

## **The complaint**

Mr H complains about his insurer, Aviva Insurance Limited ('Aviva') for delays in handling a claim for damage to his vehicle from an accident.

In referring to Aviva, I include its agents and representatives.

## **What happened**

In November 2020, Mr H's vehicle was hit by a third-party vehicle. The third party left a note on Mr H's vehicle. Mr H said that their insurer (A) initially accepted liability and told him he didn't need to contact his insurer. Mr H contacted a recovery firm (P) recommended to him by a friend to arrange for recovery of his vehicle. The following month Mr H was told by A that they weren't going to continue with his claim against the third party, advising him to contact his insurer (Aviva).

Mr H contacted Aviva to tell them about the accident, including that his vehicle had been recovered by P and that storage charges were being incurred. Aviva contacted P to request removal of the vehicle to a different location, but P wouldn't release the vehicle until the storage charges had been paid. Aviva then agreed with P for their engineer to inspect the vehicle at the location it was being stored, but this didn't happen. An engineer from another company (not Aviva) did inspect the vehicle and after some confusion over who had sent the engineer, Mr H sent Aviva pictures of his vehicle, Aviva offered a settlement for the vehicle as a total loss (less a salvage value for the vehicle). Mr H was unhappy at the value offered for his vehicle (£6,000 market value less a salvage value of £1,680 so a net offer of £4,320), which Aviva agreed to review. Pending this, Mr H accepted an interim payment of £4,320.

But P wouldn't release the vehicle until the storage charges had been paid. Aviva didn't accept responsibility for the storage charges as they hadn't agreed to incur them. Unhappy at this position, and the delays in settling his claim, Mr H complained to Aviva.

In their final response, Aviva said that when Mr H made his claim, they asked their salvage agent (C) to collect his vehicle. When C contacted P, they were told there were outstanding recovery and storage fees of £1,325 from the date of the accident. Aviva didn't accept these charges as they hadn't agreed to incur them, but they agreed to pay £600 towards the overall storage costs (based on 30 days at what they thought was a fair daily rate of £20).

On the value of his vehicle, Aviva apologised for the delay in the review, but drawing on industry valuation guides they thought the offer was fair and wouldn't increase it. But Aviva accepted that their communication with Mr H could have been better and they hadn't always set clear expectations. Acknowledging the delay in providing a valuation of his vehicle, Aviva said they'd pay interest (at 8%) to the date the claim was reported (£38.82). In recognition of the trouble and upset caused they also offered Mr H £150 in compensation.

Unhappy at Aviva's response to his complaint, Mr H complained to this service. He asked that Aviva should settle all the storage charges for his vehicle and arrange for the collection of his vehicle and pay him compensation for how it had handled his claim.

Our investigator upheld Mr H's complaint, concluding Aviva hadn't acted fairly. She thought it wasn't made clear to Mr H that Aviva wouldn't pay for the storage costs and as A had accepted liability for the incident (so it was a no-fault claim by Mr H) then Aviva should have taken responsibility for the storage costs when they were notified about the accident (and moved the vehicle to a free storage location, to mitigate ongoing storage costs). The investigator thought Aviva should pay the costs of storage from the date of the accident to when Mr H notified Aviva of the accident (£1,325) as well as from then to March 2021 (£2,525). She thought it fair Aviva paid interest on the settlement for Mr H's vehicle, given the delays. On compensation, she thought Aviva's offer of £150 wasn't enough and that £250 would be a fairer sum.

Aviva disagreed with the investigator, and requested an ombudsman review the complaint. They said the policy made it clear a policyholder should contact them as soon as reasonably possible about an accident so they could assess the circumstances and deal with any associated claim. Also, a policyholder must not promise any payment without their consent, something Mr H hadn't done (by committing to the storage costs incurred by P, which Aviva hadn't agreed). Aviva also referred to previous decisions of this service where the insurer wasn't held responsible for storage costs before it became involved in an incident.

In my findings I concluded that Mr H should have told Aviva about the accident when it happened. While A might have told him initially that he didn't need to contact Aviva, I didn't think that should have precluded Mr H telling Aviva about the accident.

I also concluded that it was reasonable for Aviva not to accept the storage charges incurred before the date they were notified of the accident by Mr H, based on the decisions of this service Aviva referred to as well as the terms of the policy.

On the costs of storage from the time Mr H notified Aviva of the accident, I concluded that it would have been reasonable to expect Aviva to mitigate the ongoing costs of storage when it became aware of the accident. I thought Aviva could have settled the storage charges to enable the vehicle to be moved to one of its storage facilities, so reducing the ongoing storage costs, and then sought to recover those charges from the settlement of Mr H's claim if it didn't consider them to be their responsibility. I thought it would be reasonable for Aviva to have done that by the start of 2021 (say 4 January). Based on this, I thought a reasonable outcome would be for Aviva to pay the storage costs from that date until the date to which the storage charges were calculated (£1,700) less the £600 they'd offered Mr H, if they'd already paid that sum).

