

## The complaint

Mr S has complained about his car insurer AXA Insurance UK Plc because following a claim for theft of the catalytic converter from his car, he's been left with no car, an affected no claims bonus and the full year's premium to pay.

## What happened

Mr S called AXA because part of his car had been stolen. AXA accepted the claim and sent Mr S a letter which said:

"When we settle the claim, the vehicle becomes our property.....We will be unable to allow you to retain your vehicle if it is uneconomical to repair."

AXA placed Mr S in a hire car and, within a couple of weeks, settled the claim as a total loss. Given the age of the car, and the cost of repair, AXA felt it was uneconomical to repair it by replacing the part (although it could have been repaired and returned to the road). AXA kept Mr S's car, selling it as salvage and settling with Mr S based on its market value. Mr S was asked to keep paying the instalments he was paying to cover the premium and was told his no claims bonus would be affected. He was unhappy about these things.

Subsequently Mr S cancelled his policy. AXA said that if he hadn't done so, it would have, for non-payment of the instalments for the premium. Mr S complained to AXA. AXA said he didn't understand why he had to pay these when he no longer had his car. But also that it was unfair that his no claims bonus was affected by the claim because he had not been at fault for the loss. When AXA explained that "fault" really meant it had no-one to recover the loss from, Mr S said AXA should have advised him about that when he made the claim. He said – if it had done so, he'd have just notified it of the loss and had the car repaired himself.

Mr S complained to the Financial Ombudsman Service. Our Investigator considered the complaint and issued a view. He didn't think Mr S's complaint should be upheld. Mr S wasn't happy with the Investigator's view. The Investigator asked Mr S some questions. Mr S, replying to those questions, said he hadn't replaced his car. He said he'd told AXA's agent dealing with the claim that he wanted to have it repaired, but they told him it wasn't worth repairing. Our Investigator had also asked AXA if it had offered Mr S the chance to keep his car. AXA said it had not offered to let him keep the car because he had not asked to do so, which he could have done, because he had initially been unhappy with the settlement.

The complaint was referred to me for an Ombudsman's consideration. I felt AXA had failed Mr S. I felt that to put things right, AXA should be writing off the outstanding premium, providing Mr S with a letter he could send to debt record agencies, and paying him £500 compensation. My provisional findings were:

*"Having done so, with regret for the disappointment this causes Mr S, I don't think AXA did anything wrong in how it set up the claim. It wasn't for AXA to advise Mr S on whether or not to make a claim. Further, whilst the policy year had only just started, with Mr S having made a claim, which was settled as total loss, his full policy premium did become due. The policy says this will happen but also, effectively, a total loss settlement means the purpose of the policy – to offer cover for the car – has been fulfilled. That's also quite usual and Mr S was*

told he could add a replacement car to the policy to continue to receive the benefit from the premium. So, in my view, AXA didn't fail Mr S in these respects.

Nevertheless, I do think AXA failed Mr S regarding keeping his car. I don't think it's a generally fair position for AXA to take to say Mr S didn't ask about keeping his car but could have done so. Which would have prompted it to make an offer in that respect. Not when it had expressly told him in writing that this cannot be done (my emphasis) – "When we settle the claim, the vehicle becomes our property.....**We will be unable to allow you to retain your vehicle if it is uneconomical to repair.**"

I can see that this was an old car but I'm aware that Mr S's finances were stretched. And he's explained he hasn't replaced his car since. But I accept that the ideal outcome for him here would have been to have his old car repaired. AXA didn't have to repair it, because it was uneconomical for it to do so. But in completing a repair AXA would have to use new parts. Whereas, Mr S would likely have been able to repair the car by utilising reconditioned parts. Which would likely have cost less than the price to AXA for repair. And he'd have had the market value settlement less an amount for the salvage of the car, with which to do so. I can't see any reason why he wouldn't have done that.

AXA hasn't been able to provide call recordings where its agent and Mr S discussed the total loss settlement. But I've looked at what's been said about those discussions in respect of Mr S keeping the vehicle. Bearing in mind the letter AXA sent to Mr S, which said it had to keep the car, I think Mr S likely gave some indication to AXA's agent that he'd be interested in the car being repaired so he could continue to use it which was merely turned down on the basis of the cost to AXA to repair the car. I think, in this instance, that indication by Mr S should have been taken as a request by him to keep the car. Which should then have prompted AXA to offer to settle the claim by paying him the market value less an amount for salvage and returning the car to him. But AXA didn't do that and I think that was unfair.

