

## **The complaint**

Mrs C and Mr S complain about AXA Insurance UK Plc (“AXA”) and the handling of the claim made on their home insurance policy.

Mr S has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, and comments made, by either Mrs C or Mr S as if they were made by Mr S, where appropriate throughout the decision.

## **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 and Mr S held a home insurance policy, underwritten by AXA, when they discovered a leak in their oil tank. So, they contacted AXA to make a claim.

AXA appointed a loss adjustor, who I’ll refer to as “Q”, to manage the claim on their behalf. As Q were acting as an agent of AXA, AXA ultimately remain responsible for Q’s, and any agents they instructed, actions.

Q instructed an engineer, who I’ll refer to as “X”, to install a temporary oil tank at Mr S’ home before compiling a report on the damage caused to the existing tank. And following receipt of X’s opinion through Q, AXA chose to decline the claim stating the damage had been caused by wear and tear. Mr S was unhappy about this, so he raised several complaints.

These complaints included, and are not limited to, Mr S’ unhappiness with the claim decline. Mr S also complained about the service AXA provided overall, including avoidable delays, a lack of communication and what Mr S felt was racial discrimination. So, he wanted to be compensated to recognise the distress and inconvenience he and his family had been caused.

AXA responded to Mr S’ complaint and upheld it in part over two responses. In total, AXA paid Mrs C and Mr S £650 compensation, as well as agreeing to cover his claim in full. They accepted there had been delays caused by their errors, a lack of communication and that the claim had initially been declined unfairly. But they didn’t think they had seen any evidence of racial discrimination. Mr S remained unhappy with this response, so he asked our service to investigate.

Our investigator looked into the complaint and didn’t uphold it. Initially, they explained it was beyond our service’s remit to reach a finding regarding Mr S’ complaint he and Mrs C had been racially discriminated against.

And for the service aspects they could consider, they thought AXA’s total compensatory payment of £650, alongside their agreement to cover the claim in full, was a reasonable one. So, while they recognised all the comments Mr S had put forward explaining why he felt this payment should be increased, our investigator didn’t think AXA needed to do anything more.

Mr S didn’t agree, providing several arguments setting out why. These included, and are not

limited to, Mr S' continued belief that the £650 didn't fairly compensate him and his family for the inconvenience they had been caused. He explained why, calculated on his hourly rate at work, the £650 didn't compensate him for the time spent engaging with AXA. And he reiterated why the amount didn't fairly reflect the impact to his mental health, the impact on Mrs C and a job application she couldn't prepare for, or the loss of the freedom he felt his children endured. Mr S continued to set out why he felt like AXA not being directed to pay up to ten times what they had was allowing a large corporation to get away with treating customers unfairly.

Our investigator considered all the comments Mr S made. And they reconsidered Mr S' complaint centred around what he felt was racial discrimination. But having done so, their opinion remained unchanged. They explained our service is unable to make a legal determination on whether there had been a breach of the Equality Act 2010. But we were able to consider whether Mr S had been treated fairly and reasonably. And while our investigator noted it had been accepted that Mr S was called the incorrect name by Q, they didn't think they were able to say this error, and the service Mr S received, was evidence that he had been treated less favourably due to his race. Mr S didn't respond to this additional reasoning 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.

Before I explain why I've reached this decision, I think it would be useful for me to set out exactly what I've been able to consider, and how. I recognise that following our investigator's view, Mr S raised new concerns about events that occurred after AXA's complaint response in October 2023. While I appreciate Mr S' claim was still ongoing after AXA's complaint response, any complaints about an event that occurred after October 2023 would need to be raised with AXA first, allowing them a chance to address these issues within their own complaint handling process, in order for those issues to fall within our jurisdiction. So, to be clear, this decision focuses solely on the complaints Mr S raised, that AXA addressed, in their complaint responses up to October 2023.

I also want to make it clear that it is not my role, nor the role of our service, to punish a business for errors they have made. Instead, it is our role to consider the service a business has provided and, where we find it has been unreasonable or unfair, provide an award or direction that fairly addresses the individual circumstances of that complaint, and the impact caused to that individual customer.

So, while I do note Mr S' comments about the size of AXA as a business, and why he wants an award that warns them off from providing a similar of service, this isn't something I'm able to do.

I've then turned to what I can consider. I note that over the two complaint responses AXA provided, in August and October 2023, they have accepted that they initially declined the claim unfairly. And, that the service Mr S received fell below the standard they would expect for several reasons which I won't list individually. As these complaint issues have been accepted by AXA, I think it's reasonable for me to assume they no longer remain in dispute. So, I've thought about these issues, considering AXA's acceptance, alongside the points that

remain in dispute, before refocusing on them when I think about what AXA should do to put things right.

I note the complaint issues that remain in dispute centre around Mr S' complaint he was racially discriminated against. Again, I want to reiterate that our service is unable to make a legal determination on whether there has been a breach of the Equality Act 2010, as we are an alternative to the courts. But we can decide whether we think AXA, and their agents, acted fairly and reasonably taking this act into account.

I note Mr S has explained the loss adjuster at Q addressed him using an incorrect name. And he feels this error, alongside AXA's decision to wrongly decline the claim and the loss adjusters overall conduct when speaking to him, is evidence that he was treated less favourably due to his race. Explicitly, Mr S has explained he feels if he had a different sounding name, his claim would've been progressed differently.

