

## **The complaint**

Miss T complains AXA Insurance UK Plc unfairly settled a motor insurance claim with her as jointly at fault.

## **What happened**

In May 2023 Miss T was involved in a collision with a third-party's car. Her car received some limited damage. She considered the third-party driver to be fully at fault. However, AXA settled the claim on a 50/50 split liability basis.

Miss T was unhappy about that decision, so complained to AXA. AXA responded in March 2024. It said it had decided on the 50/50 decision after receiving the incident footage and discussions with the third-party. It didn't agree to alter the liability decision.

Miss T wasn't satisfied so referred her complaint to the Financial Ombudsman Service. She feels dashcam footage shows the third-party to be fully responsible. She's unhappy AXA didn't discuss the incident before reaching the settlement. She complains AXA didn't allow her to use her legal expenses cover – nor explain why. She feels the claim outcome will unfairly result in her paying more for her motor insurance. To resolve her complaint she would like the claim record removed from an industry database and the £500 excess refunded.

Our Investigator didn't find AXA's decision to agree to a split liability outcome to be unfair. So she didn't ask it to do anything differently. As Miss T didn't accept that outcome the complaint was passed to me to decide. She asked for records of the claim to be deleted and her excess refunded.

## **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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Miss T and AXA have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

This service doesn't decide who's at fault for an incident. That's the role of the courts. Instead, we look at whether the insurer acted in line with the policy terms and made a fair and reasonable decision. Miss T's policy terms allow AXA to take over and carry out any negotiation, defence or settlement of any claim on her behalf. That means it might make a decision she disagrees with, but the policy allows it to do so. I can consider if its decision to do so was reasonable.

Dashcam footage, from Miss T's car, shows the incident. Her car and the third-party are travelling in opposite directions on a road. At the point they pass, and make contact, both

lanes have cars parked against the kerb. This restricted the space available to both Miss T and the third-party.

Miss T said two other vehicles, on the other side of the road, passed her with ease. But the third-party crossed the central line, didn't respond to her horn and collided with her car. So they should be considered fully at fault.

AXA said both cars move towards the centre. It said at least one of the drivers should have stopped or slowed down to negotiate the gap. It said the footage shows the third-party encroached on to other side of the road – but it also looks like Miss T may have done the same. It said there isn't enough evidence to hold the third-party fully at fault. So it considered the fairest outcome to settle on a 50/50 basis.

I've considered Miss T's description of the collision, her explanations for her not being at fault and additional dashcam footage she's provided. But having viewed the incident footage, and considered AXA's description of the incident, I can't say its liability decision was unreasonable, unfair or that it failed to act in line with the terms of her policy. So I'm not going to require AXA to amend the claim record, reimburse the full excess or do anything differently.

Miss T said AXA didn't discuss the claim with her before settling at 50/50. However, I can see it advised her, several months before settling, that this outcome was likely.

Finally Miss T has said AXA told her she couldn't make use of her legal expenses cover. I haven't seen anything to confirm she had optional legal expenses cover for the relevant policy year or that if she did it was provided by AXA. Neither have I seen anything to support AXA stopping her from making use of any cover. So I'm not going to uphold that part of her complaint.

### **My final decision**

For the reasons given above, I don't uphold Miss T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 2 October 2024.

Daniel Martin  
**Ombudsman**