

## **The complaint**

Mr H complains about how Aviva Insurance Limited handled his claim after his car was damaged in an accident. He's unhappy about how the solicitors Aviva appointed dealt with his claim and with the level of communication he received from Aviva and the solicitors.

## **What happened**

Mr H has insurance for his car with Aviva. His car was damaged in an accident on 15 July 2018. He reported the accident to Aviva the same day and made a claim on his policy for the cost of his repairs.

The day after the accident Aviva contacted Mr H by email saying he'd be sent a link to allow him to book his car in for repair and he'd then be able to review progress. He was also told that a car hire company would contact him to arrange for a hire vehicle to be provided while the repairs were being completed.

Mr H wanted the repairers to collect his car and the hire car to be delivered to him. He's unhappy that this took five days to sort out and he had to make a lot of calls for this to be arranged. He feels he had to organise this himself when Aviva should have done it. He raised a complaint with Aviva about this and they offered him £100 to cover loss of use and the cost of his phone calls.

Mr H also complained to Aviva about the solicitors they'd appointed to deal with his claim. He said the first solicitors they appointed did nothing with his claim. When he raised this with Aviva, they appointed a second firm of solicitors whom he says struggled to build a competent case.

There were two other vehicles involved in the accident. One of them didn't stop but the police traced the driver and had his details. Mr H says he told the solicitors that both drivers were male, but despite this they issued proceedings against the female registered keeper of this vehicle, who denied being the driver on the day of the accident.

Mr H contacted Aviva's CEO in January 2021 about these issues and said he'd had no communication from either Aviva or the solicitors for over a year.

Mr H was also unhappy that he hadn't received his policy excess back as it was a non-fault accident. But given the time that has passed since Mr H first complained to Aviva, proceedings against the other drivers have been successfully concluded, and he's received his policy excess.

Aviva responded to Mr H's complaint saying they're weren't responsible for their appointed solicitors' actions. And if he wanted to raise a complaint about them, he'd need to contact them directly.

Mr H wasn't happy with Aviva's response and complained to our service. Our investigator considered the case and said there are rules about what we can consider when a complaint is about an insurance claim that's been passed to solicitors. He said we can't look at the

actions of solicitors when they're pursuing a claim for uninsured losses, such as Mr H's policy excess. And we can't comment on the legal case they've put together. These types of complaints would need to be referred to the Legal Ombudsman.

He said we could consider what the solicitor did in relation to carrying out a contract of insurance, but this would be limited to looking at customer service and delays, rather than the legal case.

After the accident Mr H confirmed to Aviva that he wanted to recover his policy excess. On 15 August 2018 Aviva told Mr H they couldn't pursue this, as it was an uninsured loss, but he could use his legal cover to try and recover this. Mr H agreed so Aviva appointed one of their panel solicitors to act for him.

Our investigator said he could see that the solicitors had tried unsuccessfully to contact Mr H on 4 October 2018. They'd then sent him blank forms about the accident to complete, which was their normal procedure.

Mr H called Aviva for an update on 16 January 2019. He wasn't happy that nothing had happened for six months. Aviva's notes said that the solicitors couldn't have done anything as the other insurers hadn't admitted liability. Mr H thought Aviva were responsible for the performance of the solicitors, but our investigator said he couldn't comment on the solicitor's actions, or anything to do with running the legal claim as this is outside our jurisdiction.

Our investigator then looked at Mr H's complaint about the second firm of solicitors Aviva appointed. He was unhappy that they'd asked him to complete paperwork requesting similar information to that he'd provided to Aviva and the first firm of solicitors. As these solicitors were appointed to recover Aviva's outlay and Mr H's policy excess, our investigator said he could look at their actions from January 2019 as they were partially acting as Aviva's agents.

So our investigator looked at the actions the solicitors had taken when they were instructed. He said they'd confirmed their process was to send an uninsured loss form, including a Statement of Fact, which they asked Mr H to complete. Our investigator said he understood that it was frustrating for Mr H to have to provide information again, but Aviva had told us they don't automatically send information to the solicitors, and even if they did the solicitors would need to verify this.

Aviva's system notes record that in April 2019, July 2019 and October 2019 that they were waiting to hear from the solicitors. But our investigator said he couldn't see that any update had been sent to Mr H.

