

complaint

Miss C is unhappy because AXA Insurance UK Plc won't apply the '*Uninsured Driver Promise*' to a recent claim.

All references to AXA include its claims handlers.

background

Miss C had an accident while reversing out of a parking space.

After investigation by AXA it was concluded the third party was uninsured. But AXA wouldn't apply the '*Uninsured Driver Promise*' as it said Miss C was partially liable for the accident.

Our investigator didn't uphold the complaint. They said Miss C was reversing out of a parking bay at the time and so she was partially at fault.

Miss C disagreed and said:

- The third party was travelling contrary to the one way system.
- She'd almost completed her exit from the parking bay when the collision happened.
- The third party admitted liability at the scene.
- She was disappointed the Police didn't take the matter further especially as the third party provided false information. And she thinks they should do more to stop this kind of thing happening to law abiding citizens.

my 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, I've reached the same conclusions as the investigator and for broadly the same reasons.

what does the policy say?

The policy explains that they do have an uninsured driver promise and the term explains:

"If you have comprehensive cover and you make a claim where the driver of the other car involved in the accident is found to be uninsured, you will not have to pay your exceed or lose any party of your no claims discount (NCD) as long as :

- *You are able to provide the make model and registration number of the other car involved, and*
- *We can establish that you were not at fault in any way"*

The policy term does explain that the uninsured driver promise doesn't apply if they can establish that the consumer was at fault in any way. Unfortunately for Miss C because she was reversing out of a parking bay it would be challenging for AXA to say that she wouldn't be at fault in any way. So, it follows that AXA doesn't have to do anything further.

I know Miss C feels strongly that she wasn't at fault but we have to consider what the evidence shows. Miss C was reversing out of a parking bay and the third party was already on the lane into which Miss C was reversing and so had right of way. I appreciate he was travelling in the wrong direction. But Miss C reversed into his pathway and so AXA can reasonably conclude that Miss C was partially at fault.

I understand Miss C will be disappointed with my decision. However I think AXA are entitled not to apply its uninsured driver promise to Miss C's claim because the conditions haven't been met.

my final decision

My final decision is that I don't uphold Miss C's complaint against AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 20 October 2017.

Tracey Nugent
ombudsman