

The complaint

Mr B complains about how his insurer, AXA Insurance UK Plc (AXA), handled a claim under his motor insurance policy, following a collision with a third party vehicle.

References to AXA in this decision include their agents.

This decision covers the issues raised in Mr B's complaint to this Service in January 2024, following AXA's final response of 17 January 2024. Those issues are AXA not contacting a potential witness to the accident and their decision to split liability on a 50/50 basis.

AXA issued two previous final response letters in response to earlier complaints from Mr B about delays in handling his claim, each awarding £275 in compensation. While this decision doesn't cover the issues raised in those complaints and covered in the two earlier final responses, reference is made to them as context for this decision.

What happened

In November 2022 Mr B was involved in a collision with a third party vehicle, with both parties saying they were stationary at the time of the collision. Mr B maintained the third party vehicle turned out of a side road and hit his stationary vehicle. He took a photograph of the accident and obtained details of a witness to what happened. He contacted AXA to tell them about the accident and lodge a claim, providing the photograph and witness details.

However, Mr B wasn't happy with the time AXA took to assess the claim and investigate the circumstances of what happened. Nor did they contact the witness, who Mr B believed would have provided evidence showing he wasn't at fault for the accident – but subsequently left the UK. AXA decided liability for the accident should be split 50/50 between Mr B and the third party involved in the collision (the third party insurer was a different part of AXA). Because of the accident, Mr B lost his NCD (two years, unprotected), leading to a significant increase in his premium. He also had to pay a £500 excess under the policy terms.

Unhappy at what happened, Mr B complained to AXA. In their final response, dated 17 January 2024, they partially upheld the complaint. They acknowledged they hadn't updated Mr B. They'd considered this under separate complaints, awarding compensation (£275 and £275) in two earlier final responses. On the witness, AXA said details were provided but they didn't contact the witness when they should have done as part of the claim investigation. AXA couldn't be sure the witness would have helped their investigation or support Mr B's non-fault contention. AXA also acknowledged they should have done more to support Mr B and been proactive in handling the claim. In recognition of their service falling short of the standards expected, AXA awarded £225 to Mr B, including £25 for failing to respond to his complaint within the timeframe allowed for businesses to respond.

On their decision to determine liability on a split 50/50 basis, AXA said they reserved the right to determine liability, as set out in the policy terms and conditions. No decision had been made officially and they were going to try to contact the witness for a statement. However, if there wasn't any supporting evidence (from either side), they would settle the claim on a 50/50 split of liability. So, they didn't uphold this element of complaint.

Shortly after issuing their final response, AXA wrote to Mr B to say they'd closed the claim as all necessary payments had been raised and confirmed his NCD would be affected. On delays in assessing the claim, delays between November 2022 and July 2023 had been dealt with under a separate complaint. Since July 2023 AXA accepted they could have done more to progress the claim in a timely manner, including contacting the third party insurer. Upholding this element of complaint, AXA awarded a further £50 to Mr B (a total of £275).

Mr B then complained to this Service, unhappy at how AXA handled his claim, in particular the failure to contact the witness to obtain their version of the accident. Because of this and AXA splitting liability 50/50, he'd lost his NCD and had to pay a higher premium. He wanted a refund on the cost of his policy; reimbursement for the loss of his NCD over the next five years (he estimated this could amount to £3,000); and refund of the £500 excess he'd had to pay as part of the claim settlement.

Our investigator didn't uphold the complaint, concluding AXA didn't need to do anything more. She noted in cases where liability was disputed, determining liability and settling a claim could take significant time. As a Service, our role wasn't to determine liability – which was AXA's responsibility - but to decide whether an insurer had reached a reasonable outcome. AXA's decision to determine a 50/50 split of liability was based on the available evidence and the most likely outcome were the issue to go to court.

However, AXA hadn't contacted the witness whose details were provided by Mr B, causing a loss of expectation. But she couldn't conclude that had the witness been contacted and provided a statement, it would have been material to the outcome of the claim (the liability decision). She thought AXA's award of £225 compensation was fair in the circumstances.

Mr B disagreed with the investigator's view and asked an ombudsman to review the complaint.

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 Mr B.

