

The complaint

Mr S is unhappy with how AXA Insurance UK Plc (AXA) settled a claim made under his motor insurance policy.

Any references to AXA include its agents. Mr S is represented by Mrs S.

What happened

In August 2023 Mr S was overtaking a vehicle as part of his journey. A third-party car pulled out of a driveway and collided with Mr S, who then collided with the vehicle he was overtaking. A claim was logged with AXA and Mrs S says in the early days it was handled as they'd expect, given there appeared to be a dispute over liability. Mr S asked Mrs S to deal with the claim on his behalf but she says AXA wouldn't engage with her, leaving Mr S to try and resolve the claim himself.

In January 2024 Mr S took steps to get the van back on the road, and he became aware AXA had recorded a fault claim. Mr S complained to AXA who responded in August 2024. AXA said as the incident involved a changing lane collision and neither party had evidence to show the fault lay with the other, it was compelled to pay the third parties hire costs. AXA said this didn't mean Mr S was at fault for the incident and solicitors had been instructed to defend action taken by the third-party. But it said it wouldn't be able to recover the hire cost that had already been paid.

Unhappy with AXA's response Mrs S referred the complaint to the Financial Ombudsman Service for review. One of our investigators considered AXA had acted fairly in the circumstances, as liability was still being disputed, but AXA had acted correctly in making the payment for the third-party hire costs.

Mrs S replied saying she didn't understand how Mr S could be found at fault for the incident when nobody from AXA had spoken to him. As they didn't agree with the conclusions reached by our investigator, the case has been passed to me.

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.

In the first instance, I think it's helpful to set out I'm only able to consider AXA's handling of the claim up to the date of the final response letter, which is from August 2024. At that point, liability hadn't been decided and AXA said it was continuing to defend the claim on Mr S's behalf.

However, AXA says it has paid out for the third party hire costs. It's done so under an established protocol to prevent costs from increasing in situations such as this one where liability can't be easily determined. I'm satisfied AXA has acted reasonably here.

When a motor insurer records a claim on a claims database (as required) they can be recorded as either fault or non-fault. But this doesn't mean the insured driver is at fault, rather it means the insurer has made a payment but hasn't recovered their costs. So as things stood in August 2024, AXA's recording the incident as a 'fault' claim was correct as there was a payment made for the third party hire costs which hadn't been recovered. I'm not going to require AXA to make a change to how the claim is recorded. I haven't been provided with any evidence to show that, up to the date I'm able to consider, AXA had decided liability for the incident rested with Mr S.

Mrs S also said AXA hadn't accepted Mr S's instruction for her to be a representative on this claim. AXA says it doesn't have any record of this request and when asked, Mrs S and Mr S weren't able to confirm the request was made directly to AXA rather than another organisation involved with the incident. As such, I can't say that AXA disregarded Mr S's request for Mrs S to handle the claim on his behalf. Mrs S says she's not clear on the position of the claim, so it'd be helpful if AXA reached out to give Mr S an update and when doing so, perhaps it could include an explanation as to how Mr S can give authority for Mrs S to act on his behalf.

If Mr S remains unhappy with AXA's continued handling of the claim, he (or Mrs S on his behalf) can make another complaint and refer that to this Service, subject to the usual considerations.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 April 2025.

Emma Hawkins

Ombudsman