

## **complaint**

Mr C has complained that AXA Insurance UK Plc logged his claim on his motor insurance policy as a "fault claim" against him without investigating it properly. Mr C has also complained about poor service from AXA.

## **background**

Mr C was in a collision with another car in November 2014. He says it was the other driver's fault and the other driver didn't stop, but Mr C noted his car registration number.

The damage to Mr C's car cost £859.64 to repair. Mr C claimed on his motor policy with AXA, and AXA tried to recover the cost from the other driver's insurer. But the other driver insisted he wasn't involved in the accident.

AXA inspected the other driver's car and didn't find evidence that it collided with Mr C's car. So AXA decided not to continue trying to get the £859.64 back from the other driver. This meant that Mr C's claim became a fault claim on his record, which would affect his No Claims Discount. AXA wrote to him to explain this in May 2015.

Mr C complained to AXA and then brought his complaint to us. He thinks AXA should have done forensic paint tests on the other driver's car. He also complained that AXA didn't keep him informed or respond to his emails promptly. He doesn't think there should be a fault claim against him and says he'd like compensation for the time he's spent chasing AXA.

The adjudicator who investigated the complaint thought that AXA had acted reasonably in the circumstances. Mr C didn't agree and so his complaint has come to me to decide.

## **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 C's motor policy has a section headed General Conditions which says among other things:

*"If you have a claim ... you must ... give us full control of the claim ...  
We may take over, defend or settle the claim."*

This is common in motor policies so that insurers can settle out of court if they think that defending the claim would be unsuccessful or cost more than the settlement. Although it's AXA's right under the policy to decide whether to defend or settle a case, we expect it to reach its decision in a fair and reasonable way taking account of all the evidence it has and its past experience of handling claims. AXA doesn't have to follow Mr C's wishes but we expect it to consider what Mr C says as well as the other driver's evidence and any independent evidence.

## **evidence**

Mr C said he was turning right at a junction when the accident happened. The other driver wished to turn left and squeezed past Mr C's car, causing damage to the passenger side of it. There was no independent evidence to confirm this, such as a witness statement, CCTV

or police report. Mr C gave AXA the registration number of the car which he said collided with him, and AXA contacted the other driver's insurer. That insurer insisted that their policyholder wasn't involved in the accident and refused to pay AXA the cost of Mr C's repairs.

AXA then instructed an independent engineer to inspect and photograph the other driver's car. The engineer found no damage which matched up with the damage to Mr C's car. That engineer's report then went to AXA's own engineer, and both engineers agreed there was nothing to show that the other driver had been in an accident with Mr C.

We don't decide who caused an accident. We only decide whether an insurer made a reasonable decision in choosing to settle a claim from a third party. In these situations insurers look at how the case would stand up in a court. I think it was reasonable for AXA to decide, after the engineers' inspection, that it couldn't convince the other insurer or a court that the other driver caused the damage.

Mr C wanted AXA to get a forensic paint test done on the other driver's car. AXA said they thought such tests were mainly for criminal investigations, and they didn't do them. Mr C offered to pay for the test himself and asked AXA to refund the cost if the test proved that the other driver hit his car. I don't think it was unreasonable of AXA to refuse as they had no experience of those tests, didn't know the cost or the process and also pointed out that the other driver would have to agree to have his car tested.

So in the circumstances I don't think it was wrong of AXA to give up trying to recover the £859.64, which is a relatively small sum for a motor insurance claim, and to log the claim as a fault claim against Mr C. A fault claim doesn't mean Mr C caused the accident. A fault claim just means that the insurer has had to pay out on a claim and, for one reason or another, can't recover that money back from any third party.

However AXA also told Mr C that they'd passed the file to their solicitors to assess whether there was a chance of succeeding in court to recover the money from the other driver. I think it was fair of AXA to get a professional opinion before finally deciding whether to drop the claim against the other driver.

#### *poor service*

Mr C says that AXA were slow at dealing with his claim and didn't keep him informed or respond promptly to his emails. He also says that the other driver could have had his car repaired between November 2014 when the accident happened and March 2015 when AXA's independent engineer inspected it.

AXA have said that they had to keep waiting for the other insurer to reply to them, which slowed things down. AXA said they contacted the other insurer twelve times by letter, email or 'phone and have shown us copies of several letters between them from 2 December 2014 to 7 April 2015. Although this claim did go on for many months I can see that it was difficult to decide because there was no independent evidence and the two drivers had completely different stories.

AXA didn't charge Mr C his excess of £250, and I think that's fair as he did experience some frustration with not knowing what was going on. AXA have also pointed out that Mr C won't lose a year of his No Claims Discount as it's protected under his policy but, because of the fault claim, he won't gain a year's No Claims Discount for that year.

In the circumstances I think that waiving Mr C's £250 excess and referring his claim to their solicitors are reasonable steps to help Mr C, and I don't think AXA has to do anything further to put things right for him.

**my final decision**

For the reasons given above it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 October 2015.

Sandra Webber  
**Ombudsman**