The key issues in Mr B's complaint are, firstly, AXA failing to contact the witness and, secondly, their decision to settle the claim on a 50/50 split of liability. Mr B maintains the witness would have provided evidence to support his version of events, that he wasn't at fault. AXA's failure to do so, and decision to split liability 50/50 means the loss of his NCD and consequently higher premium. AXA accept they should have contacted the witness – but didn't – and they should have handled Mr B's claim better. On the 50/50 split of liability, they say the policy provides for them to determine liability. They've awarded £225 in recognition of this (including £25 goodwill gesture for failing to respond to the complaint in the standard timeframe).

Considering the timeline of events, looking at AXA's case notes, there is a significant gap from when the incident was initially notified to them in November 2022 through to July 2023 (which AXA acknowledge in response to one of Mr B's complaints, awarding compensation). Thereafter, there were further delays which AXA accept they could have handled more proactively – including contacting the third party insurer. From what I've seen, the third party insurer was a different part of AXA, with indications of significant backlogs in that part of the business. From the date of the accident in November 2022 through to AXA's closure of the claim and confirmation of a 50/50 split of liability in February 2024 meant the claim took over 14 months to be settled, with significant periods of what appear to be little or no progress.

While not covered by this decision, I note AXA previously made two awards, each of £275, in earlier final responses and a further £50 for delays and lack of progress in the claim handling in their third final response issued on 17 January 2024.

On the two specific issues within this decision, I've first looked at the failure to contact the witness for whom Mr B provided details to AXA at the time of the accident. AXA acknowledge they should have contacted the witness as part of their investigation of the claim. It's not clear why they didn't, but the fact remains it didn't happen until the start of 2024, with no response received that I could see.

Mr B says the witness would have corroborated and supported his view of the accident and what happened, which would have shown that he wasn't at fault. In the absence of AXA contacting the witness earlier than they did, it's not possible to form a definitive conclusion on whether they would have responded, or if they did, whether any account would have supported Mr B's version of what happened. Or whether that would have changed AXA's view of liability or made the third party insurer willing to accept liability.

However, even allowing for these uncertainties, I've concluded AXA didn't act fairly towards Mr B by not contacting the witness until a significant time after the accident (when Mr B says they had gone abroad). Contacting the witness much closer to the date of the accident would have been more likely to obtain a response and a statement while events were fresher in the mind of the witness. I'll come back to the question of what I think AXA needs to do to put things right.

Moving to the question of liability for the accident, looking at the evidence, there are versions of events from both Mr B and the third party driver about what happened, with each saying the other party was at fault for the collision. In the absence of any other evidence (apart from the potential witness) such as dash cam or CCTV footage, it's not unreasonable for AXA to have decided to settle the claim on the best possible terms, which would be an equal split of liability (50/50).

The policy terms and conditions referred to by AXA in their final response as supporting their right to determine a claim, including liability, are set out in the *General conditions applying to all sections of your policy* section, as follows:

“5. Claims

If you have a claim or any incident that may lead to a claim under your policy 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; you must not negotiate regarding any claim, settle any claim...”

Given this, in the circumstances of the case, I can't conclude it was unreasonable of AXA to have agreed a 50/50 split of liability. In the absence of any independent evidence to support a clear non fault conclusion, it would have been unlikely that AXA would have been

successful in pursuing the matter. To be recorded as non fault, AXA would have had to recover all the costs of the claim from the third party insurer, which in the circumstances would have been unlikely.

Given the split of liability, as an uninsured loss, Mr B would have had to contact the third party insurer to recover half of the policy excess he paid under the claim.

Having reached these conclusions, I've considered what AXA needs to do to put things right. When considering the case, I've noted AXA accept they made several service failings as set out in their response to Mr B's complaints, so the issue becomes one of whether they've done enough to put things right for Mr B. I've also considered carefully what Mr B has said about the impact of what has happened, including the financial impact of the claim being settled on a 50/50 basis and the loss of his NCD.

AXA awarded £225 compensation to Mr B in their final response (including £25 for complaint handling issues) and £50 for delays, so a total of £275. Considering the circumstances of the case, given the uncertainties of what might have happened had they contacted the witness as I've set out, then I think their compensation award is fair and reasonable and in line with the published guidance on compensation from this Service. So, I won't be asking them to make a further award.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 June 2024.

Paul King
Ombudsman