Because I reached different conclusions to the investigator, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below.

*What I've provisionally 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.*

*My role is to decide whether Aviva have acted reasonably towards Mr H.*

*The key issue in Mr H's complaint is the storage charges for his vehicle following its recovery to P after the accident. Mr H believes that Aviva should reimburse him for all the charges. He believes that because the accident wasn't his fault, Aviva should pay the charges and then recover them from the insurer of the third party (A). For their part, Aviva maintain that they didn't agree to incur the storage charges from the vehicle's recovery (until they were notified of the accident by Mr H). They feel they've acted reasonably in agreeing to make a £600 contribution towards the storage charges, even though they hadn't agreed to incur them.*

*In considering this issue, I've first thought about the period from the date of the accident (and recovery of the vehicle to P) through to the date when Mr H informed Aviva of the accident. Aviva say (under the terms of the policy) Mr H should have told them about the accident as soon as possible. And that he shouldn't have committed to the storage costs without their consent. They also refer to previous decisions of this service where the insurer wasn't held responsible for storage costs before it became involved in an incident. Having considered these points, I agree with Aviva's position and I'll set out why I've come to that conclusion.*

*Taking the points in turn, on the first I've looked at the policy terms and conditions. There's a prominent reference on the front cover (and a similar reference on the back cover) to:*

***"Had an accident? Tell us as soon as you can:***

*Please report all accidents to us immediately online at...or you can call us on..."*

*There's a similar reference on the back cover, which also states: "If you receive any contact from another party in relation to your claim, please re-direct this to us and we will handle it on your behalf."*

*So, I think that Mr H should have told Aviva about the accident when it happened. While A might have told him initially that he didn't need to contact Aviva, I don't think that should have precluded Mr H telling Aviva about the accident, as they could then have contacted A to deal with the accident (and any associated claims and liability issues).*

*On the second point, under the General Conditions that apply to the whole policy heading, there's a section 2. Claims Procedures (Your duties) that states:*

*"Anyone claiming under this policy must not admit to any claim, promise any payment or refuse any claim without our consent."*

*I think it's reasonable to understand that this means Aviva wouldn't agree to make payment that they hadn't agreed to.*

*On the third point, I've looked at the decisions Aviva have referred to. Having done so, I agree that's the principle that we apply in those circumstances. While Mr H might have thought the costs could be recovered from A, as the third-party insurer, that should have been a decision for Aviva (not an assumption by Mr H).*

*Taking these points together, I've concluded that it was reasonable for Aviva not to accept the storage charges incurred before the date they were notified of the accident by Mr H.*

*I've then considered the period from the date Aviva was notified of the accident. At that point I would have expected them to make arrangements to move the vehicle to one of its own storage facilities where charges wouldn't have continued to accumulate, so mitigating the ongoing costs. While I've concluded that it was reasonable for Aviva to be unwilling to pay the storage charges incurred before the date it was notified of the accident, the charges continued to be incurred because P wouldn't release the vehicle until they'd been settled. But neither Mr H nor Aviva was willing to settle the charges, so the vehicle remained with P and the storage charges continued to accumulate.*

*I've thought about the circumstances and what would be fair and reasonable. Listening to the call recordings of the discussions between Aviva and Mr H, there are references from Aviva that they will accept charges from the date they were notified of the accident, but not*

*before that date. Similarly, in one of the discussions, Mr H accepts that the costs of storage before he notified Aviva of the accident should (in his view) be for the third-party insurer.*

*While it isn't an issue in his complaint to this service, I've also noted that while Mr H wasn't happy with the initial settlement offer for his vehicle, Aviva making an interim payment of the market value offered, less the salvage value, meant that the vehicle remained the property of Mr H. In some of the call recordings Mr H also states his intention to keep the vehicle (potentially with a view to having it repaired himself). In that position, it could be argued that the charges from the date of the settlement (through to March 2021) should be the responsibility of Mr H as the owner of the vehicle.*

*I've thought about this carefully. However, given what I've said about it being reasonable to expect Aviva to mitigate the ongoing costs of storage when it became aware of the accident, as well as indications from Aviva that they would cover the costs from the date of the incident, I don't think that's fair and reasonable. Aviva could have settled the storage charges to enable the vehicle to be moved to one of its storage facilities, so reducing the ongoing storage costs, and then sought to recover those charges from the settlement of Mr H's claim if it didn't consider them to be their responsibility.*

