

complaint

Mr M complains that AXA Insurance UK Plc gave him poor service and unfairly declined a claim he made on his motor insurance policy.

background

In August 2018, after Mr M's car was driven by someone who wasn't insured on the policy, it was damaged in an accident. Mr M had given his keys to a friend ("Mr R") who drove him to a pub. Later that night Mr R gave the keys to another friend of Mr M ("Mr W"). Mr M says Mr R asked Mr W to return them to Mr M, but Mr W drove the car away instead.

AXA began to deal with Mr M's claim and provided a hire car for 21 days. It declined the claim in February 2019. AXA said the policy didn't cover damage to a car caused by fire or theft if at the time of the incident it was under the control of anyone who wasn't covered by the policy. It asked Mr M to pay for the car hire he'd had. In reply to Mr M's complaint, in August 2019 AXA said he'd breached the terms of his policy, so its decision didn't change.

Mr M complained to this service. He said he hadn't breached the policy, and had continued to pay his premiums, yet his car still hadn't been repaired. Later on, he said AXA had threatened legal action if he didn't pay it the money it said he owed, after cancelling the policy. He also said it had taken too long to deal with his complaint and that AXA hadn't kept him updated, despite his requests for contact from it.

One of our investigators reviewed Mr M's complaint. He thought AXA had acted reasonably, in declining the claim, given that Mr M had given the control of his car to Mr R. As the claim was complex, he thought it was reasonable for AXA to have taken until February 2019 to reach a decision. He thought AXA could have replied sooner to Mr M's complaint, but said Mr M had the right to complain to us within eight weeks of making it anyway. He thought AXA had acted in line with the policy's terms in limiting car hire to 21 days and in later asking Mr M to pay for it, when it decided not to cover the claim. And he said Mr M could have applied for an off the road notice for the car, rather than continue to pay the premiums.

Mr M said Mr R was insured to drive other cars, and that Mr R hadn't broken the law by giving the keys to Mr W to pass back to Mr M. He said he shouldn't suffer due to Mr W deciding to drive the car. The investigator still thought AXA had acted reasonably.

As there was no agreement, Mr M asked for a review of his complaint by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr R may have had a policy that allowed him to drive other people's cars, but assuming he did, the cover would have been limited. Had Mr R had an accident whilst driving Mr M's car, it would only have covered any damage caused to other cars, not damage to Mr M's car. The policy exclusion for claims arising from fire or theft says there's no cover if at the time of an incident the insured car is under the control of someone who isn't covered by the policy, with the policy holder's permission. So as Mr R wasn't a named driver on the policy, I think when Mr M gave him the keys, AXA ceased to have liability for any damage to the car.

Mr M says it wasn't unlawful in itself for Mr R to hand the keys to Mr W. But I think by giving the keys to Mr R and then not taking them back, Mr M took a risk in terms of what might happen later. He left the car under Mr R's control, and the accident flowed from that decision. It was unlawful for Mr W to act as he did, but he couldn't have done so without the keys. Mr M can't be sure what was said between Mr R and Mr W when the keys were handed over – but the police accepted that Mr M didn't give permission for Mr W to use the car. Given that fact, I understand why Mr M is upset that the claim was declined, but I don't think he's shown that AXA acted unreasonably.

To benefit from the policy's cover, Mr M had a duty to take reasonable steps to protect the car from damage. In my view, it was for him to ensure that the keys were safe. That would have meant there was no access to the car for anyone to use it without his permission. Instead, he left the control of the keys with Mr R, and in doing so he took a risk, as he didn't know what Mr R might do with them. So I think it was fair for AXA to decline the claim.

I don't think there were unreasonable delays in AXA dealing with the claim. The file notes show that it had to chase Mr M for some of the documents it needed to consider the claim. In November 2018 it was still waiting for the car's V5 registration document and a theft report from Mr M. And in January 2019 AXA was still waiting for further details from the police. It declined the claim shortly after that.

In terms of the hire car, Mr M was only entitled to keep it for 21 days from August 2018 unless AXA agreed to repair his car. In that case, the policy would have allowed Mr M to keep it until the repairs were done. But AXA didn't have the documents from Mr M that it needed to decide whether to cover the claim and repair the car until November 2018. So I don't think it was unreasonable for it to withdraw the hire. As the claim was later declined, I think it was also reasonable for AXA to ask Mr M to refund the cost of hire, although it said he wasn't obliged to do so.

In terms of Mr M's complaint about AXA's decision, as he wasn't easily contactable at the time, AXA emailed his father on 6 March 2019 to say its complaints team was looking into the matter. AXA says it didn't receive the letters Mr M sent to it in March and April 2019 chasing a response. As Mr M couldn't have known that, I think his frustration with the lack of a reply was understandable. AXA also says its complaints workload was such that it couldn't have replied to the complaint earlier than it did. After Mr M contacted us we wrote to AXA in June 2019. It sent Mr R its final response letter in August 2019.

I think AXA should have updated Mr M, even if it didn't get his letters, and regardless of any delays in its complaints-handling. But Mr M was able to complain to us anyway. And when AXA reviewed his complaint, it only confirmed its earlier decision not to deal with the claim. As I think its decision was reasonable, in my opinion the impact on Mr M of the delay in AXA considering his complaint was more limited than it would otherwise have been.

Mr M says he wasn't able to use the car as it remained unrepaired whilst his claim and complaint were ongoing. But I don't think there was any delay on AXA's part until January 2019, as I've said above. From what Mr M has told us about his personal circumstances, he wasn't able to use the car from January 2019 onwards anyway. He thinks the policy premium should be refunded. But Mr M had the benefit of the policy even when he couldn't use the car. It would have covered events such as vandalism until the policy ended.

AXA has told us the policy renewed in April 2019 and it has shown us evidence that Mr M didn't pay the premium instalments after March 2019. As he had cover until June 2019, on

the basis of the details I've seen, I don't think it was wrong for AXA to chase Mr M for the extra premium he owed. If Mr M has any concerns about the policy's renewal, or its later cancellation, it's open to him to raise the issues with AXA.

Although I think AXA should have kept Mr M better informed, as I think it acted reasonably overall, I don't think it would be appropriate to uphold Mr M's complaint.

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 M to accept or reject my decision before 22 July 2020.

Susan Ewins
ombudsman