

The complaint

Mrs P complains that Aviva Insurance Limited settled a claim on her motor insurance policy as split liability. She wants to be held not at fault. Mr P is a named driver on Mrs P's policy.

What happened

Mr P was involved in a collision with another car at a roundabout. There were no independent witnesses or CCTV footage available. The drivers both held the other driver to be at fault. So Aviva said the best possible outcome was a split liability decision. Mrs P was unhappy with this as there were people in her car who could be witnesses. Aviva held off making its decision whilst Mrs P pursued personal injuries claims.

Our Investigator recommended that the complaint should be upheld in part. She thought Aviva hadn't sufficiently investigated the claim before making its decision to settle it as split liability. She thought Aviva should investigate the claim further and pay Mrs P £100 compensation for the trouble and upset caused.

Aviva replied that it didn't agree and asked for an Ombudsman's 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 P said he had correctly proceeded around the roundabout and was exiting when the other driver cut into his lane and collided with the rear driver's side of his car, pushing his car into the kerb. The other driver said Mr P had pulled into his lane causing the collision.

The Investigator has already explained that it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mrs P the same as someone else in her position.

Aviva is entitled under the terms and conditions of its policy with Mrs P to take over, defend, or settle a claim as it sees fit. Mrs P has to follow its advice in connection with the settlement of her claim, whether she agrees with the outcome or not. This is a common term in motor insurance policies, and I do not find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

That said, we expect an insurer to reasonably investigate a claim and consider the evidence available before making its decision on liability. And, in this particular case, I'm not satisfied that Aviva has done this. I'll now explain why I think this.

The evidence Aviva considered was the two drivers' conflicting versions of events. The passengers in Mrs P's car wouldn't be considered independent, so I'm satisfied that Aviva wouldn't need to gather their statements. There was no dashcam or CCTV footage available. But there were photographs of the damage to the two cars.

Aviva firstly held Mr P not at fault, but this was challenged by the other driver who said Mr P was entirely at fault. Aviva thought that as it was a changing lanes scenario and it was one side's word against the other's, then a split liability decision would be the likely outcome. But I haven't seen that Aviva reasonably investigated the claim before coming to this conclusion:

- Aviva received an image of the roundabout where the accident occurred. But it said it didn't look at this further to understand the drivers' routes or how the collision occurred.
- Aviva instructed a claims investigator to interview Mr P to clarify his version of events. And Aviva asked for more information from the other driver, his intended route and engineering evidence. But I can't see that this was received. And I can't see that Aviva pressed the other insurer for this.
- Aviva didn't have any engineering evidence to show the damage to Mrs P's car as she hadn't made a claim for this. But I can't see that it considered the photographs of the damage that were provided to see if they supported either side's version of events.
- Mr P had said his car was pushed into the kerb by the impact. And his car was hit in the rear. But Aviva didn't then challenge the other insurer with this.
- Aviva said Mrs P's own solicitors agreed that a split liability decision was the best possible outcome. But I can't see that it checked with this its own solicitors.

So I think Aviva should continue its investigation before making its decision on liability. Aviva's handling of the claim has caused Mrs P trouble and upset. Our Investigator recommended that it should pay her £100 compensation for this. I think that's fair and reasonable as it's in keeping with our published guidance for the impact its errors have had.

Putting things right

I require Aviva Insurance Limited to further investigate Mrs P's claim and to pay her £100 compensation for the distress and inconvenience caused by its handling of her claim.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require Aviva Insurance Limited to carry out the redress set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 27 March 2023.

Phillip Berechree
Ombudsman