

The complaint

Mr F complains that AXA Insurance UK Plc (“AXA”) unfairly held him at fault for a collision he was involved in, under his motor insurance policy.

What happened

In April 2023 Mr F was involved in a collision with a van. He contacted AXA and it was agreed he would claim directly from the third-party’s insurer (TPI) as it was thought the other driver was at fault. However, AXA subsequently received confirmation that the TPI was holding Mr F at fault for the collision. No action was taken at this time as AXA thought Mr F was in contact with the TPI.

Mr F arranged for his car to be repaired. He told AXA he didn’t have an MOT at the time of the collision so couldn’t have claimed through his cover.

In July 2023 AXA was informed the TPI was pursuing it for the costs to repair its insured’s vehicle. CCTV footage of the incident from the TP’s vehicle was then shared with AXA. In February 2024 AXA informed Mr F it couldn’t defend his position. It says he was in the process of reversing at the time of the collision and that the onus was on him to ensure it was safe to do so throughout the entire manoeuvre.

AXA apologised to Mr F for communication failings causing delays in keeping him updated. It also paid him £175 compensation.

Mr F didn’t think AXA had treated him fairly. He says his car was stationary at the time of the collision. He says that it was the TP’s van that drove into his stationary car. Mr F says AXA should amend how this claim was recorded to show he wasn’t at fault. Because he wasn’t satisfied with AXA’s decision he referred the matter to our service.

Our investigator didn’t uphold Mr F’s complaint. She says she’d considered whether AXA had handled this claim fairly and reasonably. She thought the business had shown that it considered the evidence fairly and arrived at a reasonable decision regarding liability. Our investigator thought the payment AXA had made for its communication issues was fair and so didn’t ask AXA to do anything more.

Mr F didn’t agree with our investigator’s findings and asked for an ombudsman to consider his complaint.

It has been passed to me to decide.

I issued a provisional decision in February 2025 explaining that I was intending to not uphold Mr F’s complaint. Here’s what I said:

provisional findings

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 my intention is to not uphold Mr F's complaint. I'm sorry to disappoint him. I understand he feels very strongly that he isn't at-fault for the accident. But I'll explain why I think my decision is fair.

Our role isn't to consider who's at fault for an accident. That's a role for the courts. Our role here is to consider whether AXA acted fairly considering all of the evidence, when deciding how to deal with this claim

Mr F's policy terms state that AXA is able to take over, defend, or settle a claim in his name. It doesn't need his permission to do this. However, this doesn't mean it can do anything it wants. It must still treat Mr F fairly. I've focused on that here.

I've watched the CCTV footage of the collision. The TP's van is obstructing Mr F's car from reversing out from where it was parked. This meant he had to perform a manoeuvre that involved reversing, driving forwards and then reversing again before he could drive away. The TP's van drives forward mid-way through Mr F's manoeuvre, and this is where the collision happens.

Mr F maintains that his car was stationary when the van drove forward causing the collision. He's provided an expert witness report that he says confirms his car was stationary at the time of the impact. Having considered this carefully I think the expert witness report shows that Mr F's car was stationary. It sets out to a frame-by-frame analysis of the CCTV footage to support this point. I think this reasonably shows that it was the van that moved into Mr F's car. Albeit this comes down to a small fraction of a second.

I asked AXA to comment on the expert witness report. It didn't have the opportunity to consider this information before it decided how to proceed with the claim. So, I think it's fair that it was given chance to comment. In its complaint response AXA said Mr F was in the process of reversing at the time of the collision, but this is at odds with the expert witness's findings. I asked it whether this altered its view on who was at-fault.

AXA responded to my request to say that the report, footage and claim information has been reviewed again. It says in its view there is no way it could get a no-fault outcome on this claim. AXA says Mr F's car cleared the path of the van when moving forward after the first reversing manoeuvre. This left the way clear for the van to move off. As discussed, it was after this that the collision occurred. AXA didn't think that the expert witness report changed how liability for the collision should be viewed.

AXA also says that although it has considered the van being illegally parked, it can't use this as a valid argument to show Mr F wasn't at fault.

In its response AXA says it is certain that the outcome of this claim would never be non-fault. It says even if it ended up as a split liability decision, Mr F's no-claims discount (NCD) would still be affected. AXA says his policy excess has already been waived so there's no added benefit of a split liability decision. Albeit the business says it doesn't think this outcome would be possible anyway.

