

The complaint

Ms H complains about the handling of her motor insurance claim by Aviva Insurance Limited (Aviva).

What happened

Ms H's car was damaged by a pothole in June 2023, so she contacted Aviva to make a claim under her policy. Aviva accepted the claim and said they would try to make a recovery of the cost of the repairs from the local Council.

Aviva requested legal advice on whether they could make a recovery from the Council – but the legal advice said there were no real prospects of success. So, Aviva recorded the claim as 'fault' under Ms H's policy.

Ms H thought this was unfair – she complained to Aviva and said the damage wasn't her fault. And she also said she'd reported the pothole to the Council who had acknowledged it and repaired it. She said Aviva and their legal team didn't request additional evidence from her as they said they would – and she doesn't think they should refuse to try to make a recovery from the Council for the damage. Aviva didn't uphold her complaint and said they had applied the policy's terms fairly.

Unhappy with Aviva's response, she brought the complaint to this Service. Our Investigator looked at what had happened but didn't recommend the complaint be upheld. He thought Aviva had exercised their rights under the policy reasonably. Ms H disagreed and so the complaint has been passed 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.

Under Ms H's policy, Aviva have the right to take over and settle a claim on her behalf. I can see this in Ms H's policy wording under "General Conditions" - it says:

"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 take 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."

This is a common term in most insurance policies which allows insurers to make a commercial decision about whether it's reasonable for them to pursue a claim or not. So, I don't find this to be unreasonable – provided Aviva have applied this term fairly.

It's not in dispute Ms H's car was damaged by a pothole. I can see from Aviva's file they acknowledged this and requested legal advice on whether they could make a claim against the Council. But the legal advice said there were no reasonable prospects of success in making a claim against the Council. Aviva then wrote to Ms H and explained they would be

treating the claim as 'fault' under her policy. They said this was because they didn't have anyone to make a claim against.

Ms H was unhappy with Aviva's reply – she said they'd been misleading when they said they would request information from her, but neither Aviva nor their legal team had reached out to her to request the evidence she had which she said showed the Council was responsible for the damage. She said a fault claim being recorded against her would have a negative financial impact on her.

While I appreciate Ms H may disagree with Aviva choosing not to pursue the Council, because Aviva's legal advice said there was no reasonable prospect of successfully claiming from the Council, I think Aviva have acted fairly in relying on the policy's general condition when deciding whether or not to proceed with a claim.

Court proceedings can be long and costly, and there's no guarantee of success. I'm satisfied the policy's terms allow Aviva to make a commercial decision, and I'm not persuaded this was unfair, particularly as Aviva sought legal advice first. They're not required to go to court at any cost and in every circumstance.

Ms H says evidence wasn't requested from her. While I can appreciate this would have been frustrating, I can see Aviva did review it and ultimately concluded the evidence wouldn't have made any difference to the decision not to pursue the Council. So, while I think Aviva may have been able to request this information earlier, I'm satisfied it didn't alter the outcome.

Ms H feels upset about having a fault claim recorded against her insurance record, even though this incident wasn't her fault. I do appreciate this would be frustrating. But it's normal insurance practice for a claim to be recorded as fault on insurance databases where an insurer cannot recover their claim costs from anyone.

Overall, I'm satisfied Aviva acted reasonably and in line with the policy terms, so it follows I don't require them to do anything more than they have already.

My final decision

For the reasons I've given above it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 6 November 2024.

Stephen Howard

Ombudsman