

The complaint

Mr H complains that AXA Insurance Designated Activity Company (AXA) unfairly found him at-fault for an accident he was involved in when driving, under his motor insurance policy.

What happened

Mr H was involved in a car accident in December 2022. He collided with the car in front when approaching a roundabout. Mr H says the other driver admitted fault. There was minimal damage to his car. He didn't make a claim but says he did see a doctor about minor whiplash.

Mr H says AXA contacted him when the third party made a claim against his policy. He says he didn't receive the letters it sent regarding liability. Mr H is concerned these letters weren't actually sent because of another complaint he'd made. In addition, he says a mandate he completed to obtain a copy of his paper driving licence was returned to him. He says the business didn't investigate the claim properly and failed to obtain CCTV footage. As a result of the at-fault decision Mr H says his premium has increased.

In its complaint response AXA says that the circumstances of Mr H's accident are that he collided with the rear of another vehicle. It says it doesn't believe it can contest liability and the terms of its policy allow it to decide how best to deal with the claim. It confirms that it holds Mr H at fault and has dealt with the claim on a without prejudice basis.

Mr H didn't think this was fair and referred the matter to our service. Our investigator didn't uphold his complaint. She says AXA had shown it investigated the claim reasonably and confirmed there was no CCTV footage available. She thought it could've made enquiries about the CCTV sooner, but this didn't alter the fact that none existed. She says it was fair that AXA settled the claim on a without prejudice basis. This meant Mr H could still take legal action against the other party if he wished.

Our investigator didn't think it was possible to identify why the mandate was returned to Mr H. But she did acknowledge that AXA's letters were shown to be addressed correctly. She thought it was clear from the email and other contacts Mr H had with AXA that he was aware AXA intended settling the claim in the third-party's favour. And she didn't think it was able to deal with his claim for whiplash injury, given he was deemed to be at fault for the accident.

Mr H disagreed with this outcome and asked for an ombudsman to consider his complaint.

It has been passed to me to decide.

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 Mr H's complaint. I'm sorry to disappoint him but I'll explain why I think my decision is fair.

The terms and conditions for Mr H's policy under the section headed, "*General Conditions*" say:

"3. Handling claims against you

We may take over and deal with the defence or settlement of any claim in the name of you and/or the driver."

This essentially means that AXA can decide how it should deal with a claim. It doesn't need Mr H's permission to do this. This is a common term used throughout the insurance industry, which is known as subrogation. This doesn't mean that AXA can do anything it wants. We still expect it to treat its customer's fairly, and in line with its policy terms and conditions.

The records show that AXA was contacted in December 2022 by the third-party's solicitor to confirm it was holding Mr H liable for an accident on 12 December. AXA says it wrote to Mr H to let him know, although he says he received none of the letters it sent. I've checked the address on the letters AXA included with its submissions. This is the same address Mr H confirmed to us. Based on this evidence letters were sent, but for reasons unknown didn't reach Mr H.

Mr H is concerned that the letters AXA says it provided, weren't actually sent. He suggests this may be linked to another complaint he made against AXA. However, I haven't seen evidence that supports this. It's clear from the records that Mr H was made aware of the claim. He was then actively involved in disputing it. I don't think there is evidence to show letters weren't sent or that the lack of receipt of these letters had an impact here.

I note Mr H raised concerns that the date AXA had for the incident wasn't correct. However, this was the date confirmed by the solicitor acting for the third-party. I haven't seen evidence that shows this was inaccurate.

AXA appointed an investigator to look into the third-party's claim. A detailed report was produced, which included the responses Mr H provided when questioned. I've read this report. I note Mr H confirms that he drove into the back of the other car. There were no independent witnesses, no dashcam footage was taken, and the investigator noted that there was no obvious CCTV in place at the scene of the accident. The investigator noted that Mr H had called his GP and was prescribed anti-inflammatory drugs in relation to a soft tissue injury.

In his report the investigator recorded Mr H's explanation that the car in front had stopped suddenly having first driven forward onto the roundabout both cars were approaching. The investigator suggested Mr H may have focussed on the approaching traffic and then collided with the car in front. But he thought it was clear that Mr H was liable for the accident as he had collided with the car in front.

I can see that Mr H disputed the lack of CCTV. He confirmed there were cameras in place that would have captured the incident. It was subsequently found that this was correct. AXA made enquiries to establish who was responsible for the cameras and whether video of the accident had been recorded. It was subsequently confirmed that although cameras were present, this allowed 'live streaming' only. This meant there was no video footage recorded.

Based on this I think AXA carried out a fair investigation into the claim against Mr H. I think the issue with the availability of CCTV could've been resolved sooner. But as discussed there was no recorded footage of the incident, so this didn't impact on the outcome. In the circumstances I think AXA behaved reasonably when settling the claim as it did, on a without prejudice basis. If Mr H wishes to take the matter further he can do so by taking legal action

against the third-party.

I acknowledge Mr H's comments that he signed a mandate in December 2022 to allow the DVLA to release a paper copy of his driving licence. He says this was returned to him by the post office sometime later. I've looked at the information Mr H has supplied and the discussions that took place between him and AXA. I don't think it's clear why the mandate was returned by the postal service. But I can't reasonably conclude that this was AXA's fault. This didn't affect its decision on liability for the accident.

I note Mr H's comments that AXA didn't deal with his injury claim. I can see from the email correspondence in March 2023 that its claim handler told Mr H that the evidence strongly suggests he would be held at fault for the accident should this matter go to court. He says the claims handler for the third party wouldn't accept any claim for injuries in light of this. AXA advised that any claim Mr H wanted to pursue for his whiplash injury would need to be done through his own solicitor. In these circumstances I don't think AXA treated Mr H unfairly given the explanation it provided.

Having considered all of this, although I'm sorry Mr H's insurance premiums have increased, I don't think AXA treated him unfairly in how it settled his claim. So, I can't reasonably ask it to do anymore.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 December 2023.

Mike Waldron
Ombudsman