So I have to think about what can be done now to put things right. Mr S has had the market value settlement for his car, and AXA has sold the car on. I can't undo any of that. The policy has been cancelled and Mr S doesn't currently have another car which he needs cover for. So there's no use in me requiring the policy to be reinstated.

Then there's the premium. Mr S owes AXA around £1,000 in premiums. As I set out above, in the normal course of a total loss settlement, the policy does allow AXA to request that the full premium is paid. However, here, I have to think about the fact that AXA made an error and what would have happened if it hadn't. In that respect I've found that Mr S would have fixed his car. He'd have had to keep the car insured. So I think, in that instance he would have continued to make his premium payments. And he'd have benefitted from that outlay because he'd be insuring his car. But AXA's error meant that didn't happen. And Mr S now has to pay for the premium even whilst being without his car or any further benefit from the policy. In this instance I do think it would be unfair for AXA to continue to seek recovery from him for the outstanding premium amounts. As I've said, on a strict interpretation of the policy AXA can do that – but, for the above reason, I don't think it would be fair for it to do so in this case. I intend to require it to mark its files to show the sum is written off and cease chasing Mr S for the monies. Also to write a letter for Mr S, to provide to any debt record agencies, should he need to, to explain any debt shown was due to AXA's error.

In terms of compensation, I think £500 is a fair and reasonable sum. Mr S's frustration and worry about the premium outstanding would all have been avoided if AXA had offered to let him keep the car because he'd still feel like he was benefitting from the sum he was paying (which I think he would have continued to pay for that same reason). Instead I understand he's been faced with debt collectors chasing him for money he doesn't feel he reasonably owes. As I've said, Mr S, strictly speaking, is incorrect in that respect – the policy does make

*him liable for that sum. But, as I've also said, I think it's unfair for AXA to chase him for payment of it in this instance. I am satisfied that AXA caused him this worry by not offering to settle his total loss claim by paying a reduced market value and returning his car to him so he could repair it."*

Mr S said AXA had lied – he had told it he wanted to keep the car. He said he felt it had dealt with his claim incorrectly and he shouldn't have to pay anything.

AXA said it disagreed with the outcome. AXA said the premium is outstanding as per the policy terms. It said it's not fair for Mr S to not have to pay for this whilst having the full benefit of the policy. AXA said Mr S could have replaced his vehicle, had he wanted to, adding any new car to the policy and benefitting from the remaining cover/premium price. It said it's not clear if Mr S could have sourced a replacement part – because thefts of these items are increasing. AXA said it felt £500 was too high for the impact the complaint made.

### **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 S hasn't been clear about when it was that he asked AXA to keep his car. It may have been its agent he asked. In any event, I found he had likely at least indicated to AXA's agent that he wanted to keep the car and that AXA hadn't treated him fairly in that respect.

I appreciate that, in this situation, the policy would allow the premium to be retained, or require outstanding parts of it to be paid. But as I explained provisionally – AXA failed Mr S regarding keeping his car. So what AXA can fairly do regarding the premium has to be considered through that lens. In short Mr S is only in the position of not having his car *whilst* being liable to pay a policy premium for it because AXA failed him, by not giving him the option to have his car back. Mr S could, in theory, have improved that situation, caused by AXA, by buying another car to add to the policy, thereby benefitting from the premium. But the fact he did not doesn't negate AXA's liability for the consequences of its failure.

AXA hasn't shown that Mr S could not have replaced the part. The fact that these items are being stolen from cars doesn't mean it would be impossible to find a replacement part.

I note AXA feels £500 compensation is too high. But I'm satisfied that Mr S was caused a substantial amount of worry due the financial position I've found AXA left him in – being chased to pay for cover for a car no longer owned.

### **Putting things right**

I require AXA to:

- Write off the outstanding premium amount, ceasing to chase Mr S for payment.
- Write a letter for Mr S to present to any debt record agencies should he need/wish to, to explain that any debt recorded there is its fault.
- Pay Mr S £500 compensation.

### **My final decision**

I uphold this complaint. I require AXA Insurance UK Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 January 2024.

Fiona Robinson  
**Ombudsman**