

The complaint

Miss P complains about liability for a claim under her motor insurance policy with AXA Insurance UK Plc trading as Swiftcover (AXA).

References to AXA in this decision include their agents.

What happened

In February 2023 Miss P was involved in a collision with a third party vehicle bumping into her vehicle. Miss P's vehicle only sustained minor damage. She contacted AXA to tell them about the collision. From the initial call notifying AXA of the collision, AXA thought it was likely to be held as Miss P's fault (she was changing lanes when the collision occurred).

As she didn't want to claim for the damage to her vehicle, AXA said they were noting details of the incident for information only and wouldn't take any further action. The circumstances of the incident meant they couldn't hold any other party responsible for the incident, so they wouldn't be able to reclaim any costs. So, it would be treated as a claim under Miss P's policy. AXA also said they would handle all aspects of the incident, including liability.

AXA confirmed they thought it looked like Miss P was at fault for the collision. Miss P subsequently found out the third party had made a claim against her, which she only became aware of when she logged into her online account with AXA.

Miss P challenged this, saying AXA hadn't contacted a witness to the collision or taken account of the witness's view the third party was at fault. And they'd settled the third party claim (in June 2023) without properly investigating the circumstances of the claim or questioning the third party version of what happened, saying they were seeking to claim for pre-existing damage to their vehicle. So, Miss P complained to AXA.

In their first final response, issued in September 2023,, AXA agreed they should have made more thorough investigations before the third party claim was settled. So, they partially upheld the complaint. AXA apologised for any distress or inconvenience caused to Miss P and awarded £100 compensation, as well as £25 as a goodwill gesture for the time taken to review the case and respond to Miss P. But AXA didn't uphold a second element of complaint, about how she was treated in a call with AXA in July 2023.

Separately, AXA contacted the witness to the collision, who drew a diagram of what happened and wrote underneath that the third party was at fault. Miss P also completed a witness questionnaire, maintaining her view the third party was at fault for the collision. AXA then wrote to Miss P later in September 2023 saying review of her questionnaire and the witness statement, they would need to settle the claim as a fault claim against Miss P. They said the witness statement indicated the third party vehicle was established in the inside lane when Miss P indicated to change lanes (from the outside lane to the inside lane). As such the third party was correctly proceeding forward. While the witness statement said the third party vehicle was travelling at speed, it wasn't something that could be proven and so AXA wouldn't be able to use this point in defence of the claim. So, on the available evidence, AXA wouldn't be able to hold the third party at fault for the collision.

Miss P complained to AXA, but they didn't uphold her complaint. In a further final response they said after reviewing the evidence from Miss P and the witness their liability resolution team had concluded Miss P was fully at fault for the collision, for the reasons they'd previously set out.

Miss P then complained to this Service. She didn't accept she was at fault for the collision and as a result of being held at fault her premiums had increased. The stress of what happened had affected her mental health. She wanted AXA to accept the third party was at fault for the collision and for her premiums to be adjusted to what they would have been had she not been held at fault and reimbursed any difference.

Our investigator didn't uphold the complaint, concluding AXA didn't need to take any action. While they could have handled the claim better, overall AXA had acted fairly in reaching their decision on liability for the claim resting with Miss P. From the initial call notifying the loss the investigator didn't think it unreasonable for AXA to indicate it was likely Miss P would have been held to be at fault, as Miss P was moving from the outside lane to the inside lane when the collision occurred. Without dashcam footage, which Miss P wasn't able to retrieve, it would be difficult for AXA to hold the third party responsible. And it was reasonable for AXA to place weight on Miss P's initial statement about what happened.

The investigator also concluded AXA had considered the third party claim costs before settling them, including the engineer's report from inspection of the third party vehicle. And Miss P had the opportunity to complete an accident report form in February 2023. But it wasn't completed until after the claim had been settled. And the witness statement subsequently provided was consistent with Miss P's initial statement about changing lanes at the time the collision occurred and that the third party was established in the lane. Given this, although AXA could have acted differently in how they handled the claim, the investigator thought their decision to deem the claim as a fault claim against Miss P wouldn't have been any different. The investigator thought the compensation awarded by AXA was fair and reasonable.

