

The complaint

Mr M has complained, as a director of a company, which I'll refer to as P, about AXA's handling of a motor claim under P's commercial motor insurance policy.

What happened

On 1 September 2020 Mr M was involved in a collision with a motorbike. Mr M was indicating left while waiting for the gates to his drive to open so he could turn in. As Mr M commenced to turn, a motorcycle undertook Mr M's vehicle resulting in a collision. A claim was opened with AXA. AXA appointed a third-party claims handling company to act on its behalf, which I'll refer to as B.

During the investigation of the claim, two witness statements were provided - one from an independent witness which held both parties at fault and another from a person known to Mr M which said the third party was at fault.

Liability was disputed by both parties. AXA made a decision to settle the claim by agreeing a 50/50 split liability with the third-party insurer. Mr M disputed this and said the third party was at fault. He was dissatisfied that AXA agreed to settle the claim on a split liability basis even though B was defending the claim and also that the split liability was agreed without his prior knowledge or consent.

Mr M brought a complaint to our service. He believed an error was made in settling the liability and wanted to know who authorised it because B was defending the claim on a non-fault basis.

AXA said if the matter went to court, the second witness statement holding the third party at fault, would be dismissed as there is a pre-existing relationship between Mr M and the witness. Therefore, based on the information available it hadn't acted unreasonably in settling the claim on a 50/50 split liability.

Our investigator didn't recommend that the complaint should be upheld. He thought AXA was entitled by the policy terms and conditions to settle the claim as it saw fit. He said that AXA had been fair and reasonable in deciding to settle the claim as split liability, given the one independent witness statement which held both parties at fault and lack of any further evidence.

Mr M didn't agree and so the complaint has been passed to me to for a decision.

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.

In Mr M's complaint letter to this service, he said that he didn't think he was at fault in this collision. Whilst he clearly didn't agree with AXA's decision on liability, what he is also disputing is that AXA should be able to make that decision, without his knowledge and

agreement and, also while B, who was acting on behalf of AXA, was defending liability.

This is clearly a matter of great principle to Mr M and I fully understand he feels frustrated that AXA has settled the claim without his knowledge as a split liability even though B wrote to the third-party insurer to defend liability.

The Investigator has already explained that it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy?

In the terms and conditions of P's policy, AXA's ability to determine liability is included under the heading Claim Procedure. Here it says, in summary, AXA has full discretion to take over and deal with the defence or settlement of any claim that arises.

So, AXA is entitled, under the terms and conditions of its policy with P, to take over, defend, or settle a claim as it sees fit. And this means AXA can settle the claim as it feels appropriate irrespective of what B said and whether Mr M agreed with the outcome or not. That means it doesn't require Mr M's knowledge or consent to decide how to settle a claim. This is a common term in motor insurance policies, and I don't find it unusual. And I think it's a reasonable term, as ultimately AXA will have to pay any settlement, so it should be able to decide how to settle.

This having been said, I would still expect AXA to act reasonably when relying on this term and properly consider the matter before proposing a settlement.

The evidence that AXA had to consider was the two drivers' versions of events, the damage to the vehicles, one independent witness statement which held both parties at fault and another statement from a person known to Mr M who held the third-party at fault. I think it was reasonable for AXA to consider that it wouldn't be able to rely on this witness in court due to the pre-existing relationship between the witness and Mr M. I'm satisfied AXA acted in line with P's policy terms and conditions and took into account the available evidence when it made its decision to settle the claim as split liability. I think this was a reasonable decision in the circumstances and I don't require AXA to change it. So, I think AXA has acted fairly and reasonably in the circumstances.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 28 December 2022.

Ankita Patel
Ombudsman