

## **The complaint**

Mr P complains that when he was involved in an accident Aviva Insurance Limited settled liability on a 50/50 basis without telling him beforehand, having previously told him they were treating it as a non-fault claim.

## **What happened**

In January 2023 Mr P was involved in an accident in a car park. He was reversing out of a parking space when another vehicle, travelling in the wrong direction along the aisle, collided with his car. Mr P reported the claim to Aviva and made a claim on his policy.

Mr P was told by Aviva that they were treating the accident as non-fault. In February 2023 Mr P contacted Aviva as the car hire company they'd instructed had told him they couldn't provide him with non-fault hire, as they were concerned he might be held responsible for the accident. Aviva didn't change their stance about liability and later instructed solicitors, who contacted Mr P in relation to the recovery of Aviva's outlay.

Then in January 2024 Mr P was advised by Aviva that they'd reached an agreement with the other driver's insurers, to settle the claim on a 50/50 basis. Mr P contacted Aviva and raised a complaint about this.

Aviva responded to Mr P's complaint on 17 February 2024. They apologised that he hadn't been notified before they agreed to settle the claim on a 50/50 basis, but said they were satisfied the correct decision had been reached on liability.

They referred him to Highway Code Rule 202 which sets out the steps a driver should take before starting to reverse. They also said it was clear from the account he'd provided that he hadn't looked in both directions when reversing, and had he done so the accident might have been avoided. And they said the other insurers had accepted that their driver was partially responsible for the accident, as he was driving the wrong way in a one-way section of the car park, which is why they'd agreed a 50/50 settlement.

Aviva then referred Mr P to the terms and conditions of his policy which allow them to take over the defence or settlement of any claim and allow them to settle it as they see fit. They offered Mr P £150 compensation for not advising him of the liability agreement reached until the case was closed.

Mr P wasn't happy with Aviva's response to his complaint, or their offer of compensation, so he complained to our service. He told us that he'd never said he hadn't looked in both directions as he reversed, he had, but when the impact occurred he was looking in the direction he expected any vehicle to be approaching from, and towards a pedestrian crossing near to his parking space. And he was hit by a car travelling at speed in the wrong direction.

As a result of the accident Mr P has lost three years of his no claims discount (NCD) which he wants restored. He didn't accept Aviva's offer of £150 compensation as he says he regarded this as a bribe to accept closure of his case and to not refer it to our service.

Our investigator considered the case but didn't uphold Mr P's complaint. He said he empathised with Mr P and his position, but he was satisfied Aviva carried out a reasonable investigation before reaching a decision on liability.

He said that it's not our role to reach a decision on liability. We can only consider whether liability has been decided fairly and reasonably. He also said that the terms of Mr P's policy allow Aviva to settle any claim as they see fit. And while he agreed that they'd communicated their decision poorly, he felt a 50/50 settlement was a fair and reasonable outcome. And he thought Aviva's offer of £150 in relation to delays and poor communication was fair, and in line with our guidelines for distress and inconvenience payments, so he didn't ask Aviva to do any more.

Mr P didn't accept our investigator's opinion. He said he was told for a year that his claim would be dealt with on a no-fault basis and his NCD wouldn't be affected. So he didn't accept that Aviva's sudden change of mind and acceptance of a 50/50 settlement could be regarded as poor communication, as he felt he'd been misled by them.

Mr P also said that if his policy terms and conditions allowed Aviva to change their mind about liability, this is something that should have been pointed out to him. And he felt our investigator had failed to acknowledge what he'd told us about the accident circumstances.

Our investigator responded to Mr P saying that the right of an insurer to settle a claim is a very common clause in motor insurance policies, and not something unusual that we feel needs to be highlighted.

He said his opinion was intended to set out a brief summary of the complaint, but he'd considered all the information provided by both Mr P and Aviva and taken this into account. And he said that he considered failing to update Mr P adequately about the status of his complaint, having initially advised him it would be treated as non-fault, and failing to advise him of their liability decision, could fairly be summarised as poor communication.

Mr P remains unhappy with our investigator's opinion, so the case has 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.

It's not our role to decide who is responsible for an accident. Our role is to consider whether Aviva have carried out a fair and reasonable investigation of the accident circumstances before reaching a decision on liability.

The terms and conditions of Mr P's policy, under General Conditions – 6. Claims states *"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 or proceedings for our own benefit to recover any payment we have made under this policy. We shall have full discretion in the conduct of any proceedings or the settlement of any claim."*

Mr P agreed to this as part of the terms and conditions when he took out his policy. And as our investigator said this is a fairly standard term in motor insurance policies. So it's not something we'd expect insurers to highlight to policyholders.

Mr P was initially told that the accident would be treated as non-fault. And Aviva did nothing to notify him that their view on liability had changed until after they'd agreed a 50/50

settlement with the other driver's insurers, a year after the accident.

Mr P contacted Aviva in February 2023 as he was concerned that the hire company they'd instructed weren't prepared to provide him with non-fault vehicle hire, as they thought he might be found responsible for the accident. I think Aviva should have reviewed liability at this stage, and if they'd changed their opinion have updated Mr P, but this didn't happen. The claim continued with solicitors being instructed to recover Aviva's outlay, the amount Aviva had paid to repair Mr P's car.

The solicitors first contacted the other driver's insurers in July 2023 seeking recovery of Aviva's outlay. They wrote to Mr P on 3 January 2024 saying they'd been instructed by Aviva to issue proceedings against the other driver if his insurers didn't settle the claim within 14 days. So I can understand why Mr P was very surprised on 17 January 2024 to be notified by Aviva that they'd settled the claim on a 50/50 basis.

Aviva have told us that their solicitors weren't involved in the decision to settle the case on a 50/50 basis. I've considered what Aviva have said about liability for the accident in their final response letter. As I've said it's not my role to decide who was responsible for an accident. But based on the available information about the accident circumstances, that Mr P was reversing and the other driver travelling in the wrong direction in a car park, I don't think it was unreasonable for Aviva to reach the decision that liability might be shared between the parties and that a 50/50 settlement should be accepted.

However there was a long delay before Aviva considered the issue of liability, and for a year Mr P believed that the claim would be treated as non-fault. And even though Mr P's policy gives Aviva authority to reach a settlement of his claim, I think this delay was unacceptable and Mr P should be compensated for the impact this has had on him.

Mr P has told us he'd like Aviva to restore his NCD. In the event of a fault claim Mr P's policy sets out the reduction to his NCD that would be applied, as his NCD wasn't protected. I'm satisfied that Aviva reduced his NCD by three years in line with the terms and conditions of his policy, and I'm not going to ask them to change that.

But I do think he should be compensated for the delay and lack of communication from Aviva. They've offered him £150. Taking everything into account I don't think this is enough and the appropriate level of compensation for their poor handling of his claim should be £250.

We let both parties know that I intended to increase the amount of compensation Aviva should pay Mr P. Aviva haven't commented on this. Mr P has responded saying he welcomes the slight increase in compensation, but it doesn't return him to the position he was in before the accident.

I've considered what he's said, but as I think Aviva's decision on liability was reasonable I don't think it would be fair to ask them to restore his NCD.

### **My final decision**

For the reasons set out above my final decision is that I uphold Mr P's complaint about Aviva Insurance Limited.

And to put things right I require them to pay him £250 compensation for the distress and inconvenience their poor handling of his claim has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 22 August 2024.

Patricia O'Leary  
**Ombudsman**