Mr H called Aviva in December 2019 as he'd received a letter from one of the other drivers, saying he wasn't insured and offering £250 to settle his claim. Our investigator said that part of the delay had arisen because this driver's insurers firstly denied liability for the accident and then said his policy was void from inception.

From Aviva's case notes it appeared that the case had been reviewed by Aviva every three months, and there was a further review in January 2021. But their notes only said '*awaiting outlay recovery from solicitors*', and our investigator said there was nothing to suggest they'd updated Mr H.

Mr H then raised a further complaint on 9 January 2021. Aviva replied on 11 January 2021 saying that once they'd instructed solicitors they could '*pursue the claim as they see fit, without any need to refer their decisions to us and we do not request periodic updates, instead we await the outcome of their enquires*'. It was at this point Mr H brought his complaint to us.

Our investigator said that internal emails from Aviva acknowledged that updates from the first solicitors wouldn't have gone amiss. And he felt it was reasonable to say the same for the second set of solicitors. So he didn't think the level of communication Mr H had received was acceptable.

He said that while Mr H had a contract with the solicitors, he still had a contract with Aviva, and he wasn't given the option to instruct his own solicitors. And from the time of their final response letter in February 2019 Mr H didn't receive any outbound communication from Aviva for nearly two years. So he felt £400 compensation was appropriate for the delay and frustration this had caused.

Mr H was happy with our investigator's opinion. But Aviva weren't. They provided a timeline of the actions taken by them and the second firm of solicitors between January 2019 and November 2021.

According to that timeline the second set of solicitors first contacted Mr H in January 2019 and he agreed to them acting on his behalf. Through 2019 the solicitors were trying to resolve the case. This wasn't possible and court proceedings were issued in early December 2019.

The solicitors contacted Mr H in January 2020 with a copy of the defence from the first defendant who denied being involved in or having any knowledge of the accident. They send Mr H a witness questionnaire and asked for any dates he couldn't attend court.

In March 2020 Aviva say the solicitors received a court order requiring Mr H to identify the first defendant's driver. They then contacted Mr H who replied saying he didn't have the driver's name, but the police had confirmed the driver was male. This led to correspondence with the police for details of the driver. And his name was provided on 6 April 2020.

The first defendant's solicitors were then asked to admit the details of the driver, confirm his address and that he was covered by her insurance. As they didn't, the solicitors contacted the police for the driver's address, and the proceedings were amended to substitute him as the first defendant. His solicitors then filed a defence stating he had no knowledge of the accident. By this stage it was August 2020.

Mr H complained to Aviva in January 2021 and they passed this on to the solicitors asking them to provide him with an update. Which they then provided to Mr H.

In March 2021 the solicitors received notification of a hearing date and informed Mr H this would take place on 16 July 2021. The solicitors then dealt with preparation for the hearing. This took place remotely and Mr H's claim against both defendant's was successful. The hearing ran over, so the judge asked the parties to agree an order. The terms of the order agreed resulted in a £350 shortfall in the total amount due to settle Mr H's claim. Counsel agreed to refund this from her fee and Mr H was sent his recovered policy excess on 26 November 2021.

Aviva had said that based on the information provided by the solicitors it's wrong to say they struggled to build a competent case. And that the first contact with Mr H about the identity of the driver was after the female registered keeper of the vehicle denied being the driver, or her car being involved in an accident. And if he did identify the driver as male, this must have been to the first firm of solicitors who didn't pass this information on.

Aviva said that Mr H didn't ask for updates. They say the solicitors updated him at key stages, apart from the issuing of proceedings in October 2019 and the outcome of the hearing. Although they say he was present at that.

In saying Mr H had no contact from them for nearly two years Aviva say our investigator failed to consider any updates he was receiving from the solicitors. Although they do accept that there were delays between January 2019 and early July 2019, when the first solicitors didn't reply to the second, and they didn't chase. Then between the end of October 2019 and the end of July 2020 when proceedings were issued against the female registered keeper of the first vehicle and the driver being substituted as first defendant. And then between August 2020 and early February 2021 when the solicitors were awaiting directions from the court.

Aviva say that things were slow because of the pandemic but acknowledge that the solicitors could have chased the court sooner. Aviva also say that at no point did the court threaten to strike out the proceedings.

