

## **The complaint**

Ms J complains AXA Insurance UK Plc settled a claim without consulting her and held her liable for an accident which she felt was fraudulent.

## **What happened**

The details of the claim are well known to both parties, so I won't repeat them again here. Instead, I'll summarise the background and focus on the reasons for my decision.

Ms J insured her car with AXA under a motor insurance policy.

In November 2021, Ms J had a car accident. At the time, she spoke to AXA and said she thought the third party may try to make a fraudulent claim as there was no damage to her car so she felt it'd be impossible for him to have damage on his vehicle and there may have been pre-existing damage. Ms J says she asked AXA to let her know if a claim was made so she could make a full statement about what had happened.

AXA wrote to Ms J on 16 November to explain it was alleged by the third party she was at fault for the accident and information was sought urgently. But it didn't keep Ms J updated with how this claim was progressing or that it'd agreed to accept full liability on the claim. The claim was then recorded on an external database as a 'fault' claim – meaning AXA couldn't recover all its costs.

When it was time to renew her policy, Ms J didn't understand the significant increase in the quotation she was sent so she contacted AXA. At this point, she was told about the claim recorded against her. She wasn't happy about this and complained to AXA.

Whilst it didn't agree to change its overall decision on the liability of the claim, AXA explained the amount of the claim hadn't been fully reviewed due to an administration error. AXA gave her £75 compensation for this which included £25 for the delay in responding to her complaint.

Ms J was unhappy with AXA's response and brought her complaint to this service.

An Investigator looked into Ms J's complaint. In correspondence with AXA, it accepted it didn't have enough evidence to support Ms J being held liable for the claim and considered a 50/50 split of liability would've been the likely best liability decision it would've agreed with the third party's insurer. This was because both parties accept there was an accident and there was no independent evidence. Although this would still be recorded as a fault claim, it'd lead to half of Ms J's excess being returned to her, with interest at 8% from the date it was paid. As they didn't feel AXA had dealt with the claim fairly, they recommended a further £100 compensation be paid to Ms J.

After some correspondence about this, AXA accepted the Investigators recommendation. Ms J didn't. She says she was denied the opportunity to put forward evidence, including that her car had no damage, and fight for a zero-fault incident. Had she been able to do this, she

feels the outcome would've been different. This is AXA's fault, and it will affect her future premiums for a number of years to come.

The case 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.

I recognise I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this and it reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to comment on every individual argument to be able to reach what I consider to be a fair outcome.

Having done so, I'm partially upholding Ms J's complaint. I'll explain why.

Firstly, I acknowledge Ms J has strong views about what happened. But it's not the role of this Service to determine who is responsible for an accident – decisions on this are best dealt with by a court of law.

What I'm deciding in this matter is whether AXA has acted in accordance with the terms and conditions of the policy which set out the agreement between the parties. I'm satisfied it did because the terms allow AXA to conduct and settle a claim as it sees fit. It therefore doesn't need Ms J's approval of any decision to admit liability, settle a claim or make a payment to a third party. That means it's able to make a decision the policyholder disagrees with, as has happened here.

I have, however, thought about whether AXA made a fair and reasonable decision in settling the claim as it did, based on the evidence it had and the circumstances of the case. Taking everything into account, I don't think it did. I say this because Ms J disputed the claim from the outset. Despite this, AXA says, as the case handler didn't update the system correctly about the concerns Ms J had raised, the third-party claim was paid in full through an automated system rather than being taken out of that process.

Having said this, I also need to consider what I think would've likely happened if AXA had taken the claim outside the automated process. Ms J says she missed the opportunity to submit evidence because she didn't know a claim was being settled in full by AXA. I agree she should've been presented with information about the claims progress. However, I'm not satisfied it's more likely Ms J's statement would've led to AXA denying *any* liability to the third party given both parties accepted an accident had occurred and no independent evidence was available. I've also balanced this with the letter to Ms J on 16 November.

Ultimately, I'm satisfied Ms J wasn't given sufficient information about the progress of the claim, it was settled automatically in error and the best liability decision AXA would've likely achieved was a 50/50 split.

To put this right, AXA has agreed to treat the claim as a 50/50 split of liability, return half of Ms J's excess to her, with interest at 8% from the date it was paid, and pay a total amount of £175 compensation for the distress and inconvenience caused by this matter, including the

time it took to respond to her complaint. I'm satisfied this is a fair and reasonable way to resolve this complaint considering in all the circumstances.

I appreciate Ms J has raised the impact of AXA's failing on her future insurance costs. However, as this would still be recorded as a 'fault' claim on the relevant motor insurance database – because AXA wouldn't recover all its costs from the third party – it may impact the quotations she is given in the future. But this is a matter for each insurer to decide based on their underwriting criteria.

I recognise Ms J will be disappointed with this decision because, although it has been upheld, this isn't to the extent she'd hoped it would be. But my decision ends what we – in trying to resolve her dispute with AXA – can do for her.

### **Putting things right**

To put things right, AXA Insurance UK Plc must treat the claim made on Ms J's policy in November 2021 as being resolved with a 50/50 split of liability. In doing so, it will need to return half of Ms J's excess to her, with interest at 8% from the date it was paid to the date of payment\*. It also needs to pay Ms J a total amount of £175 compensation for the distress and inconvenience caused giving credit for any amounts already paid.

\*If AXA Insurance UK Plc considers it's required by HM Revenue & Customs to take off income tax from that interest it should tell Ms J how much it's taken off. It should also give Ms J a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons set out above, my final decision is I uphold this complaint. AXA Insurance UK Plc needs to do the things set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 1 February 2024.

Rebecca Ellis  
**Ombudsman**