-party lorry at fault, but they disputed liability. So, AXA agreed to independent arbitration, following which, in September 2023 liability was determined on a 50/50 basis.

Miss R then brought her complaint to us. AXA said it thought Miss R's version of events and those of the third party were equally plausible. And that it had made Miss R aware of the arbitration decision and asked her if she had any more evidence such as CCTV or a witness, but she didn't reply.

However, AXA acknowledged it had provided poor service by not setting clear expectations, not providing regular updates, and not sending Miss R a settlement letter at the time of the liability decision being reached. So, it offered Miss R £250 compensation in recognition of these points.

Our investigator didn't think AXA had acted unfairly. He said Miss R had provided AXA with witness details, which it hadn't acted on. But he didn't think it likely would have affected the liability outcome if it had. And he thought £250 was fair and reasonable for the remaining service issues.

Because Miss R didn't agree, the complaint was referred to me to decide. I issued a provisional decision upholding the complaint, and I said:

"I should start by saying it isn't my role to decide who was liable for the accident, or to what extent. That's not something which I can decide, and it has already been dealt with through independent arbitration. My role is to decide whether AXA treated Miss R unfairly in how it handled her claim.

Miss R said she was proceeding correctly when the third-party lorry hit the side of her car. The third party said they were proceeding correctly when Miss R encroached into their lane and braked in front of them without providing enough time for them to stop.

Miss R disputes this. She says it was impossible for her to undertake the lorry on the road she was on, and if she had done this, her car would have been struck on the driver's side, rather than the passenger's side.

Since there were two different versions of events, it would have made it more challenging for AXA to successfully defend liability in Miss R's favour without further evidence like CCTV or a witness statement to show what happened.

Under the circumstances, I would have expected AXA to check with Miss R if she had any evidence to support her version of events, and to follow up on anything she provided.

I can see Miss R filled out an accident report form in July 2023. Within this, she shared the name and phone number of a witness. Miss R provided these details again on the claim form she submitted, confirming in this the witness was the driver of the car in front of her.

However, I haven't seen anything showing AXA followed up on this information and tried to contact the witness for a statement.

In September 2023 AXA emailed Miss R saying the third party had asked for evidence. AXA asked Miss R if she could provide any CCTV or images of the third-party vehicle. Miss R replied to this saying:

"I have no images of the third party, I assume you mean the witness? She wasn't really a third party, she stopped to see if I was ok."

I think this shows Miss R again made AXA aware there was a witness. Again though, I haven't seen anything to show AXA followed up on this information. And I think that caused the matter to go to arbitration without AXA having attempted to contact the witness, even though Miss R had provided it with their name and phone number.

Miss R had a genuine and reasonable belief a statement from her witness may have helped show she wasn't at fault for the accident. So, I think she was caused a loss of expectation by AXA not attempting to obtain a statement from her witness before the matter went to arbitration. I think that caused Miss R some avoidable distress, and I think some additional compensation is warranted for that.

But I don't think there's enough for me to conclude if AXA had approached the witness it likely would have changed the outcome on liability. I say this because it's uncertain whether the witness would have responded to a request for a statement, whether they clearly observed the incident (particularly since their car was in front), and whether any statement they provided ultimately would have altered the arbitration decision. For these reasons, I don't intend to ask AXA to change how it has recorded the claim.

AXA acknowledged it could have provided better overall service to Miss R since it didn't set clear expectations, provide regular updates, or inform her of the liability decision at the time. I think the £250 compensation AXA offered for these issues was reasonable. But because of the distress caused to Miss R by AXA not acting on the witness details she provided, I think AXA should increase this by a further £100 and pay a total of £350 compensation for the distress and inconvenience caused by its handling of this claim."

AXA replied saying it accepted the decision. Miss R replied saying that it was untrue she hadn't responded to AXA's request for any further evidence prior to arbitration, and that she could have obtained further evidence to support her version of events, but AXA didn't give her the chance.

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.

I've considered Miss R's response, but I've reached the same conclusions as I did in my provisional decision.

I don't dispute Miss R replied to AXA's request for her to provide any further information prior to the case going to arbitration. I said in my provisional decision AXA had sent an email to her in September 2023 asking if she had any CCTV or images and I acknowledged she replied to this restating she had details of a witness.

I've considered Miss R's comments about not being given the opportunity to provide further evidence. But I think overall AXA gave Miss R a fair opportunity to provide evidence in support of her version of events. Miss R was asked on the accident report form and claim form if she had any witnesses – which she provided details of, and in the email AXA sent in September 2023 it asked Miss R if there was any CCTV or images she had – but Miss R replied saying she didn't have images and didn't say there was any CCTV.

Miss R says photographic evidence of the road could have been obtained which she thinks would have supported her case. But I can see on the claim form Miss R gave a description of the road layout and provided a diagram sketched on satellite image of the road, and on the accident report form Miss R also provided a diagram of the road layout and explained her version of events. So, I think AXA already had an overview of the accident circumstances from Miss R's perspective, including the road layout.

Since AXA hasn't provided me anything more to think about, I still think it was unfair and caused distress to Miss R that AXA didn't contact the witness to request a statement, even though Miss R had provided their details. But, for the same reasons I set out in my provisional decision, I don't think there's enough here for me to say it's likely this would have changed the outcome on liability if AXA had done this. So, I think the fair and reasonable outcome for the complaint is for AXA to increase the compensation by £100 to account for the additional distress caused by not contacting Miss R's witness.

Putting things right

I require AXA to pay Miss R £350 compensation for the distress and inconvenience caused by its handling of her claim.

My final decision

My final decision is that I uphold this complaint and I require AXA Insurance UK Plc to carry out what I've set out in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 5 March 2025.

Daniel Tinkler
Ombudsman