Based on the timeline they provided Aviva didn't agree the increase in compensation our investigator suggested was reasonable.

Our investigator considered the further information Aviva had provided and issued an updated opinion. He said that from the timeline Aviva had provided he could see that the solicitors had tried to progress Mr H's claim, but they'd been some difficulties. But he felt that at certain points of the claim the level of communication from both Aviva and the solicitors could have been better.

Aviva had said that once solicitors were instructed, they didn't ask for updates. He felt a call to the solicitors to check the position and then provide an update to Mr H would have been better customer service. Aviva accept that the second solicitors could have done more to chase the first solicitors in the early stages of the claim. And that Mr H wasn't updated when proceedings were issued, or about the outcome of the hearing.

Our investigator said it wouldn't be fair to say the delays were caused solely by the solicitors as other parties and the pandemic had contributed. And Mr H had been getting some updates from the solicitors, so he had a better idea of how the claim was progressing than he'd initially thought. So while he still thought Mr H was entitled to some compensation for delays and lack of updates, he now thought that £250 would be a more appropriate amount.

Mr H wasn't happy with our investigators further opinion as he considered the initial amount of compensation our investigator suggested was appropriate. Aviva also weren't happy but said they were prepared to offer £300, inclusive of the £100 they'd previously offered in relation to the difficulties arranging the collection of Mr H's car for repair and the delivery of a hire car.

The case has now come to me for a 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.

Mr H's complains about how Aviva dealt with his request regarding collection of his car for repair and the provision of a hire car. Aviva's notes say that the way he wanted this to be dealt with wasn't usual, but it wasn't unreasonable. So this shouldn't have taken the five days and numerous phone calls Mr H has told us he needed to make to sort this out.

Aviva offered Mr H £100 compensation for the delay and the additional phone calls he needed to make which I think is reasonable.

He's also complained about the way in which his claim has been handled by Aviva and the

solicitors they appointed to act on his behalf. Where a case has been passed to solicitors we can only consider what the solicitor did in relation to carrying out a contract of insurance. This would be limited to looking at customer service and delays, rather than the legal case.

The Insurance: Conduct of Business sourcebook (ICOBS) sets out the Financial Conduct Authority's (FCA's) guidance on how claims should be dealt with by insurers. ICOBS 8.1.1 states that an insurer must *'handle claims promptly and fairly'*.

While Mr H's claim was referred on to solicitors who were pursuing it on his behalf there must still be a presumption that the claim will be handled promptly.

Based on the further information Aviva provided in response to our investigator's original opinion, it appears that when they replied to his complaint, they hadn't checked with the solicitors to see what information and updates had been provided to Mr H.

Aviva have told us that once a case is passed to solicitors they don't ask for updates, they just wait to be told when the case is resolved. It doesn't appear from what they've told us that there was any agreement in place about the updates the solicitors would provide to Mr H. I think this was poor customer service and that it contributed to the time it took to resolve Mr H's claim. And I don't think it's reasonable for Aviva to say Mr H didn't get updates, as he didn't ask for them. He shouldn't have had to.

I accept that there were other factors, such as the pandemic and delays with the other parties involved, which contributed to the time it took to resolve Mr H's claim. Based on the timeline Aviva have now provided they've accepted there were delays between January and July 2019, October 2019 and July 2020 and between August 2020 and February 2021. And there was another delay they haven't acknowledged as after the hearing as Mr H didn't receive the refund of his policy excess until November 2021.

These delays total over 24 months and they're not accounted for by the outside factors Aviva have referred to. Considering all the parties have said I think Mr H has been provided with poor customer service and they've been delays in pursuing his claim. This has led to him suffering distress and inconvenience over and above what I'd expect in pursuing a claim following an accident. And I think the appropriate level of compensation he should receive for this is £250, in addition to the £100 previously offered in relation to the delays arranging his repairs and car hire.

### **My final decision**

For the reasons set out above my final decision is that I uphold Mr H's claim against Aviva Insurance Limited.

And to put things right I require them to pay Mr H £250 compensation for the distress and inconvenience he's suffered as a result of the poor customer service he's received and the delays in handling his claim. This is in addition to the £100 Aviva have already offered him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 October 2022.

Patricia O'Leary  
**Ombudsman**