

The complaint

K complains about the settlement offered by AXA Insurance UK Plc following a claim on its haulage insurance policy.

Mr H is the director of K and brought this complaint on its behalf.

What happened

K had a commercial insurance policy to cover the haulage vehicles it used for its business. In 2021 Mr H was driving a vehicle round a roundabout when it tipped over and fell on its side. He made a claim on K's insurance and AXA accepted the claim.

After some time, it declared the vehicle a total loss. In November 2021 it reimbursed the finance company it had been bought through for the outstanding finance.

However Mr H was unhappy with how AXA had handled the claim. He said because of the delays it had caused, K had been unable to trade for many weeks. And this meant he had lost out on income which had put his company into financial difficulties. He made a complaint and asked AXA to reimburse K for these lost earnings.

AXA agreed it had caused delays and calculated this at around 79 days. It appointed a forensic accountant who considered submissions made by Mr H and decided that his lost earnings would amount to an average of £836 per working day. They also calculated the money saved from not trading and concluded he had a net loss of £29,178.80. AXA based its settlement for loss of earnings on this amount and also paid K £5,000 compensation to apologise for the inconvenience it had caused.

Mr H wasn't happy with this as he said his business was growing and he was projected to make much more than that in the months he was without a vehicle. He also said he was without a vehicle for longer than 79 days so thought AXA hadn't provided a fair settlement. He brought his complaint to this service.

Our investigator didn't recommend the complaint be upheld. She said AXA had followed a fair process to calculate K's loss of earnings so she wouldn't ask it to do anything differently.

Mr H didn't agree and asked for the complaint to be reviewed by an ombudsman.

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.

Mr H has said that AXA hasn't paid enough to make up for K's lost earnings while it was without a vehicle.

K's policy doesn't provide a replacement vehicle as part of the policy terms. Nor does it cover any lost income while a vehicle is off the road. Therefore after it was involved in an

incident and was off the road, AXA wasn't obliged to provide a replacement vehicle or reimburse lost earnings.

However AXA has accepted that it delayed progressing matters, which meant K was left without a vehicle or the funds to purchase a new one for longer than it should have been. And AXA has agreed to pay for the lost funds caused by these delays. And this is what this service would expect it to do in the circumstances.

AXA has provided a timeline of the actions and events from the date of the incident on 18 June 2021, until the settlement was paid to the finance company on 16 November that year. It's identified a number of times when it failed to take prompt action, including delays to appointing an engineer to inspect the vehicle and in reviewing the report when it was provided. It's said the delays amount to a total of 79 working days and this is what it's based the settlement on.

I've reviewed the timeline provided and I think this is a reasonable assessment. I can see there are times when no action was taken for periods of time, and AXA has agreed to pay loss of earnings during these periods.

I note Mr H's comments that he should be paid 189 days instead. While the claim took around five months to settle, it wouldn't be fair to ask AXA to pay loss of earnings for the entire duration. This is because the need to claim would always cause K to be without the vehicle for a period of time. And as this isn't covered under the policy, it would be considered an uninsured loss so K would always have lost some earnings during this time. But as AXA has caused it to be without a vehicle for longer than it should, then it's fair it pays for just the additional time that is due to these delays. From what it's provided I think 79 working days is an accurate reflection of the additional time caused by delays. I therefore think it's acted fairly and reasonably by basing its settlement on this timescale.

Mr H has said that AXA didn't settle his whole claim in November, but paid it in two parts, with the additional part being paid in December. So he says he should be paid loss of earnings for the additional weeks to that date.

AXA has provided a breakdown of the payments it made. And I can see that it did make a further payment towards the claim settlement in December of around £3,000. However it paid off the outstanding finance of around £23,000 and an additional amount of around £4,000 directly to K both in November. And I think this would be enough to allow Mr H to purchase a replacement vehicle. So I don't think it would be fair to ask AXA to pay any further loss of earnings after this date.

I've also considered the daily rate AXA has based its payment for loss of earnings on. It instructed a forensic accountant who analysed K's income in the period before the incident, and during the time Mr H hired a vehicle while its was unavailable. And they calculated the average daily earnings to be £836, which is what the settlement is based on. While Mr H has said that his business was due to grow in the months after the incident, this is based on a projection and therefore it isn't a definite income. So I don't think it would be fair to ask AXA to based its payment on projected earnings, and instead think it's reasonable that it based it on the evidence of what K has earned in the past.

Based on this, I'm satisfied that AXA has fairly resolved K's complaint. It has fairly identified a delay of 79 working days and based the loss of earnings rate on an assessment by a forensic accountant, which is a reasonable step to take. I therefore won't ask it to do anything differently.

My final decision

For the reasons I've given, I don't uphold K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H, on behalf of K, to accept or reject my decision before 16 October 2023.

Sophie Goodyear
Ombudsman