

The complaint

Mrs D complains Aviva Insurance Limited unfairly declined a claim she made for repairs under her motor insurance policy.

Any reference to Aviva also includes its appointed representatives, unless set out otherwise in the decision.

What happened

Mrs D drove her car through some flood water and said as a result, her power steering stopped working. She made a claim on her Aviva motor insurance policy for the repairs. Aviva assessed the damage but ultimately declined the claim. It said there was no evidence of flood damage to the interior of the car or engine, but her type of car had a known manufacturing issue with power steering. So it said any repairs needed would be excluded by her policy and would need to be resolved by the manufacturer.

Unhappy with Aviva's response, Mrs D complained. Aviva didn't agree to change its position. It said the issue was a mechanical failure, which is excluded under her policy. Mrs D brought her complaint to the Financial Ombudsman Service for an independent review.

Our Investigator wasn't satisfied that Aviva had assessed the claim fairly. He said Mrs D had provided information from the manufacturer which said there was no known fault with the power steering. He was satisfied, based on what he'd seen and Mrs D's video evidence, that flood damage was the most likely cause of the issues Mrs D had faced. To put things right he recommended Aviva reimburse what Mrs D had paid for the repairs to be carried out, plus 8% interest. He also said it should reimburse Mrs D's costs of being added to a relative's car insurance policy. He further said Aviva should pay £450 compensation to reflect the unnecessary distress and inconvenience it had caused her.

Aviva didn't accept that. It said in the UK it was ultimately up to the manufacturer to recall vehicles, and it can choose not to recall them even if there is a known issue. But it didn't think this meant it should cover the damage under Mrs D's insurance policy.

As Aviva didn't agree, the matter has come to me to decide.

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.

As this is an informal service, I'm not going to respond to every point or piece of evidence Mrs D and Aviva have provided. Instead, I've focused on those I consider to be key to determining the complaint. But I would like to assure them I have considered everything provided.

When making a claim under an insurance policy, it is for the policyholder – in this case Mrs D – to demonstrate she's suffered a loss covered by the policy. If she can do so, then Aviva needs to meet the claim unless it can fairly rely on an exclusion to decline it.

Mrs D's policy covers her car in the event of loss or damage. She says her power steering was damaged due to driving through flood water. She's provided videos showing heavy rain

and fairly deep floodwater collected on the roads. She said having driven through some of this, the power steering suddenly stopped working, but she was able to manage the short drive back to her home with the help of a relative to assist with steering. Mrs D then contacted a breakdown recovery service, which confirmed that the power steering had gone, and arranged for the car to be towed to a garage. So on the face of it, Mrs D's car has suffered damage, and so is covered under her policy.

Aviva says the damage is excluded as it is a mechanical breakdown which the policy doesn't cover. It has given a couple of reasons for this; I'll consider these in turn.

Aviva says cars are designed to be driven in wet weather, so it shouldn't affect the power steering. It also said there was no internal signs of water damage to the vehicle suggesting the car had not flooded.

Mrs D says she never reported there being any internal damage, as no water entered the car. She says due to heavy rain, she was forced to drive through several deep bodies of flood water, and it was after doing so that the power steering failed.

Aviva hasn't persuaded me that the only way for the power steering to be affected would be if water had entered the interior of the car. Despite several requests from this Service, it has never provided any report from an engineer, or photographs showing any issues supporting its view of a mechanical breakdown.

The only comments we have from Aviva say "*the water was not of a sufficient level to be drawn into the engine as the vehicle started and ran*", so it says there is no reason for the power steering to have failed. And "*the only reason water can have entered the part in question is the seal failed on it which is mechanical failure and excluded.*" However, it hasn't provided any evidence to this Service that the seal on Mrs D's car had indeed gone. So this seems nothing more than an assumption.

Mrs D's testimony is that the garage where her car was taken, had told her that Aviva's engineer couldn't have confirmed whether water ingress was the cause or not because to do so he'd have had to have the vehicle lifted and the steering rack inspected, which didn't happen. This, coupled with Aviva's own case notes which say the report it first received from its engineer was held "*insufficient detail to support the repudiation*" means I'm not satisfied Aviva has fairly shown it can rely on a mechanical breakdown exclusion to decline the claim. Especially bearing mind it is for Aviva to show it can fairly rely on it.

Aviva's other, related, argument is that it is widely known that Mrs D's type and model of vehicle has a fault with power steering when driving in wet conditions. It has referenced internet forums in support of this, although it hasn't provided copies of any of these to this Service in support of its position. But it says this recall for this issue is happening in other parts of the world. Again, it hasn't provided anything to support this claim.

Mrs D disputes Aviva's position, she's provided information from the manufacturer which states there is no known issue with her car's power steering. It said if there was, it would have done a recall.

In this case, I'm more persuaded by Mrs D's evidence than Aviva's. Mrs D's testimony has been consistent and clear throughout, and the comments from the manufacturer don't support that it is more than likely to be a mechanical failure, in the absence of any proper, detailed inspection report. So I'm not persuaded Aviva has fairly relied on the exclusion, and it can't fairly decline the claim.

Mrs D paid for the power steering to be fixed herself, she's provided an invoice in support of that. So to put things right Aviva needs to reimburse what Mrs D paid, less any excess amount due. It should also add 8% simple interest from the date she paid it until the date of settlement.

Under the policy a hire car will only be provided once a claim is validated. However, I've noted that Aviva did provide Mrs D with a courtesy car as a goodwill gesture, due to delays in assessing the vehicle. It appears to have done this for around a week from what I can tell. And whilst I think there were avoidable delays in it carrying out this assessment, given it did provide a hire car as a solution to this, I think this is fair and reasonable.

However, having returned the hire car, once the claim was declined, Mrs D says she relied on family and friends – and paid to be added to their insurance policies so she would have use of a car until she was able to get hers repaired in February 2024. I'm satisfied this financial loss has been caused by Aviva's unfair decline of the claim, and Mrs D has evidenced the loss. So Aviva needs to reimburse what Mrs D paid, which based on what she has provided, I have worked out to be £140. It will need to add 8% simple interest from the date of payment, until the date of settlement.

It also needs to compensate Mrs D for the unnecessary distress and inconvenience it caused. I've no doubt it was inconvenient to have to rely on the use of her extended family's cars, having been without the use of hers for around three months longer than she should have been, given the timeline of events. For this I think £450 compensation is a fair amount to award.

My final decision

My final decision is that I direct Aviva Insurance Limited to:

- Reimburse what Mrs D paid to repair the vehicle, less any excess payable on the policy. It needs to add 8% simple interest to this amount from the date the payment was made, until the date of settlement.
- Pay Mrs D £140 to cover her costs of being added to alternative insurance policies. It needs to add 8% simple interest to this amount from the date the payment was made, until the date of settlement.
- Pay Mrs D £450 compensation for unnecessary distress and inconvenience caused.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Aviva Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs D how much it's taken off. It should also give Mrs D a tax deduction certificate if she asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 27 June 2024.

Michelle Henderson
Ombudsman