

## **The complaint**

Mr M has complained about Aviva Insurance Limited. He isn't happy about the way it settled a claim, on a split liability basis, under his motor insurance policy.

## **What happened**

Mr M made a claim on his motor insurance policy after a collision with a third party in a car park. Mr M said that the other driver had reversed into his car while he was stationary, at the front of a line of vehicles. He provided contact details to Aviva for a witness who he said could support his version of events.

When Aviva came to settle the claim it agreed with the third-party's insurer to do so on a joint liability basis. This was because the third-party had a differing version of how the accident had occurred and Aviva had been unable to obtain any response from the witness, whose details Mr M had provided.

Mr M was unhappy with this outcome as he felt that he was totally blameless for the accident and that the witness could confirm this. He felt that Aviva's delay in contacting the witness and failure to consult with him properly, led to it making a wrong decision about who had caused the accident. Mr M said it was unfair for a fault claim to be recorded against him.

Aviva explained that as both sides disagreed on how the accident was caused, and in the absence of any other evidence, it was right to settle the claim on the basis of joint liability. As a good-will gesture it offered to pay Mr M £250, which is half of the excess he has had to pay on his claim, and to assist him with recovering the other half from the third party. It has also agreed to allow its in-house no-claims record for Mr M to remain unaffected. But it has explained that it's not right to change the industry shared records of the fault claim on the Claims and Underwriting Exchange (CUE).

Our investigator considered the complaint and decided that while Aviva hadn't dealt with the claim as quickly as it should, the way it had concluded the claim and Mr M's complaint was fair, due to the lack of independent evidence and Aviva's right to act as it had. Mr M remains unhappy, and as a result the matter has been passed to me to review.

## **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.

My decision is that I do not uphold Mr M's complaint. I understand Mr M's frustration with how the claim was considered. He is clear that he wasn't at fault for the accident and that there was enough evidence to support his position. But having considered all of the details here I believe that Aviva hasn't treated Mr M unfairly.

Aviva have dealt with the customer service aspects of their delays under a different complaint which has now been concluded. This complaint, and my decision, deals

specifically with Aviva's decision on liability. But I will consider here whether the delays made an impact on Aviva's decision.

Mr M is aware that under the policy terms, Aviva has the right to take over the settlement of the claim. This gives it the right to decide whether to take a third party to court or settle a claim. Legal proceedings are time-consuming, expensive and the outcome can be uncertain. As such, it will not always be commercially sensible to take legal action against a third party. This Service's general approach is that insurers should act fairly and reasonably in deciding whether to settle or pursue a third party. We expect insurers to make a reasonable assessment, based on a clear understanding of the evidence and the circumstances of the accident.

Aviva has shown evidence that it attempted to contact the witness, using the details provided by Mr M, on a number of occasions and that it received no reply. I'm satisfied that, in this respect, Aviva's actions were appropriate and sufficient and haven't seen any evidence to suggest that the outcome would have been different if contact had been made earlier. Mr M has mentioned that if he had known about the problems then he could have contacted the witness himself. For clarity, I would not expect Aviva to keep Mr M informed of the progress of its attempts to contact the witness. And although Mr M said that he could have directly contacted the witness I haven't seen anything to suggest that he's done so since Aviva's decision, or why any delay by Aviva would have made a difference to him doing so.

Aviva was left with two different versions of the incident and no independent evidence to support either. As a result, its decision to accept a 50/50 liability outcome seems fair and reasonable. This doesn't mean that Aviva didn't believe Mr M's evidence. Rather that Aviva had little to rely on if it wanted to dispute liability in the courts.

The good-will offer made by Aviva means the final effect on Mr M would be limited to the impact of the records shared on CUE. That may have some potential disadvantage to Mr M in future insurance applications but that's difficult to assess and, as I have explained, is a natural outcome of a claim like this.

In conclusion I believe Aviva has acted fairly and I do not require it to take any further action.

### **My final decision**

For the reasons given above I do not uphold Mr M's complaint against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 September 2024.

John Withington  
**Ombudsman**