

The complaint

Mr R is unhappy with AXA Insurance UK Plc's handling of a claim he made under his motor insurance policy.

Reference to AXA includes its agents or representatives.

What happened

Mr R made a claim under his motor insurance policy after he was involved in an accident. Mr R's car was assessed by AXA's engineer and deemed a total loss. The engineer determined market value of the car was £2,320. AXA paid this amount, less the policy excess, in settlement of the claim.

Mr R has complained that he told AXA's engineer that he wanted to retain the salvage, yet it subsequently sent him a cheque for full payment for the car with no explanation as to what the payment was for. He then had difficulty contacting AXA to query the payment. Mr R has also complained that AXA failed to pay his witness expenses for attending court in relation to the dispute of liability for the accident.

In April 2024 Mr R was informed the payment was for the market value of his car. He was offered the chance to pay a salvage fee to retain the car, or to allow AXA to collect it. Mr R wanted AXA to pay his tax, insurance and storage costs for the time he had to store the car at his home before he'd agree to release it. AXA didn't agree. And, as a result of this dispute, AXA ended up logging a theft marker on the Motor Insurance Anti-Fraud Theft Register (MIAFTR).

AXA has accepted there were avoidable delays and communication issues and offered Mr R £100 compensation for this. AXA also agreed to pay Mr R a further £100 toward his court expenses as a gesture of goodwill. But it maintains that it isn't responsible for paying Mr R's tax, insurance or storage costs, and that it acted reasonably in applying the theft marker when Mr R refused to pay the salvage fee or return the car.

An investigator at the Financial Ombudsman Service considered Mr R's complaint but didn't think it should be upheld. She said AXA had paid a fair amount in compensation for the service issues it was responsible for, and more than she thought it was required to pay for Mr R's court expenses. She didn't think it had acted unreasonably by offering Mr R the option to pay to retain the salvage, or to allow it to collect the car. And she didn't think AXA needed to pay Mr R's tax, insurance or any storage costs either.

Mr R didn't accept our investigator's opinion. So, as no agreement has been reached, the 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.

Having done so, while I appreciate it will likely come as a disappointment to Mr R, I agree with the conclusions reached by our investigator. I'll explain why, addressing the various elements of Mr R's complaint separately.

The settlement and communications

AXA based the settlement it paid Mr R on the report issued by its engineer. This report states that the settlement figure was agreed with Mr R. But it also states that Mr R told the engineer he wanted to retain the car. Given this, I can understand Mr R's confusion when he received a cheque for £1,970 without any accompanying correspondence to explain what it was for.

Mr R made several attempts to contact AXA, and query the cheque, without success. And AXA made one attempt at returning Mr R's contact without success. This meant it took around two months from receiving the cheque before Mr R was informed what it was for.

AXA has accepted its service fell short here and has offered Mr R £100 compensation. I think that amount is sufficient to fairly compensate Mr R for the impact of AXA's poor communications here. While it would have undoubtedly been confusing and frustrating to have received a cheque without understanding what it was for, and to be unable to reach AXA to clarify things, Mr R still had the use of the car during this period, and so the impact of AXA's errors was limited to that frustration and confusion.

Mr R has also raised concerns that he wasn't provided with a copy of the engineer's report immediately. But I wouldn't necessarily expect AXA or the engineer to immediately share the report with him. The report was commissioned and paid for by AXA and was for its own internal use. Had Mr R requested to see it, I'd have expected AXA to consider and respond to his request – either to share it or to explain why it wouldn't do so. But I've seen no evidence that this was requested at the time. So, I don't think AXA treated Mr R unfairly by not immediately sharing the report with Mr R.

Tax, insurance and storage costs

Once it was established that AXA had paid Mr R the full settlement for the car, it set out that he could either allow AXA to collect the car – which was now its property – or pay AXA £533.60 to retain the salvage.

Mr R didn't agree to release the car or pay the salvage fee because he first wanted AXA to reimburse him for the tax and insurance costs he'd incurred since the settlement cheque was issued, and to pay him storage costs for keeping the car at his property.

As I understand it from the engineer's report, Mr R's car was driveable, and continued to be used by him following the accident. So, it's natural that he would need to continue to pay for tax and insurance. Should Mr R not have been driving the car, and not wanted to pay tax and insurance, he was free to notify the DVLA that it was off road via the appropriate channels, and to cancel his tax and insurance.

Based on the above, I don't think it would be fair or reasonable for me to direct AXA to cover tax or insurance costs in the circumstances. I also don't think it would be fair to direct AXA to pay Mr R for storing his car at his home. This is because I'm not aware that he actually incurred any costs in storing the car, and because when AXA made attempts to collect it, Mr R refused to release it.

The theft marker

AXA explained to Mr R on several occasions that the settlement it paid him meant that the car had become its property – which is correct.

I appreciate Mr R was clear with the engineer that he wanted to retain the car, and that AXA could have done more to explore this before making the total loss payment. However, once Mr R queried the cheque, I think AXA was clear with Mr R about his options – he could release the car to AXA or pay the salvage fee to keep it.

When Mr R refused to do either, AXA made him aware of its intention to record a theft marker against him, before it eventually did. So, I think Mr R was provided with reasonable options, and with reasonable notice of the consequences of taking neither option. Based on this, I don't think AXA acted unfairly by recording the theft marker when Mr R continued to refuse to release the car or buy it back.

Witness expenses

Mr R is unhappy that AXA hasn't paid his expenses for attending court as a witness in the liability dispute.

The Civil Procedure Rules explain that the party issuing a court summons should deposit with the court a sum sufficient to cover the witness for travelling to and from court, and a sum to cover the witness's lost earnings or benefit.

AXA has provided comments from its litigation panel team, which explain that AXA is not responsible for paying the witness expenses outlined in these rules, in circumstances where the policyholder is party to the proceedings, i.e., the claimant or defendant. AXA would be unlikely to issue a summons in these circumstances, rather the policyholder would need to attend to defend their position, if there were to be any prospect of success. AXA says the expenses outlined in the above rules only apply to a witness summons, which are generally only served in cases where there is an independent witness that needs to attend court. AXA further explained that where a liability dispute is ruled in the policyholder's favour, they can request expenses be awarded by the court. But this is discretionary, by decision of the judge, and limited to £95.

In this case, the liability dispute wasn't heard by the judge, because the parties agreed a 50/50 liability split before the case was heard. Therefore, no award for costs by the judge was considered. However, I've seen that AXA later offered Mr R an additional £100 toward his court expenses as a gesture of goodwill.

I find AXA's explanations to be persuasive. So, I don't think it acted unfairly or unreasonably by not initially paying Mr R's witness expenses – as this isn't its standard practice, and to my knowledge isn't standard practice within the industry either. And as explained, AXA has since paid Mr R more than it says he would have been able to claim via the courts had his case been heard. So, even if I agreed that AXA had acted unfairly – which I don't – Mr R hasn't suffered any loss.

My final decision

AXA Insurance UK Plc has already made an offer to pay £200 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that AXA Insurance UK Plc should pay Mr R £200 – if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 April 2025.

Adam Golding
Ombudsman