

## The complaint

Mr R complains about AXA Insurance UK Plc (“AXA”) and the way they settled the claim he made on his motor insurance policy. Mr R also complains about the way AXA investigated and progressed this claim.

## 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, Mr R held a motor insurance policy, underwritten by AXA, when he was involved in a road traffic accident. So, he contacted AXA to make a claim.

Unfortunately, the third-party drove from the scene without exchanging details. But the incident happened by a garage forecourt, which had functional CCTV. So, Mr R made both AXA, and the police, aware of this. But this CCTV footage wasn’t able to be obtained and so, AXA were unable to obtain the third-party details to recover the costs they incurred repairing Mr R’s car. Because of this, they settled the claim on a fault basis, which in turn impacted Mr R’s no claims discount (“NCD”) and renewal premium. Mr R was unhappy about this, so he raised a complaint.

Mr R was unhappy that the claim had been settled and recorded on a fault basis, when the third-party had driven into him. He didn’t think AXA had done enough to obtain the CCTV footage that he felt would’ve provided the third-party details. And he was unhappy that he’d been told verbally his NCD wouldn’t be impacted significantly, only to discover this wasn’t the case. So, he wanted the claim to be reclassified as non-fault, his NCD reinstated, and compensation for the inconvenience he’d been caused when engaging with AXA.

AXA didn’t respond to the complaint within the eight-week time-period they are afforded. So, Mr R asked our service to continue with our investigation.

Our investigator looked into the complaint and upheld it. Within the two outcomes they provided, they explained why they thought AXA had acted fairly when settling the claim on a fault basis, as AXA had incurred costs they couldn’t recover from the third-party as they had no third-party details. But they did think AXA failed to proactively request the CCTV footage from the garage, even though the police had and it wasn’t available. And they accepted AXA had mis-advised Mr R about the impact the claim would have on his NCD, which led him to believe it wouldn’t be impacted as significantly as it had. So, to recognise the above, they recommended AXA pay Mr R a total of £325 in compensation.

AXA accepted this recommendation. But Mr R didn’t, providing several reasons as to why. These included, and are not limited to, his belief that the compensation failed to fairly recognise the fact he was out of pocket significantly due to the loss of his NCD, and the fact he was required to disclose a fault claim to future insurers. Mr R reiterated his belief that, had AXA proactively requested CCTV footage and not delayed acting until May 2023, then the third-party details could’ve been obtained. And that if this had been the case, the claim would’ve been recorded as non-fault. So, he wanted the claim to be altered to reflect this, and his no claims discount reinstated, which he felt he’d seen our service do in another

decision that he felt reflected his own situation.

Our investigator's view remained unchanged, and Mr R continued to disagree. 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 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.

Before I explain why I've reached my decision, I think it would be useful for me to set out what I've been able to consider, and how. I note Mr R has raised several concerns about the fairness of a claim being recorded as a fault claim against a driver who was involved in an accident with a third-party who drove off, or who may not have had insurance. While I recognise Mr R's concerns, I must be clear that it's not the role of our service to comment on, or direct change towards, the fairness of this standard industry approach. This would instead be for the industry regulator, the Financial Conduct Authority ("FCA").

Our service is also unable to consider the way AXA handled or responded to Mr R's complaint, as complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction. So, I won't be commenting on AXA's complaint handling within this decision.

And to ensure independence and fairness, every complaint our service considers is based on its own merits and individual circumstances. So, while I appreciate Mr R feels he's found an example outcome we've reached that is similar to his own situation, this hasn't impacted the decision I've reached here.

Instead, it is my role to consider the actions AXA have taken in the individual circumstances of Mr R's complaint about the settlement of his claim, and the service AXA provided during this claim, and decide whether I think they acted fairly and reasonably. And when doing so, I've thought about the policy terms and conditions alongside what I think another insurer would've done in the same situation.

I've carefully read through the terms and conditions of the policy Mr R held. And these explain within the general conditions that Mr R must "*give us full control of the claim*" before explaining that they "*may take over, defend, or settle the claim*". So, I think AXA were entitled to settle the claim as they saw fit, with or without Mr R's agreement and that they acted within the policy terms and conditions when doing so.

But I must also be satisfied it was fair and reasonable for AXA to do so in this situation. I note Mr R's car was damaged by a third-party, who then drove off without providing any details. So, Mr R was unable to provide a registration or any personal information for the third-party itself.

This has meant that AXA has incurred costs of over £6,000 to repair the damage to Mr R's

car that the accident caused. And they don't hold any information about the third-party to be able to claim these costs back from the third-party insurer.

So, in line with standard industry approach, as AXA have incurred a financial cost they're unable to recover, they've settled the claim on a fault basis. And I think it is fair and reasonable for AXA to do this, as this is what another insurer is most likely to have done in this situation.

