

The complaint

Mr M has complained about how his motor insurer AXA Insurance UK Plc handled a claim made by him when he was hit by another driver. He was also unhappy about the decision AXA made about him being liable for the accident.

What happened

Mr M had an accident in July 2019 on a roundabout. He said it was the other driver's fault and AXA initially took Mr M's word that was the case. But the other driver disputed liability. AXA accepted Mr M was at fault and told him so. Mr M wasn't happy about that. He also felt it had been difficult for him to contact AXA. He recalls being offered £200 compensation for the communication issue and that AXA said it would review its liability decision. AXA then sent Mr M a final response on 22 November 2019 stating it had answered his concerns.

In 2020 Mr M found, what he has referred to, as a 100% fault claim on his record. He contacted AXA and told it, as he recalled it, that during a call in November 2019, AXA had said this would be recorded as a 50% liability against him. But he was unhappy about how AXA had come to that decision, and that it was now showing as 100% anyway.

In June 2021 AXA said that it had told Mr M in 2019 that this was being settled on a 100% fault basis. It didn't think it had done anything wrong in reaching that decision. Mr M complained to us. Our investigator explained he felt we couldn't look at the decision AXA had made about liability because Mr M had complained more than six months after the November 2019 final response letter. He said we could only look at whether or not it had handled things reasonably in order to make a liability decision.

In respect of how AXA handled the liability decision our investigator noted that Mr M and the other driver had provided similar accounts of the accident, but the other party included a little more detail. He noted that the other party's account had caused AXA to accept Mr M was liable for the accident and didn't think it had done anything wrong by not reverting back to Mr M first when that account was received.

Mr M said AXA had never given him a written final response on the liability issue – and that it had been closer to the end of November 2019 (so after the date of the final response) when he'd spoken to someone in the claims team who had told him the claim had been recorded as 50% liability. He said if he'd known then that this had been settled on the basis of full liability he would have challenged AXA further. In respect of how he would have challenged AXA he said that the lane markings on the roundabout hadn't been clear, he'd made some judgement calls about which lane to take and when to change, and the other driver, regardless, had driven straight into him. He felt that, above all else, showed the other driver hadn't been paying attention and so should have been found at fault. And if AXA had given him a chance he could have explained all of this, but AXA had failed to ask him for more detail when the other driver had raised their initial dispute.

Mr M's complaint was passed to me to decide. I felt I could consider AXA's liability position and explained why. AXA didn't object to this. But I also explained why I felt its decision had

been fair and reasonable. I added that I didn't intend to uphold Mr M's complaint. AXA didn't object. Mr M said he was unhappy with my findings.

Mr M said AXA had not had sufficient information to determine liability as it hadn't got in touch with him for his full account as it had been duty bound to do. And he'd missed the opportunity to discuss this with his legal experts as available under his legal expenses cover.

Mr M went on to explain further his views on the incident and shared with us what he said he'd been told by an expert advanced driving instructor. He maintained that the other driver was not driving with due care and attention, which was the only applicable legal requirement on either of them, because the road lane markings weren't enforceable.

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.

My provisional findings were:

"I can consider liability"

I'm satisfied I can look at this issue. I'll explain why here and set out my findings on the merits of the liability issue below. AXA can, of course, in reply to this decision, object to my considering the merits if it wishes. And I'll review what it says. But, to manage Mr M's expectations at this stage though – I don't think AXA did anything wrong in settling liability in the way that it did. As I said, I'll explain that below (in my section titled "Liability").

The details AXA has sent us bear out what Mr M has told us. He said he had a conversation with AXA where it accepted there had been a communication issue and that it would refer his concern about the liability decision. AXA sent us a copy of an internal email which was sent following this call with Mr M. This supports Mr M's recollection of what had been agreed and shows the liability issue was to be reviewed. No further review or response on the liability issue came from AXA. So I'm satisfied that the final response letter, dated the same day as Mr M's call and the internal email, was sent in respect of the communication issue.

It's possible the final response was intended to address both the communication and liability issue. But as AXA's response on the liability issue was to agree to review it, that wasn't really, in my view, based on the correspondence I've seen, a final position. And I don't see that between November 2019 and Mr M's further complaint in late 2020 that AXA did complete a review. However, following Mr M's complaint in 2020, AXA sent a final response in June 2021 which said it felt it had made the correct liability decision. Within four months of this final response letter Mr M complained to this service. I'm satisfied that AXA's decision on liability is something I can consider.

Liability

As I mentioned above though, I don't think AXA's decision was wrong. And whilst I know that Mr M thinks it might have been different if it had referred back to him, I don't think that is reasonably likely to be the case.

