

The complaint

Mr M complains about Aviva Insurance Limited's handling of a claim he made under his motor insurance policy.

What happened

Mr M was involved in a road traffic accident in August 2023, so he reported the claim to Aviva. They accepted the claim but after considering the accident circumstances, they thought Mr M would be found at fault for the accident as he had collided with the rear of the third-party's car.

Mr M was also unhappy with how Aviva had handled the claim; he said the third-party drove dangerously and caused the accident. And he also complained that Aviva had valued his car for less than it was worth, as well as delays in being given a courtesy car, and he said Aviva's recovery agents damaged his car.

Mr M raised a complaint to Aviva who said while they were satisfied Mr M would be liable for the accident, they agreed there had been areas where they'd failed and caused avoidable delays – so, they offered £400 compensation. Unhappy with Aviva's response, Mr M brought the complaint to this Service and said he didn't think he was responsible for the accident, and he wasn't happy with the value Aviva placed on his car, or with their offer of compensation.

An Investigator looked at what happened and recommended the complaint be upheld in relation to the value of Mr M's car, the delays in arranging a courtesy car, and general claim's handling. He recommended Aviva pay an additional £1,120 plus 8% interest for the value of Mr M's car, as well as a further £100 compensation. But he thought Aviva had fairly considered liability for the claim, so he didn't think they needed to do anything more.

Aviva agreed with the Investigator's view and raised a further payment in line with his recommendations. Mr M agreed with the Investigator's points, except for the liability decision. He asked for an Ombudsman to consider that complaint point and decide whether Aviva had acted fairly in holding him responsible for the accident.

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.

Mr M has agreed with the Investigator's findings in relation to his concerns over the car's valuation, claims handling, and the provision of a courtesy car. And Aviva have raised additional payments in line with the Investigator's recommendations for the value of Mr M's car and an additional £100 compensation. I find these sums to be fair and reasonable, so I won't be asking Aviva to increase them. This means I will focus on the liability decision Aviva made.

It's not this Service's role to determine who is liable for a collision. That's a matter for a court to decide. But what I can do is decide whether I think Aviva investigated Mr M's claim fairly and reached a reasonable outcome based on the available evidence. Having looked at how Aviva considered liability for the claim, I think they've acted fairly – I'll explain why.

The terms and conditions of Mr M's policy, like most car insurance policies, give Aviva the right to take over the defence or settlement of any claim, as they see fit. That means Aviva might make a decision Mr M disagrees with and settle a claim from the third party or their insurer. This is common 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 it fairly.

Mr M has provided dash cam footage of the incident. I can see Aviva reviewed this - and while they initially said there was blame to both drivers - they concluded this wasn't a claim they could defend. Aviva said this was because Mr M had collided with the rear of the third-party's car.

I appreciate Mr M's comments over what he says is a flaw in the UK road traffic law that holds a driver responsible for colliding with the rear of another driver's car. Mr M says this is unfair as he feels the other driver carried out a dangerous manoeuvre. But my role is to reach a decision on the specific complaint at hand which I consider to be fair and reasonable in all the circumstances, with minimal formality.

I've reviewed the footage and I can understand Mr M's frustration at the situation, particularly taking into account his comments about how the third-party was driving. I appreciate Mr M has asked for an Ombudsman to consider whether he was "brake checking" the third-party vehicle. But this isn't something I'm going to make a finding on, as I consider the relevant issue to be around the collision itself and not the lead up to it.

At the point just before the crash, Mr M slows down and the third-party overtakes him on the other side of the road – and repeatedly presses their brakes and stops. Mr M then goes to overtake the third-party on the other side of the road but collides with the drivers-side rear of the car. Aviva said that as Mr M was overtaking at that point and didn't have room to make it around, he would be considered at fault.

Having considered the dash cam carefully, I'm satisfied Aviva have considered the available evidence and made a fair and reasonable conclusion in accepting liability for the claim. And I think Aviva acted in the same way any insurer in the industry is likely to have acted in these circumstances.

I'm therefore satisfied Aviva acted reasonably and in line with the policy terms when saying this wasn't a claim they could defend. So, I'm not going to tell Aviva to do anything else.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint in part, in respect of Aviva's incorrect valuation of Mr M's car, as well as their service failings. But as Aviva have now made payment for this as well as additional compensation, I don't require Aviva Insurance Limited to make any further payments.

In relation to liability for Mr M's accident, I don't require Aviva Insurance Limited to do anything more than they have already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 January 2025.

Stephen Howard
Ombudsman