

The complaint

Mr M complains about how Aviva Insurance Limited (Aviva) dealt with a claim on his motor insurance. References to Aviva include other individuals and organisations acting on its behalf.

What happened

Mr M had motor insurance with Aviva. Another motorist drove into the back of his car and caused some damage. Aviva arranged for Mr M's car to be repaired by its approved repairer.

Mr M says that when the car was returned there was water in the back and the boot. He took the car back to the approved repairer. He says they were rude and not very professional, and told him the car was damp when they got it for repair. Mr M says the approved repairer told him the leak could have many causes and they would need to try a fix, and return the car and see if it was still leaking. If it was, they'd try another fix. Mr M wasn't happy with this suggested approach and took the car to the main dealership, who had looked after it since new. The dealership found leaks in various places, and completed the repairs. Mr M thought these leaks were all caused by the accident and asked Aviva to pay for the repairs.

Aviva obtained reports from its approved repairer and the main dealership. Both advised that the water leak wasn't related to the accident damage. So Aviva said it wouldn't pay for these repairs.

The main dealership suggested the leak may have been due to wear and tear, and also told Aviva that they had felt "railroaded" by Mr M into saying the leak was accident related. On the basis of this information Aviva repudiated (declined) the claim and cancelled the policy, saying the claim was exaggerated.

Mr M wasn't happy with this and complained to Aviva. Aviva said it could see its technical team had reviewed the claim and damage in full, and had explained to Mr M that it wasn't going to be dealing with the water leak and why.

Mr M wasn't happy with Aviva's response and complained to this service. Our investigator upheld his complaint saying that while she didn't think Aviva was responsible for repairing the water damage, she did think that Aviva acted unfairly by saying Mr M acted fraudulently, and by cancelling his insurance policy. She asked Aviva to remove the cancellation from Mr M's records and pay him £300 compensation for the distress and inconvenience caused.

Mr M agreed with the investigator's suggestion. Aviva didn't respond to say if it agreed or not, despite several chasers, so the complaint has been passed to me.

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.

I uphold Mr M's complaint. I'll explain why.

After Mr M had complained to this service. Aviva wrote to him about the cancellation of his policy. Aviva said:

"We write in respect of your above claim where you have advised us that your vehicle is suffering an incident related water leak from your air vents following the collision.

As part of our validation checks into your claim, a motor engineer [from the approved repairer] was instructed to inspect your vehicle and assess the damage sustained to it in relation to the circumstances you reported.

On inspection, our appointed engineer confirmed that the water ingress to your vehicle was not consistent with the claim circumstances. Specifically, the repairer advised that when stripping your vehicle, the rear boot area had water ingress already and was mouldy, which would suggest the issue was historic.

In order for us to consider this element we asked you to provide a detailed report stating the cause of the water leak. On the 17th of January 2023, you sent us a copy of your vehicle's health check, unfortunately, this report did not state the cause of the leak, but we referred this to our engineer to review, given that you were insisting the non-approved repairer suspects this is accident related.

Our engineer, after some investigations, asked us to speak with [the main dealership] to understand if they deem this as accident related.

On 10th February 2023, we spoke with [the main dealership], who have advised us that they do not deem the leak to be accident related and they could see no damage to the seal/air vent. They have suggested that due to the age of the vehicle, over time, the seal/air vent degrades.

Concerningly, [the main dealership] have advised that they feel you were attempting to 'railroad' them into confirming this was accident related when it was clear that the damage was not accident related.

[The main dealership] have confirmed that they informed you of their findings, advising that they believe the water damage has been caused through wear and tear. You have then asked [the main dealership] to mislead us by writing an email confirming that the damage was accident related so that you can obtain a financial benefit that you are not entitled to.

For this reason, I draw your attention to page 37 of your policy booklet where it states:

Fraud

If your claim is in any way dishonest or exaggerated we will not pay any benefit under this policy or return any premium to you. We may also take legal action against you to include recovery of any sums paid to you in respect of the fraudulent claim.

If the fraudulent claim is made by the principal policyholder, vehicle policyholder or any named driver, we may cancel the policy immediately, and backdate the cancellation to the date of the fraudulent claim. If the fraudulent claim is made by any vehicle policyholder or named driver we may remove all cover for that person or the entire policy from the date of the fraudulent claim.

On the basis of the above your claim for rectification is repudiated in full on the grounds of exaggerated damage and you will not be able to make a claim for the index damage at any stage.

We appreciate our decision will not be welcome but trust you understand how we have reached it. As we are not proceeding with the claim for the damage to your vehicle, it will be your responsibility arrange your own repairs or for the vehicle to be disposed of, depending on whether it is economical for it to be repaired.

If false or inaccurate information is provided and fraud is identified, AVIVA reserves the right to share your information with fraud prevention agencies and the Insurance Fraud Register to prevent fraud. This may affect your future applications for insurance products.”

It's important to note that my role isn't to decide what caused the water leak in Mr M's car. My role is to decide whether Avia acted fairly and reasonably when dealing with Mr M's claim. It is the case that Mr M very strongly believed that the accident was the cause of the leak, although he hasn't been able to provide any evidence to support this, such as an engineer's report. And I accept that the main dealership said they felt "railroaded" by him into saying that the accident was the cause. However the dealership didn't in fact tell Aviva that the leak was caused by the accident; they said it was likely due to wear and tear.

Aviva said that the dealership told it that they had told Mr M the leak was caused by wear and tear. However the notes for that call just show that the repairer thought that the damage was wear and tear, not that he told Mr M so. And Mr M says he wasn't made aware of it.

I think it was reasonable for Aviva to refuse to pay for the damage caused by the leak. However I don't think it was reasonable for Aviva to say the claim was exaggerated or fraudulent. Mr M may well have been wrong in his strongly held belief that the damage was related to the accident and in wanting the main dealership to say so, but that doesn't mean the claim was exaggerated or fraudulent.

My final decision

For the reasons give above I uphold Mr M's complaint. I require Aviva Insurance Limited to pay Mr M £300 compensation for the distress and inconvenience it has caused him. I also require Aviva Insurance Limited to remove the cancellation from Mr M's records and also remove any reference to a cancelled or fraudulent claim that it may have shared with, or placed on, any insurance or motor industry databases.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 March 2024.

Sarah Baalham
Ombudsman