*While the storage costs from the date Aviva were notified of the accident through to March 2021 have been calculated at £2,525 (from an invoice from P), I think it's reasonable that having been notified of the accident and the vehicle's location at P, it would have taken Aviva time to arrange for the storage costs to be paid and the vehicle moved to one of its own storage facilities. Given the time of year, and the impact of Covid Pandemic restrictions at that point, I think it would be reasonable to say that Aviva could have done this by the start of 2021 (say 4 January). Based on this, I think a reasonable outcome would be for Aviva to pay the storage costs from that date until the date to which the storage charges were calculated (12 March 2021 from the invoice that I've seen). At a daily charge of £25, that would be £1,700 (less the £600 offered, if they've already paid that sum).*

*I've also considered the issue of compensation for the distress and inconvenience suffered by Mr H. In their final response, Aviva acknowledged the trouble and upset caused to Mr H and offered £150 in compensation. Our investigator thought this wasn't enough, concluding that £250 was fair. I've thought about the circumstances of the case, together with my conclusions about the issue of the storage costs. I think that £150 would be fair and reasonable.*

#### *My provisional decision*

*For the reasons set out above, it's my provisional decisions to uphold Mr H's complaint in part. I intend to require Aviva Insurance Limited to:*

- Pay £1,700 towards the storage costs of Mr H's vehicle (less the £600 offered, if they've already paid that sum).*
- Pay £150 for distress and inconvenience.*

Mr H responded to say that he didn't think £150 was reasonable, given the amount of time he'd spent on the phone to them and the delays. He also said that the only reason he didn't contact Aviva at the time of the accident was because A told him he didn't need to. Also, storage charges would have been incurred in any event, whether at Aviva's own storage site or at P. While he was happy to keep his car at the time, he no longer wanted to and asked that Aviva collect the car and pay him the salvage value.

Aviva responded to say they broadly agreed with the recommendations in my provisional decision and accepted that, ideally they would have moved the vehicle to secure storage by

4 January (2021). While Aviva also thought the suggestion they pay storage of £25 a day from 4 January was fair and reasonable, they asked me to consider that a reasonable date for their responsibility for storage charges to end should be 2 February. That would have given Mr H a week to move his vehicle from storage (as he indicated at the time that he wanted to keep it) after Aviva had issued their settlement (net of salvage) on 26 January. But certainly, by 25 February (the date they issued their final response to Mr H's complaint).

### **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.

Considering Mr H's points in turn, I appreciate that Mr H feels that £150 in compensation isn't reasonable, given the amount of time he spent on the phone to Aviva discussing his claim and what was happening. I'd want to reassure Mr H that I have considered what he's said carefully, but I'm still of the view that £150 is fair in the circumstances of the case, alongside my conclusions on the storage costs. On his point that he didn't tell Aviva about the accident because A told him he didn't need to, I can understand why he feels this way and that he doesn't think A treated him fairly. But his complaint is against Aviva, not A, and I still think he should have contacted Aviva at the time of the accident for the reasons I set out in my provisional decision. So, I haven't changed my mind on this point.

On the issue of storage charges being incurred in any event, the key is that Aviva would have been able to arrange for storage at one of the sites they use, under arrangements they have in place. And as I set out in my provisional decision, I don't think they should be held responsible for meeting the storage costs incurred by P. So, I don't think this changes my view on how the storage costs should be split.

On Aviva's response, their main point is the date by which they think their responsibility for storage charges should end (either 2 February or 25 February). I can understand why they make this point, given that as Mr H had indicated he wanted to keep his vehicle, it remained his property and therefore the storage charges should be his responsibility. However, I considered this specific point carefully in my provisional decision, when I noted that the storage charges from the date of the settlement (through to March 2021) should be the responsibility of Mr H as the owner of the vehicle. Having done so, I concluded that, given what I said about it being reasonable to expect Aviva to mitigate the ongoing costs of storage when it became aware of the accident, as well as indications from Aviva that they would cover the costs from the date of the incident, I didn't think that would be fair and reasonable. As I said in my provisional decision, Aviva could have settled the storage charges to enable the vehicle to be moved to one of its storage facilities, so reducing the ongoing storage costs, and then sought to recover those charges from the settlement of Mr H's claim if it didn't consider them to be their responsibility.

Aviva haven't provided any new arguments on this point, so I haven't changed my mind on what would be a fair and reasonable outcome.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr H's complaint in part. I require Aviva Insurance Limited to:

- Pay £1,700 towards the storage costs of Mr H's vehicle (less the £600 offered, if they've already paid that sum).
- Pay £150 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 April 2022.

Paul King  
**Ombudsman**