

The complaint

Mrs C complains about AXA Insurance UK Plc (“AXA”) and their decision to settle a claim made against her motor insurance policy by a third party. Mrs C also complains about AXA’s failure to notify her of the potential claim in a reasonable time frame.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Mrs C held a motor insurance policy, underwritten by AXA, when she was involved in a road traffic accident with a young pedestrian. AXA explained to Mrs C at the time of the claim that she would be deemed liable, although it was agreed that her no claims bonus (“NCB”) would be allowed due to their failure to obtain potential CCTV footage. But no claim was presented by the third-party around the time of the claim and so, it was closed.

However, in August 2023, the third-party returned to make a claim. And AXA offered to settle the claim without consulting Mrs C. She was unhappy about this, so she raised a complaint, expressing her unhappiness with the liability decision and the communication from AXA regarding the re-opening of the claim.

AXA responded to the complaint and upheld it in part. They explained they felt they were within their rights to settle the claim as they saw fit. And they thought their decision to accept the third party claim and make an offer to settle it was a fair one, based on the original accident circumstances. But they accepted they failed to request potential CCTV footage, and that they failed to manage Mrs C’s expectations and communicate with her effectively. So, they offered Mrs C a total compensatory payment of £275, on top of their previous agreement to allow her NCB, to recognise the above. Mrs C remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They thought AXA had acted fairly, and within the policy terms and conditions, when deciding to accept liability and settle the claim. And while they agreed CCTV wasn’t requested, they explained our service were unable to speculate on whether this footage would’ve been available, shown the accident and that the circumstances matched Mrs C’s testimony. So, considering the above, and the £275 compensatory payment made to accept the failures in communication, they didn’t think AXA needed to do anything more than they had already offered.

Mrs C didn’t agree. She maintained her belief that the accident wasn’t her fault and so, AXA shouldn’t have accepted liability. And she discussed obtaining witness statements and what would happen if these were available.

Our investigator explained their outcome remained unchanged, but also explained our expectation of AXA to assess any statements she could provide to see if this changed their stance on liability, whilst also making clear there could be no guarantees this would be the case. Mrs C remained unhappy and so, the complaint has been passed to me 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mrs C. I appreciate Mrs C feels strongly about the accident circumstances and so, the liability of the claim that's been brought against the motor insurance policy she held. I recognise Mrs C purchased the policy underwritten by AXA to assist her both practically and financially in situations such as the one she found herself in. So, as Mrs C is unhappy with the way AXA have communicated with her during the claim, and AXA's claim decision will likely result in a claim of value being recorded against her, I can understand why she'd feel unfairly treated and choose to raise a complaint.

But for me to say AXA should do something more than they have already, I need to be satisfied they've done something wrong that hasn't already been adequately compensated for by the offer they've put forward and issued to Mrs C by way of a cheque. And in this situation, I don't think that's the case, and I'll explain why.

But before I do, I think it would be useful for me to set out what I'm able to consider, and how. It is not my role, nor the role of our service to re-underwrite the claim, as we don't have the expertise to do so. So, I won't be speculating on who I think was at fault for the accident, or how liability should've been decided.

Instead, it is my role to consider the decisions AXA made, and the actions they took, during the claim process, including liability, to decide whether I think they've acted fairly and reasonably. And when doing so, I've thought about the policy terms and conditions and what I think another insurer is likely to have done in the same situation, with the same information available to them.

I've looked through the terms and conditions of the policy Mrs C held. And these explain clearly that AXA was entitled under the policy to *"take over and conduct the defence and settlement of any claim in your name"*. So, I think AXA were able to decide liability, and offer to settle any claim brought against the policy, with or without Mrs C's consent.

And in this situation, having carefully considered AXA's rationale for their liability decision based on the accident circumstances, I'm satisfied that another insurer is likely to have taken the same decision. So, while I appreciate Mrs C disputes this, I don't think I can say AXA have done anything wrong when accepting liability, and working with the third-party to settle the claim out of court, as I would expect them to take steps to mitigate the costs incurred on the claim.

But I would've expected AXA to have been clearer with Mrs C about this process, and the fact the claim had been re-opened and an offer put forward. AXA themselves have accepted they should've done this and done more to manage Mrs C's expectations overall. As AXA have already accepted this, I'm satisfied these issues are no longer in dispute and so, I won't

be discussing their merits in further detail.

AXA have offered a total of £275 to recognise the distress and inconvenience caused to Mrs C. And I think this offer is a fair one, that falls in line with our services approach and what I would've directed, had it not already been put forward.

I think it fairly recognises the shock Mrs C would've felt when she discovered a claim had been reopened, and settlement made, on a claim she assumed had been closed some years earlier. And I think it also recognises the frustration she would've felt at feeling like she'd not been given a chance to respond and have her own input.

But I think it also fairly reflects the fact that AXA were entitled to settle the claim without Mrs C's consent. And that by doing so, they were attempting to mitigate any costs that would then be recorded against Mrs C's policy. So, I don't think AXA need to offer anything more here.

The same can be said for the CCTV footage, which AXA accept they failed to request and so, accept they acted unfairly. But crucially, I have no way of knowing if this footage would've been available had it been requested. Nor can I be sure it would've contained a recording of the accident, or that this footage would've shown the accident in the way Mrs C recounts it. So, I don't think I can say the liability decision would've been any different.

But I do recognise this has left Mrs C wondering what may have happened. To recognise this, AXA agreed to allow Mrs C's NCB, to negate any financial impact to her. I think this was a fair offer to recognise this complaint issue and so, I don't think they need to do anything more.

I recognise this isn't the outcome Mrs C was hoping for. And that it doesn't help address her belief that a claim has been made against her policy unfairly. But I hope it goes some way to providing Mrs C with some closure on the situation, and satisfies her that AXA acted within the remit of the policy she held when taking the decisions they did. I note AXA issued the payment of £275 by cheque and this decision is made based on the assumption this cheque was cashed by Mrs C. If this wasn't the case, and the cheque cannot now be cashed, I'd expect AXA to reissue a cheque to ensure Mrs C receives the payment they put forward in their complaint response.

My final decision

For the reasons outlined above, I don't uphold Mrs C's complaint about AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 11 September 2024.

Josh Haskey
Ombudsman