

The complaint

A company, which I'll refer to as R, complains that AXA Insurance UK Plc (AXA) unfairly declined a fire damage claim made under its Motor Trade Policy.

Mr T, who is a director of R, brings the complaint on R's behalf.

What happened

The background to this complaint is known to both parties and so I won't repeat it at length here.

R took out an AXA Motor Trade Policy. On 17 September 2021, a vehicle which it had been repairing caught fire while on Mr T's drive. R made a claim on its policy, but AXA said there was no cover because the vehicle wasn't in the custody or control of R and therefore the policy didn't respond.

R was carrying out a campervan conversion on a vehicle for a customer which I'll refer to as V. Mr T is a director of both R and V. The conversion work included windscreen replacement in addition to other repairs. R said that a 'catch' for the window had been ordered and while waiting for the part to arrive, due to space constraints at R's workshop, the vehicle was moved to Mr T's home address. The vehicle caught fire while parked on Mr T's drive.

AXA made a without prejudice offer for £25,750 to settle the claim while cover was being confirmed. Mr T didn't accept the offer. AXA later withdrew the offer and declined the claim.

AXA said that indemnity for this type of situation would be provided under the Road Risk section of the policy but the terms state that cover is provided for damage to a customer's vehicle when in the custody or control of R. AXA believed that at the time of the fire damage, the vehicle had been handed back to the customer (V), as such, AXA concluded that the vehicle was no longer in R's custody or control and therefore there was no cover under the policy.

R argued that the vehicle was still in its custody or control because it moved the vehicle while waiting for the 'catch' to arrive. It said the work to the vehicle hadn't been completed and therefore the vehicle hadn't been handed back to V. Furthermore, it argued that the vehicle had been moved using R's trade plates and it remained on the driveway of R's director, so irrespective of the fact that Mr T was also a director of V, the vehicle was still under the control or custody of R.

Our investigator initially agreed that the vehicle was still under R's control when it was moved to Mr T's address. Based on the information he had at the time, he was persuaded that the vehicle was moved by R, while waiting for the 'catch' to arrive, in order to make space for other vehicles which needed repair. In light of this, our investigator was persuaded that R retained the vehicle and therefore it was still in its custody and control.

Following his opinion, AXA provided further information to show that when R's policy was taken out, its business description stated R was a windscreen repairer including mobile

work. During the claim investigation, Mr T told them that the windscreen repair had been completed prior to the incident and other electrical work remained outstanding. AXA therefore argued that R's policy provided cover when the vehicle is in R's custody or control in connection with its business, and this was the extent of the risk the policy covered. AXA therefore concluded that as the windscreen work had been completed (as advised by Mr T) and the work which remained outstanding was not in connection with its business, the policy didn't respond. Our investigator reviewed the new evidence and agreed with AXA. As a result, he concluded that AXA didn't act unfairly or unreasonably by declining R's claim.

R disagreed with our investigator; the complaint has therefore been passed to me to decide. R maintains that the 'catch' was broken and therefore the windscreen work had not been completed.

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've read and carefully considered everything R and AXA have said. However, my findings focus on what I consider to be the central issues, and not all the points raised.

The crux of this complaint centres on AXA's decision to decline R's claim. The relevant rules and industry guidance say that AXA have a responsibility to handle the claims promptly and fairly and they shouldn't reject a claim unreasonably. I have to decide if I think AXA have applied the terms of the policy in a fair and reasonable manner when declining R's claim. Having reviewed everything available to me, I think they did, I'll explain why.

The Road Risk section of the policy that R's claim has been considered under provides cover where there is insured damage to an insured vehicle. And describes an insured vehicle as:

"a) Any motor vehicle (including accessories, plant, fixed equipment) as detailed under paragraph 1. Description of vehicle if the effective Certificate of Motor Insurance."

Paragraph 1 of the certificate of motor insurance states:

"Description of Vehicle

Any motor vehicle the property of the Policyholder or in the custody or control of the Policyholder in connection with the Business."

The policy defines 'business' as:

"The activities undertaken directly in connection with the business as specified in the schedule..."

I have seen a copy of the insurance schedule dated August 2021 which states the following:

"BUSINESS DESCRIPTION

The business description of the insured is Windscreen Repairers..."

I agree with our investigator that the Road Risk section of the policy provides cover to R when in custody or control of the vehicle in connection with its business, in this case that being windscreen repairs.

When bringing the complaint to our service, R told us that there was still outstanding work in relation to the glass replacement which included fitting a 'catch' to the window. R said the 'catch' was on order and while R awaited delivery the vehicle was moved to Mr T's drive.

However, AXA provided our investigator with an earlier telephone recording where Mr T told them that the windscreen work had been completed a week or so before the fire and the work outstanding involved other conversion work such as electrical repairs. Mr T also told AXA during the conversation that R undertakes more than windscreen repairs, it also does conversions and other works on vehicles. R said its broker is fully aware of the work it carries out.

In situations like this, where the evidence is incomplete or contradictory, I'll make my decision on the balance of probabilities. That is, what do I think is more likely than not, given the evidence which is available.

It's not in dispute that glass replacement work had been carried out on the vehicle. I'm also satisfied from the telephone recording I've listened to that Mr T did tell AXA the windscreen repair had been completed before the fire incident and other repairs such as electrical work remained outstanding. Furthermore, I've seen an email dated 26 August 2021 from a supplier which confirms the 'catch' in question was sent out that day. I've not been provided with any other evidence to suggest that there was a delay in receiving it. I consider it's therefore most likely that the 'catch' was received by R before the fire incident on 17 September 2021 and the windscreen repair had been completed.

The policy wording is clear in that the vehicle must be "in the custody or control of the policyholder in connection with the Business". Both parties dispute the meaning of custody and control. However, I don't think it's necessary for me to make a finding on this because I'm satisfied that the policy wouldn't respond in any event as the work being carried out wasn't in connection with the business activity R had insured.

I note that R told AXA its business was involved in more than windscreen repairs and its broker was fully aware of the work it carried out. As the investigator explained in his view, if R remains unhappy with how the policy was set up by its broker, it will need to raise this separately with the broker. This complaint is only in relation to AXA's handling of the claim.

Having carefully considered what's happened, I'm satisfied that AXA didn't act unfairly or unreasonably when declining R's claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 12 October 2023.

Ankita Patel
Ombudsman