

complaint

Mr L has complained that AXA Insurance UK Plc has admitted liability for a claim, despite the fact he has not asked for indemnity for this under his insurance policy.

background

I considered this matter in my provisional decision dated 28 March 2003. Mr L stated that he reversed his car into a glass window at a dealer's car showroom premises after being "intimidated" by an employee of the dealer, whose own car was blocking an exit. After the incident Mr L provided his personal details and the other party's insurers used these and his car's registration number to contact AXA and submit a damage claim for the cost of the window. AXA stated that it had no option but to accept liability for the incident and pay any reasonable third party claim. In correspondence with AXA, Mr L disputed liability and questioned when he had asked AXA to indemnify him in respect of the third party claim. He says AXA have prejudiced his position in providing an early admission of liability to the third party's solicitors. In response, AXA has advised that if Mr L was not looking for indemnity under the policy, it would therefore notify the third party and advise it must redirect the claim to him personally.

AXA did this and when the letter of claim was received by Mr L from third party solicitors in December 2011, he says he suffered a severe medical reaction due to stress caused by realising he would be personally liable for third party costs. Mr L says he continues to suffer ill health, in part due to the added stress and anxiety caused by AXA's handling of the claim. The adjudicator upheld the complaint in part in that he was of the view that AXA was entitled to settle the third party's claim but that it should have done more to obtain written confirmation from Mr L that he was not seeking indemnity. Since it did not, he was of the view AXA should pay £100 compensation to Mr L.

In my provisional decision, I was minded to overturn the adjudicator's assessment. I agreed with him that AXA had properly considered the available evidence in relation to the claim against Mr L and had come to a reasonable assessment that it should settle that claim. However, I felt that Mr L had been clear throughout the claims and complaint process that he never asked or wanted AXA to involve itself in this claim and therefore, AXA were not wrong to withdraw indemnity and inform the third party that he had chosen to deal with the claim himself.

I invited both parties to submit any new evidence or arguments in response to my provisional findings.

AXA had nothing further to add.

Mr L did not agree with my findings in the provisional decision. He said that at the time of the accident he had provided the dealer's car showroom with his identity and address, thus meeting his common law obligations. He asked it to contact him directly if it wished to progress any claims against him, expressing concerns about the actions of their driver who had left the scene, depriving him of the opportunity to speak with her.

Mr L asserted that as this incident was not a collision on the road it was not covered by the Road Traffic Act, and therefore, his insurance details should have been kept confidential by AXA.

He maintained that the claim was dealt with by AXA without his knowledge, consent or approval. He believes that such action is outside the scope of his insurance contract and outside the scope of what a reasonable man could expect. He does not believe that AXA has protected him as it promised to do and that it has cost him for both the repair of his car and the loss of his no claims discount (NCD). He has said that once his insurer admitted liability, the chances of him recovering even proportionate costs were greatly prejudiced.

He believes that information was obtained by the third party from the Motor Insurance Database (MID) by deception, and he feels that his insurer should have done more to protect his personal information on there from being released.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

With regard to the actions of the third party obtaining Mr L's insurance details from the MID, the Financial Ombudsman Service has no jurisdiction over the third party's insurers in respect of it using the MID to trace his insurance details, nor over the MID itself, therefore I am unable to consider this element of Mr L's complaint. Likewise I have no jurisdiction over any alleged contraventions of the Data Protection Act; such complaints should be directed to the Information Commissioner.

As I stated in my provisional decision, we do not decide which party is liable for causing an accident, this being the prerogative of the courts. We do, however, consider whether a firm has acted within the terms of a policy and reached its decision in a fair and reasonable way. The policy gives AXA discretion to take over and deal with the defence and settlement of any claim. If there are little or no prospects of recovery, or little prospect of a finding of liability against a third party, an insurer can limit its financial outlay by not pursuing such cases and incurring the related legal costs involved. As Mr L was the reversing party, the onus was on him to complete his manoeuvre safely. I do not agree that AXA has prejudiced Mr L's position in its initial agreement to third party insurers that he was liable for reversing into the window of the showroom, as the facts suggest such this outcome would be most likely the ruling in a court of law.

Further, the policy conditions permit AXA to take over, defend or settle any claim as it sees fit as the adjudicator fully explained to Mr L.

I am sympathetic towards the suffering Mr L went through after receiving the letter from the third party solicitors, as evidenced by his doctor, however AXA was only acting in response to what it properly considered were Mr L's own wishes.

Mr L asked AXA in writing, on 10 November 2011, for it to confirm when he applied for his policy to indemnify him in respect of the third party claim. In this correspondence he states that he withheld his insurance details from the third party because he did not wish for the matter to proceed as an insurance claim. In response to this AXA advised by email on 18 November 2011 that they would therefore advise the third party representatives that he was not looking for indemnity and tell them to re-direct the claim to him personally. Mr L did not object to this course of action and I therefore, consider that he was, or should have been, forewarned that such a letter of claim from third party's representatives would be sent.

In his complaint form, his letter to this office and in his most recent reply to my provisional decision, Mr L confirms again that he is dissatisfied as AXA had acted without him requesting indemnity, and/or without authorisation from himself. Even now Mr L is still objecting to AXA's involvement in the matter. I will not, therefore, criticise AXA for taking the action that Mr L seemed to state he wanted. Consequently, I find that no payment of compensation is appropriate in this instance.

my final decision

For the reasons above it is my final decision that I do not uphold this complaint and I make no awards against AXA.

Rona Doyle
ombudsman