Having considered AXA's response and its claim records, the question of liability has been considered by multiple senior handlers. They are all in agreement that this claim should be recorded with Mr F at-fault. This position is maintained by AXA's latest review. The business has had sight of all the relevant evidence including Mr F's expert witness report. Based on this I'm satisfied it's given the appropriate consideration to the matter.

As discussed AXA doesn't need Mr F's permission to settle the claim in the way it has. From

what I've read it has considered the evidence. It proceeded with what it believes the likely outcome would be if a court were to hear the case. Ultimately AXA is responsible for paying the cost of any claim. So, it's in its interest to minimise this. Mr F strongly believes the other driver was at fault for the collision, but it's for AXA to determine how best to deal with the claim. I don't think Mr F has shown that it did so unfairly.

I've thought about the standard of communication AXA provided. I can see it apologised for failing to keep Mr F fully updated with progress once the TPI had submitted its claim. It also acknowledges that information provided over the phone wasn't always communicated effectively.

Mr F's overriding concern is the at-fault outcome. But I think it's fair that AXA acknowledges its communication failings for the frustration and inconvenience this caused him. AXA has already sent a payment for £175, along with an apology. If it hadn't already done so I would have made an award along similar lines. But as it has I can't fairly ask it to do anymore. Having considered all of this I don't think AXA treated Mr F unfairly when it relied on its policy terms and settled the claim as it did. It's fair that it paid him compensation and apologised for its communication failings. But I can't reasonably ask it to do anymore.

I said I was intending to not uphold Mr F's complaint.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

AXA didn't respond with any further comments or information for me to consider.

Mr F responded at length. But to summarise, he says his car was stationary for longer than a fraction of a second prior to the collision.

Mr F maintains that he can't be held at-fault for the accident as his car was stationary at the time it occurred. He also says AXA's comments are defamatory that he'd reversed without due care. Mr F says this has caused him a great deal of harm for which he should be compensated.

Mr F disputes AXA's comments about him clearing the path of the other vehicle, allowing the way clear for it to move off. He says I've accepted AXA's view on liability, so it's fair that I should accept his view, acknowledging the testimony of his expert witness.

With his further comments Mr F supplied images of specific frames from the accident footage.

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 not persuaded by Mr F's further comments, and the images he provided, that a change to my provisional findings is warranted. Let me explain.

In my provisional decision I say the expert witness had reasonably shown Mr F's car was stationary at the time of the collision. I go on to say that this comes down to a fraction of a second. It's clear that I misspoke on this point. Having reviewed the evidence and Mr F's comments it's apparent his car was stationary for longer than a fraction of a second. This was actually 1.04 seconds. I'm sorry for the inaccuracy of my comment on this point.

However, this doesn't persuade me that AXA treated Mr F unfairly in how it dealt with the liability aspect of his claim. As I explained in my provisional decision it's for AXA to decide how best to deal with any claim. It's responsible for paying any claim costs that are incurred under its policy, so it has an interest in Mr F not being at-fault. In this case AXA has shown that multiple senior claim handlers considered the evidence. The business has also had sight of Mr F's expert witness report. Having considered all of this it maintains that it wouldn't be able to successfully argue a non-fault outcome for Mr F in these circumstances.

In my provisional decision I explained that it's not our role to determine who's at fault for an accident. This is a role best left for the courts. Our role is to consider if AXA treated Mr F fairly when assessing his claim. From what I've read it did. Mr F clearly has a different view. But the evidence shows AXA has considered all of the evidence. It has experience of decisions a court is likely to make. Based on its expertise it doesn't believe a non-fault claim would be successful in this case. From what I've seen I have no reason to consider it's acted unreasonably in making the decision it has.

I acknowledge Mr F's comments that AXA's agent accused him of driving without due care. He refers to this as a defamation. I understand Mr F feels strongly that he wasn't to blame for the collision. But AXA has a different view of the accident. Its view is that Mr F would be considered to blame because of the manoeuvre he was performing. He can of course pursue a defamation claim in court. This isn't something I can comment on here. But I don't think AXA has behaved improperly when explaining its view of the accident.

Having considered Mr F's further submissions, I'm satisfied that AXA didn't treat him unfairly when dealing with his claim. So, my decision remains unchanged in that I do not uphold his complaint.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 1 May 2025.

Mike Waldron
Ombudsman