I note AXA have accepted Q referred to Mr S using the wrong name. And I've no doubt this would've caused offence to Mr S, and it is regrettable that he had to experience this level of service. And I don't intend to dispute Mr S' recollection about the way he was spoken by the loss adjuster, including his complaint that he was laughed at. Having reviewed the notes available to me alongside Mr S' testimony, I think it's reasonably clear there was a breakdown in communication that resulted in Mr S' feeling unfairly treated.

But while I note an error was made here, I don't think I've seen evidence that satisfies me this error was made with malice and purposefully, due to Mr S' race. This is because from what I've seen, the naming error was made on one, isolated occasion. And I think it must be taken into consideration that errors in the pronunciation of a name, or even the reading of a name, can be made without there being purposeful intent.

I'm satisfied that AXA took Mr S' concerns about this situation seriously, conducting an investigation that involved speaking to the loss adjuster at Q, as well as escalating it to a managerial level. And this is what I'd expect AXA to do. Following this investigation, an apology was provided to Mr S for any unintended offence that was caused. I've considered this apology alongside AXA's offer of compensation later within the decision.

I've also thought about Mr S' belief his claim was declined initially due to his race. And I think it follows that the dispute between Mr S and the loss adjuster, and so the difficult conversations they had, were generated because of this claim decline.

While I do recognise how Mr S would reach this conclusion, considering the error regarding his name and how this perception was created, I don't think I've seen evidence that satisfies me this is the case here. From the evidence I've seen, AXA relied upon X's professional opinion when initially declining the claim. This is what I'd expect AXA to do and so, I don't think this decision was influenced by Mr S' ethnicity or race.

Ultimately, it appears that some information Mr S provided to AXA within the claim process had been missed, due to the claim reference number not being included within the email. While this is an error of AXA's, which created unnecessary delays accepting the claim, I don't think I've seen evidence to show this was error was influenced by Mr S' race, or that he was treated differently to another customer of a different race, in a similar situation.

So, while I don't think I can say AXA's claim decision, and the service they provided, were influenced by Mr S' race, I do think it's clear AXA's error when pronouncing Mr S' name, and the overall service he received especially from the loss adjuster of Q, impacted him in a way that should be compensated for. Because of this, I've then turned to what I think AXA should do to put things right, considering their acceptance of their service failures and incorrect

original claim decision alongside the offer they have already made.

### **Putting things right**

When thinking about what AXA should do to put things right, any award or direction I make is intended to place Mrs C and Mr S back in the position they would've been in, had AXA acted fairly in the first place.

In this situation, had AXA acted fairly, I don't think they would've declined the claim. Instead, I think they would've validated the claim as I'd expect, ensuring all information was considered. And had they done so, I think this would have led to Mr S' claim being accepted sooner, meaning Mr S and his family wouldn't have needed to use the temporary tank for as long as they did, preventing any inconvenience this caused. And this would've then prevented the need for Mr S to engage with AXA as often as he did, which I've no doubt took time and effort and likely led to his perception that he'd been racially discriminated against. So, I do think Mrs C and Mr S should be compensated to recognise all the distress and inconvenience they faced.

I note AXA had paid a total of £650 compensation to Mrs C and Mr S so far to recognise the above. And I want to reassure Mr S I've considered all the arguments he's put forward explaining why he doesn't think this total amount is a fair one, even if I haven't commented on them directly due to our services informal approach. But having thought about this compensation amount, I think it is a fair one that falls in line with our service's approach and what I would've directed, had it not already been paid. And I'll explain why.

I think the £650 is significant enough to adequately compensate Mrs C and Mr S for the clear inconvenience they've been caused by the delay in accepting their claim and how the original declination led to a protracted conversation where it's clear there were service issues caused by AXA and their agents. And I think it is significant enough to reflect the period of the delay, considering it took around four months longer than it should have for the full claim to be accepted.

But I think it also fairly reflects the fact that, while I don't dispute by AXA accepting the claim they have only performed their contractual obligation set out by the policy terms and conditions, AXA have engaged with Mr S' concerns about the original decline and took steps to rectify this by now agreeing to cover the claim in full.

I think the payment also fairly reflects that AXA provided Mrs C and Mr S with a temporary tank for the duration of the dispute, which I do think has then mitigated the impact to Mrs C and Mr S overall, especially considering the time of year and the weather at the time.

And I think it fairly considers the steps AXA took to ensure the racial element of Mr S' complaint was considered appropriately, with an apology being given for any unintended perceptions that were created. So, on this occasion, I don't think AXA need to do anything more.

I understand this isn't the outcome Mr S was hoping for. And again, I want to reassure Mr S I've thought carefully about all the points he's put forward. I appreciate the comments he's made regarding his mental health and also the impact on Mrs C and how the events that transpired led to her feeling unprepared for a job opportunity. And I want to clarify I don't intend this decision to in any way take away from these lived experiences.

But it's my role to consider the individual circumstances of the complaint, and then any potential direction or award, in line with our service's approach which I recognise Mr S has been made aware of by our investigator previously. And while I know Mr S is unlikely to

agree, I do think the compensation paid by AXA already falls in line with this approach, based on the information and evidence that's been made available to me for consideration

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr S to accept or reject my decision before 14 January 2025.

Josh Haskey  
**Ombudsman**