I want to be clear that a claim being recorded as "fault" isn't necessarily an indication of who was responsible for the accident. Where an insurer records a claim as "fault", they are recording the fact that they incurred costs on the claim that they weren't able to recover. And this was the situation here. So, I think AXA were fair to record the claim in this way, as it accurately describes the claim and the costs they incurred in their role as the insurer, which is a risk that another insurer will want to consider when offering future insurance. I think it's also worth me explaining that AXA have an obligation to ensure the way they record and report a claim is accurate and up to date on external databases. And this is what I think they've done here.

And as the claim Mr R made was classed as a "fault" claim fairly, I think it follows that his NCD would be affected, as this discount is only applicable where a claim hasn't been made. And he did make a claim on his insurance policy, receiving a financial benefit from this claim as his car was repaired at a significant expense. This is also made reasonably clear in the policy documentation I've seen, including Mr R's policy schedule which provides an example of how his NCD would be impacted if a claim was made.

But I note Mr R won't agree with the above, as he feels there was CCTV footage available that could've provided the third-party information needed for AXA to recover their costs. And I do note that by accepting our investigators recommendation, I think AXA have accepted they could've been more proactive in trying to obtain this footage, contacting the garage around the time Mr R made his claim. So, I do think they acted unfairly here.

But I don't think this means I can say the outcome of the claim would've been different. This is because I've seen an email from the police to Mr R which explains clearly that the police themselves requested the CCTV footage from the garage in the days after the accident, within the CCTV retention period. And that despite this, the garage were unable to supply the CCTV footage which may, or may not, have provided the third-party details.

While Mr R may not agree with this, I do think that the police have greater powers of enforcement than an insurer. So, as the police were unable to obtain this footage despite requesting it in a timely manner, I think it's reasonable for me to assume that, on the balance of probability, AXA would've most likely been unable to obtain this footage as well, even if they had requested it more proactively. So, I don't think I'm able to say Mr R's position would've been any different and therefore I think the claim has been recorded fairly.

But that doesn't take away from the fact AXA could've done more in their role as the insurer. And as AXA accepted our investigator's recommendation, I think it's also accepted that AXA provided mis-advice to Mr R regarding the impact the fault claim would have on his NCD. So, I do think AXA have acted unfairly during the claim process and I've turned to what I think they should do to put things right.

### **Putting things right**

When thinking about what AXA should do to put things right, any award or recommendation I make is intended to place Mr R back in the position he would've been in, had AXA acted fairly in the first place.

In this situation, had AXA acted fairly, I think they would've acted on Mr R's notification regarding the CCTV footage and requested this from the garage. By not doing so, this has left Mr R in a position where he will never know for certain whether this request would've provided the third-party information, and I think this loss of opportunity had caused a level of frustration that should be compensated for.

But I must also take into account the fact that the police, with greater powers of enforcement, did make a request for this footage and it wasn't provided by the garage. So, based on this, I think that the footage most likely wouldn't have been received by AXA even if it had been requested, and I must factor this into the award I make, as essentially I think this means Mr R would always have found himself in a situation where he had a fault claim against him.

And while I don't doubt the confusion and frustration Mr R would've felt when he was initially told his NCD wouldn't be impacted as significantly as it then was, which again I think should be compensated for, I must also consider the fact that Mr R did make a claim on his policy that AXA weren't able to recover the costs for. And, that his NCD has been impacted in the way set out in his policy documentation.

I note our investigator recommended AXA pay Mr R £325 to recognise all the above. And having considered this recommendation, I think it 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 compensated Mr R for the inconvenience and frustration he's been caused during the claim process and the emotional impact caused by him never knowing for sure what may have happened had AXA been more proactive regarding the CCTV footage.

But I think it also fairly reflects the fact that the police were unsuccessful in obtaining this footage. And, that AXA aren't responsible for the third-party actions or the fact they drove away, which left Mr R in a situation, through no fault of his own, where he needed to claim on his insurance policy for repairs to his car with AXA having no way of recovering their costs. As AXA's costs aren't recoverable, the claim has been correctly recorded on a fault basis, in the same way I think another insurer would've done. So, the £325 payment is one I'm directing AXA to make.

I understand this isn't the outcome Mr R was hoping for. And I recognise this leaves him with impacted NCD, and a fault claim that will need to be declared to future insurers. But I don't think this long-lasting impact, and the financial implications of this, are something AXA are responsible for on this occasion.

### **My final decision**

For the reasons outlined above, I uphold Mr R's complaint about AXA Insurance UK Plc and I direct them to take the following action:

- Pay Mr R £325 compensation to recognise the distress and inconvenience he's been caused during the claim process.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 October 2024.

Josh Haskey  
**Ombudsman**