

## **The complaint**

Mr D complains about how Aviva Insurance Limited (“Aviva”) communicated with him and made decisions on liability when he made a claim under his motor insurance policy.

## **What happened**

Mr D had a motor insurance policy with Aviva covering his car.

He was involved in two separate incidents in 2019 and 2020. Mr D has complained to Aviva about both of these, and it’s my understanding that he is happy that the details around the 2019 claim have been resolved to his satisfaction.

In 2020 his car was hit from the rear by a third-party vehicle. The case went through an arbitration process with the third-party insurer because it denied liability for the collision, the result of which was that the liability for the incident was split 50/50.

Aviva didn’t keep Mr D updated with how this claim was progressing and it didn’t tell him about the 50/50 split on liability. The claim was recorded on an external database showing that Aviva couldn’t recover all of its costs.

When Mr D applied for cover with another company, he was told that both claims were on the external database showing that Aviva hadn’t recovered its costs for either claim.

He wasn’t happy about this and complained to Aviva. It said it didn’t think it’d communicated with Mr D well enough and it gave him £100 compensation for this. But Aviva said it had followed its terms and conditions in determining liability.

Mr D remained unhappy with Aviva’s response and brought his complaint to this service.

Our investigator looked into Mr D’s complaint and said she said he thought that Aviva had followed its terms and conditions and the compensation it offered was fair and in line with this service’s recommendations.

Aviva agreed with the view, but Mr D didn’t. He asked that this service look at Aviva’s actions in investigating the 2020 claim and that it update the external database. He says that Aviva’s decision on liability continues to affect his insurance premiums. He asked for the complaint to be reviewed by an ombudsman, so it has been passed to me for a 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.

It’s important that I say that it’s not the role of the service to decide which party may or may not be at fault for a collision. That’s the role of the courts. It’s my role to look at whether Aviva acted fairly and reasonably in its actions.

It’s my understanding that the details of the 2019 claim have now been resolved. The final

part of that claim is the records on the external database I've mentioned. Aviva hasn't been able to recover its costs from a third-party, so the claim is marked as such under Mr D's details. It's also important that I say that this doesn't denote "fault" about a particular claim – it's about whether an insurer was able to get its costs back from another party.

In Mr D's case, Aviva wasn't able to do this for either of his claims, but it does think it will eventually be able to make the recovery for the 2019 claim. It's also said that if this triggers a refund for overpayment then it'll make payment to Mr D.

There are many reasons why costs might not be recovered, but having looked at what's taken place with both of Mr D's claims, I think they are correctly recorded on the external database and I'm not going to ask it to do more.

For the 2020 claim, I can see that Aviva didn't keep Mr D up to date, and particularly about how liability for the claim was ultimately decided.

*I've looked at Aviva's policy wording and I can see this section:*

*"General Conditions*

*Our rights*

*If we want to, we can take over and conduct in the name of the person claiming under the policy the defence or settlement of any claim...*

*We shall have full discretion in the conduct of any proceedings or settlement of any claim."*

It's clear to me that Aviva has exercised this right to handle Mr D's claim. The wording that it's used is in line with the market and I think it's acted fairly and reasonably in handling the claim in the way that it did.

But I can also see that Aviva didn't keep Mr D up to date with his claim and made the decision on the 2020 claim without letting him know. It's important that I say that, even if Aviva had told Mr D about the situation, I still think its actions in handling the claim on a 50/50 basis would have been reasonable under the terms and conditions of its policy.

It's clear that Mr D has been distressed about finding out about his "fault" claims from a third-party insurer and Aviva has offered Mr D £100 compensation for this. I've thought about this carefully and I think that the level of compensation it has offered is fair and in line with this service's guidelines.

### **My final decision**

Aviva Insurance Limited has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Aviva Insurance Limited should pay Mr D £100 if it hasn't already done so.

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

Richard Sowden

**Ombudsman**