

## **The complaint**

Mr S complains that Aviva Insurance Limited recorded a claim on his motor insurance policy as a “fault”. He wants it to change this to “non-fault”.

## **What happened**

Mr S made a claim on his policy when his car collided with a defective door on a train. Aviva accepted the claim and paid for the repairs. But it said it wasn’t able to recover its outlay from the train company, so it recorded the claim as a fault on Mr S’s record. Mr S was unhappy as this affected his No Claims Discount (NCD) and his premiums.

Our Investigator didn’t recommend that the complaint should be upheld. He thought Aviva had tried to hold the train company liable. But it rejected this as it said Mr S hadn’t waited for the crew to fix the defective door. He thought Mr S was aware that the door was defective, and he was aware of the risk of damaging his car. And so he thought Mr S hadn’t complied with the policy’s requirement to take reasonable care of his car. Aviva hadn’t been able to recover its outlay for the repairs, and so he thought it had reasonably recorded the claim as a fault.

Mr S replied that he couldn’t alert the train crew without leaving the train. He said Aviva had accepted the train company’s denial of liability without establishing the facts. He said the gap he could drive through was sufficient at the time, but the door hit his car. He thought the train crew may have reset the door mechanism and this had then scraped his car. And so he thought the train company had been negligent and Aviva should have pursued it for liability. Mr S asked for an Ombudsman’s review, so his complaint has come to me for a final 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.

I can understand that Mr S feels frustrated by Aviva’s decision not to pursue the train company further for an admission of liability. He’s explained the significant financial effect this will have on his future premiums. And I was sorry to hear this.

The Investigator has already explained that it isn’t our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr S the same as someone else in his position.

Aviva is entitled under the terms and conditions of its policy with Mr S to take over, defend, or settle a claim as it sees fit. Mr S has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I do not find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

That said, we expect an insurer to reasonably investigate a claim before making its decision on liability.

The evidence that Aviva relied upon was a report from the train company and Mr S's testimony. The train company agreed that the train door was insufficiently open but that instead of waiting for the crew to arrive, Mr S decided to drive through and so damaged his car.

Mr S told Aviva that the doors hadn't fully opened, confirming what the train company had said. Mr S said other drivers behind him couldn't see the problem and were becoming frustrated. Mr S said there was sufficient room for him to proceed, but a door must have moved whilst he was passing through and scraped his car. Mr S said he didn't see this but presumed that it had occurred due to a noise he heard. Unfortunately, there were no witnesses to confirm that the door moved. And the train company didn't confirm that the door had been reset.

Aviva considered Mr S's statement and the report from the train company. It wasn't in dispute that one of the doors was only partially open. Mr S said there was still sufficient room for him to proceed, but there is no independent evidence to confirm this. So Aviva concluded that Mr S drove off the train and scraped his car rather than wait for the crew to attend and fix the door. And it thought Mr S hadn't taken sufficient care of his car, as he's required to do by the policy's terms and conditions.

Mr S thought Aviva should have challenged the train company's rejection of liability. But it could only do this with evidence and unfortunately Mr S's statement wasn't sufficient as it wasn't confirmed by other evidence. So I think Aviva reasonably decided to accept liability as it was entitled to do by the policy's terms and conditions.

And, as Aviva hadn't recovered its costs for the repairs, and Mr S's NCD wasn't protected, it recorded a fault against him. I think this is standard industry practice and I can't say this was unfair or unreasonable.

### **My final decision**

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 December 2024.

Phillip Berechree  
**Ombudsman**