Miss P disagreed with the investigator's view and requested an ombudsman review the complaint. In disagreeing she didn't think the investigator had taken into account her witness statement about the third party undertaking her from behind. And she was initially unsure about events when she contacted AXA to report the collision.

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 role here is to decide whether AXA have acted fairly towards Miss P.

The key issue in Miss P's complaint is whether AXA acted fairly and reasonably in their decision to hold Miss P at fault for the collision. Miss P says they didn't consider, or speak to, the witness and their view the third party was at fault. Miss P also feels the third party exaggerated the damage to their vehicle, claiming for pre-existing damage. AXA say they considered the evidence and information about the incident, including Miss P's statement and that of the witness, concluding she was at fault for the collision.

While this is the main issue, I've also considered how AXA handled the claim from its initial notification and view that it was a fault claim against Miss P, through acceptance of the third party claim and then their further consideration of the claim following the additional evidence (statements) provided by Miss P and the witness.

In considering the issue, I'd first want to note that it isn't my role to decide on liability for the collision, nor their decision to settle the third party claim. They have provided evidence about the latter, including the costs and engineer report on the vehicle. AXA say these costs were assessed through their normal assessment processes and I haven't seen anything to contradict that view.

As I note above, it's my role to decide whether AXA have acted fairly and reasonably in the circumstances of the case. It's AXA's role to decide liability, as they indicated to Miss P when acknowledging her telling them about the collision. The policy terms and conditions provide for this, under the *General Conditions applying to all sections of your policy* there's the following term:

"5. Claims

If you or your car are involved in any type of incident, accident, claim or loss regardless of fault you must:...

b) Give us full control of the claim including the uplift storage and repair of your car. We may take over, defend or settle the claim or take up any claim in your name..."

I've then considered the initial version of events from Miss P and the subsequent statements from Miss P and from the witness. The latter does state the witness thought the third party vehicle was at fault, saying the vehicle undertook Miss P's vehicle (at speed). The statement also says Miss P was indicating to move from the outside lane to the inside lane when the collision took place. This would be consistent with the description of the collision (the two vehicle brushed along their sides). I've also seen an email from the witness stating Miss P's vehicle was already in the straight ahead lane and the two vehicles brushed each other. Which isn't consistent with Miss P moving into the inside lane (and indicating to move into it).

When Miss P called them to first notify the incident, she told them she was changing lanes at the time of the collision. Based on this AXA said they were likely to hold her at fault for the collision, as she moved into the third party's lane. AXA also note the outside lane was to turn right only and Miss P moved lanes to the inside lane to proceed straight ahead. So, I think AXA's assessment reasonable.

On the point about AXA not speaking to the witness, they say they consider witness statements provided in writing, rather than verbally (over the phone). But their case notes record their attempting to call the witness, but the line was engaged. And as I've noted, the witness provided a diagram as part of their statement as well as an email. I think this is a reasonable body of evidence for AXA to assess.

AXA also say they can't establish the speed of the third party vehicle, even if the witness states the vehicle was moving at speed. I understand why Miss P believes the witness testimony supports her case, but it doesn't provide conclusive evidence that would be likely to be accepted should the issue have gone to court.

Taking all these points into account, I think AXA acted fairly and reasonably in concluding the claim should be recorded as a fault claim against Miss P.

On the second point, AXA acknowledge they should have made more thorough investigations before the third party claim was settled. From the timeline of events and what happened, I agree. They settled the third party claim without a detailed statement from Miss

P or the witness statement. But given my conclusion about it being fair and reasonable to deem the claim a fault claim against Miss P, after they'd considered the additional evidence and statements from Miss P and the witness, then I don't think their decision would have changed.

But the sequence of events would have meant it took longer than it should to assess the claim fully, which will have caused Miss P distress and inconvenience. Considering the circumstances of the case, I think AXA's award of £100 fair and reasonable, so I won't be asking them to make a further award.

As the £25 was a goodwill gesture for the time to respond to her complaint – and complaint handling by businesses isn't a regulated activity that falls within the remit of this Service – I haven't considered this aspect further.

My final decision

For the reasons set out above, it's my final decision not to uphold Miss P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 21 March 2024.

Paul King
Ombudsman