I'd remind the parties that it is not my job to determine the liability issue itself. But rather to decide, given all of the available evidence, whether the insurer reached a reasonable decision. Here Mr M had given AXA his account of things, and the other driver then put their side to AXA. But, when the other driver did this, details were given about what the correct road positioning for the drivers was thought to have been. AXA accepted the argument in

respect of road positioning, and I note that Mr M also accepts that he was acting out of line with the road markings. I can understand why AXA felt this meant Mr M had been entirely at fault for the accident.

I appreciate that Mr M feels that if AXA had spoken to him, his view would have made a difference. But from what Mr M has said I don't think that is likely to be the case. Mr M has explained that he was acting under his best judgement when entering and using the roundabout. I don't dispute that. But even he accepts that his judgement wasn't made in line with what the markings on the road said he should do. And when an insurer considers claims from other drivers they always need to think about the claim in light of what will likely happen if the matter proceeds to court. It's only if the insurer has good prospects of entirely defending its driver – ie showing its driver was not at fault at all for the accident – that this service might expect an insurer to risk court action. And I'm not persuaded that in a situation where one driver has acted in defiance of road markings, albeit with forethought and good intent, that a court would be most likely to find that that driver was in no way responsible for the accident. Where the prospects for success aren't good, all an insurer can reasonably do is settle the claim as best they can. I think that is what AXA did here.

So I'm not persuaded that if AXA had reverted to Mr M for more detail following receipt of the other driver's challenge, that AXA would likely have changed its position on liability. A position which I think, given all the circumstances, was a reasonable one.

50% or 100% liability

Mr M says he spoke with AXA in late November and was told this claim had been settled on the basis of 50% liability. I'm not sure what was said during this call. I think it's possible that some misunderstanding occurred – perhaps that the AXA adviser said the best outcome that could have been achieved might have been 50%. Although if the AXA advisor did give Mr M incorrect information that clearly shouldn't have happened. But, if it did, I don't think it had any material impact to the position Mr M was in. As I explained above, I don't think Mr M, even had he known the claim had been settled based on him being entirely at fault, would have been able to do anything to change that.

I'd add that the central claim database kept by the insurance industry doesn't show the percentage of liability accepted. So the record wouldn't show 50% or 100% liability for Mr M. It would never have shown, even if shared liability had been accepted, that Mr M was only partly liable. It would only show that he had been at fault. Which I'm satisfied AXA had reasonably determined he was. And the fact of a fault claim will likely have an impact on the premium the policyholder will find they are charged when taking out new cover or renewing the existing policy.

Summary

I appreciate that Mr M is frustrated with AXA. And I think it could have been clearer with him after it agreed to review its liability decision in November 2019. But that wouldn't have avoided the position Mr M found himself in when looking for new cover in 2020. And I think Mr M's overriding grievance with AXA was that it had found him at fault at all. I don't think its decision, in that respect though, was unreasonable."

I understand that Mr M feels strongly about this, that he believes he was not at fault at all. But I think it's fair to say that the other driver likely has similar feelings based on their interpretation of what happened. And Mr M has explained that there was no 'correct' lane for either party to be in, or enforceable lane requirements, such that it was up to each driver to merely drive with "due care and attention". Accepting that is the case for a moment, that

means that, at court, the account of each driver would be paramount to any finding made. And just as Mr M feels strongly that he was not at fault, so quite likely does the other driver. The issue of fault would come down to a judgement call and, from an objective perspective, I can see that a clear cut, 100% finding of fault in Mr M's favour might not be achievable. And I explained provisionally that, without prospects being good for a successful outcome like this, AXA was entitled to settle matters.

Ideally AXA should have spoken to Mr M to let him know what was happening before liability was accepted and the settlement paid. But it has no overriding duty to do so because the policy allows it to take control of the claim and settle it. And it did share its settlement decision with Mr M. Given what I've found, the fact that it didn't contact Mr M before that decision was made, didn't negatively affect the situation. I appreciate that Mr M might have felt it beneficial to receive legal advice. Although I don't know if his situation in general terms is something the legal expenses cover would look to assist with, I do note the cover would only apply where there are good prospects for success. As I've said, I'm satisfied that AXA settled the liability aspect fairly and reasonably because the prospects for a successful outcome – 100% in favour of Mr M – *were not good*. So I can't see that Mr M's position was prejudiced regarding the legal expenses cover where that same standard applied and had not been met. As such, I'm not persuaded that, if Mr M had taken legal advice, his liability position would have been any different.

Having reviewed my provisional findings and Mr M's response to them, my view on his complaint has not changed. My provisional findings now form part of the findings of this, my final decision.

My final decision

I don't uphold this complaint. I don't make any award against AXA insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 April 2022.

Fiona Robinson

Ombudsman