

The complaint

Mr B and Mrs R complain that AXA Insurance UK Plc declined a personal liability claim under a travel insurance policy.

What happened

Mr B and Mrs R held a travel insurance policy through a joint account, provided by AXA.

Mrs R says she visited the bank's branch in December 2016 to convert her account to a joint account with Mr B before going on holiday in January 2017. She says that during this meeting the key elements of cover required were discussed, including travel insurance cover for golf trips.

Mrs R was involved in an accident during that holiday in January 2017. The accident happened while she drove a golf buggy. In June 2019, the other party sought to make a claim for damages. Mrs R got in touch with AXA to claim under her travel insurance for personal liability. But AXA declined the claim as it said the terms excluded any claims arising directly or indirectly due to the use of vehicles. And AXA considered a golf buggy to be a vehicle.

Mrs R was able to agree an out of court settlement with the other party. But she made a complaint to AXA about its refusal to cover her claim. She said the breakdown cover provided by her bank outlined that a definition of a vehicle will not include any vehicle which cannot lawfully be used on the public highway. So, this would exclude golf buggies. She also said there were other policies provided by her bank at the time, underwritten by AXA, that specifically said that golf buggies whilst in use on a golf course weren't caught by the exclusion.

Mr B and Mrs R say that the policy they hold with AXA is unclear and inconsistent. They say that AXA should have highlighted the different definitions and cover in its product literature to allow customers to make an informed decision which product to choose. Mrs R says that had this been made clear to her, she could have chosen to take out another policy with her bank that provided the appropriate cover. She wants AXA to pay for the costs she incurred, which are over £24,000 – this includes her legal costs, as well as the settlement she paid to the other party.

AXA said that as the word vehicle wasn't defined in the policy, it would be fair to use an ordinary definition of a word. AXA said the Oxford dictionary defined vehicle as "*a thing used for transporting people or goods, especially on land, such as a car, lorry or cart*". So, AXA thought it would be fair to say that a golf buggy would meet this definition, and therefore the policy exclusion applied in the circumstances.

AXA said that the other policy that was available through the bank at the same time, which specifically said that golf buggies whilst in use on a golf course weren't caught by the exclusion, was attached to a bank account with a higher level of financial eligibility to qualify for the account, and therefore the policy included a higher level of cover. AXA said that the responsibility of how the two policies were explained and sold to Mr B and Mrs R rested with the bank, not AXA.

One of our investigators looked into what had happened. Having done so, she didn't think AXA had acted unfairly or unreasonably in the circumstances. This was because the policy Mr B and Mrs R held excluded cover for claims arising from the use of vehicles. She explained that when a word isn't defined in the policy, our approach is to consider what their ordinary, everyday meaning is. And she thought AXA had acted fairly by applying a dictionary definition of a vehicle. She thought this was also supported by other definitions she'd found.

Mr B and Mrs R didn't agree with our investigator's findings. In short, they don't think AXA acted fairly and reasonably by not applying a same definition across the product range. Overall, they think the wording in the product documentation is unfair and misleading.

As no agreement was reached, the complaint was passed to me to decide. I issued my provisional decision in October 2023, and I said the following:

"Firstly, as Mr B and Mrs R know, I can only consider the issues that are AXA's responsibility under this complaint. That means that I can consider if it acted fairly and reasonably when it declined Mrs R's claim, and if it applied the policy terms fairly in doing so.

The policy terms of the policy Mr B and Mrs R held provided cover under the Personal Liability section for:

*"1 Injury, illness, death or disease to another person that **You** cause, and
2 Loss of or damage to another person's property that **You** cause.*

We will pay **You** up to £2,000,000 for

- legal costs and expenses **You** become legally liable to pay as compensation for any incident or series of incidents, and
- **Your** costs and expenses that **We** have agreed in writing."

But this section of the policy excluded cover for:

"any claim arising directly or indirectly for any liability for injury, illness, death or disease to another person or loss of or damage to another person's property

[...]

- which is due to **Your** ownership, possession or use of vehicles, aircraft, watercraft (other than canoes, punts or rowing boats), firearms or explosive devices

[...]"

That means that if Mrs R's claim arose from the use of a vehicle (it arose from her use of a golf buggy), then her claim isn't covered under the policy terms as this is specifically excluded.

As our investigator explained, where a word isn't defined in the policy (as is the case here), we apply the word's everyday and commonly used meaning. And having looked through the definition AXA used, and the definitions our investigator added in her findings, I think AXA acted fairly and reasonably by saying that a golf buggy is a vehicle. Because of this, I think AXA acted fairly and reasonably when it declined Mrs R's claim by relying on the above exclusion.

I've then considered if there are other reasons why it might be fair and reasonable for AXA to cover Mrs R's claim outside of the strict interpretation of the terms of the policy she held.

Firstly, I don't think the breakdown cover provided by Mr B and Mrs R's bank which outlined that a definition of a vehicle will not include any vehicle which cannot lawfully be used on the public highway is relevant to their complaint about AXA. This is because this policy is something that Mr B and Mrs R's bank provided as part of the bank account – rather than part of the travel insurance policy with AXA. So, I make no finding on this under this complaint.

I've then carefully considered the points Mr B and Mrs R have made about AXA's definitions in its policies. An insurer is required to highlight any significant or unusual terms in its policy documentation. But I don't think whether or not the use of a golf buggy should be included or excluded from cover in a situation such as this is a significant or unusual term that AXA should have highlighted in its product literature. I think the policy terms are clear that the use of vehicles was excluded in the circumstances of this claim. And for the reasons I explained above, I think AXA acted fairly and reasonably by saying a golf buggy was a vehicle.

Additionally, an insurer is entitled to decide what risk it's willing to take in return for a premium. So, I don't think AXA acted unfairly by providing a different level of cover in another policy at the same time. An insurer is also entitled to review and change the terms of a policy at renewal. So, even if something that previously wasn't covered becomes covered under the new terms, that doesn't mean the insurer should retrospectively apply the new terms to claims where it's the previous terms that are relevant to the claim.

I'm sorry to disappoint Mr B and Mrs R, but based on everything I've seen so far, I don't currently think there are any fair or reasonable grounds for me to say that AXA did anything wrong here."

Mrs R was disappointed with my provisional decision. She accepts that AXA was entitled to decide the terms, conditions, exclusions and eligibility requirements within the various policies. But she doesn't think it's clear why I'd said that a definition of a vehicle within the breakdown cover wasn't relevant to the complaint. Mrs R says the policies are provided as part of the same bank account, and that within the full document outlining the benefits of the account the only definition of a vehicle is included within the breakdown cover section. She doesn't think it's clear that the dictionary definition of a vehicle will be applied elsewhere. Overall, she doesn't think the policy wording makes it clear that the exclusion would apply.

AXA didn't respond to my provisional decision, and the deadline to do so has now passed. So, I'm issuing my final 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.

As I explained in my provisional decision, I can only consider the issues that are AXA's responsibility under this complaint. And the products a bank chooses to offer as part of an account package, and what policy terms and conditions those products contain, are not AXA's responsibility. AXA is only responsible for its own policy terms, and for considering claims under those terms.

Having considered everything again, I see no reason to depart from the findings I reached in my provisional decision. So, I've reached the same decision, and for the same reasons. Overall, I think AXA acted fairly and reasonably in declining Mrs R's claim due to a policy exclusion. And I don't think there are any fair or reasonable grounds for me to say AXA did anything wrong in the circumstances of this complaint.

My final decision

My final decision is that I don't uphold Mr B and Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs R to accept or reject my decision before 28 November 2023.

Renja Anderson
Ombudsman