

## **The complaint**

Mrs and Mr W complain about Aviva Insurance Limited's handling of a claim under their car insurance policy.

Aviva has been represented by its agents during the claim. All references to Aviva include its agents.

## **What happened**

Mrs and Mr W took out a car insurance policy with Aviva in December 2022. In July 2023 their car collided with a deer (the incident) and they made a claim. Aviva's authorised repairer (AR) completed repairs in October 2023 (the repairs). In November 2023, Mrs and Mr W notified Aviva of issues with the steering and a knocking sound when turning.

In January 2024, the AR said it was unable to locate the issue causing the noise and the issue with the steering was likely caused by the car's lane assist system. The AR passed the car to a manufacturer dealership (K) to look into the issues. Mrs and Mr W complained to Aviva. They were unhappy with the repairs and the AR's actions.

Aviva responded in April 2024. It apologised for the service from its AR. But it felt the reported faults were down to wear and tear. This was based on the conclusions of its AR, K and a further engineer. Aviva asked Mrs and Mr W to collect their car. It offered them £300 compensation for the poor service.

Mrs and Mr W referred their complaint to the Financial Ombudsman Service. They felt the reports Aviva relied on were flawed and their car was not safe to drive. They were unhappy with Aviva's use of the AR and didn't feel safe going to the AR to collect their car.

Aviva responded again in May 2024. It accepted K was not aware of the history (the incident and repairs) but this didn't change the information K provided. Aviva felt the issues related to wear and tear and this was confirmed by the independent assessment it arranged following K's report. Aviva asked Mrs and Mr W to collect their car from the AR.

Mrs and Mr W asked Aviva to hold on requiring them to collect their car until the Financial Ombudsman Service had reviewed the complaint. They felt disadvantaged after Aviva had ended their courtesy car and this was impacted by the health of their children. Mrs and Mr W said they were unwilling to attend at the AR premises or to communicate with the AR. They were concerned about the AR threatening storage charges when they had evidence to show their car was parked on a public roadway. They were willing to have their car delivered to their home address, but they wouldn't drive it until works were done to the required standard. They still felt their car was not roadworthy and requested a courtesy car.

Aviva didn't agree to provide a further courtesy car, but it did as a gesture of goodwill, arrange for the car to be recovered to Mrs and Mr W's home address.

Our Investigator initially didn't uphold the complaint. In June 2024, she said Aviva had acted fairly in arranging an independent assessment. She felt the repairs had been completed to

the appropriate standard and the issues related to wear and tear, which is not covered under the policy. She felt the £300 Aviva had offered was fair compensation.

Mrs and Mr W didn't agree. They said Aviva's engineer was not independent. They said their own assessor (O) said the repairs were incomplete and there were still significant issues affecting the car, including loose parts and damage to the rear offside tyre. They also said:

- Aviva and its agents had breached the Consumer Rights Act 2015, the Road Traffic Act 1988, the Road Vehicles (Construction and Use) Regulations 1986, Consumer Protection from Unfair Trading Regulations 2008, the Protection from Harassment Act 1997 and the Equality Act 2010.
- Aviva's actions had impacted on their personal plans and affected other members of their family. They were seeking psychological support as a result of this impact.
- They informed Aviva of their children with additional support needs and their own disabilities, but Aviva ended the courtesy car and failed to communicate with them.
- Being without their car impacted on their ability to purchase or move stock to retail premises for their business. They suffered a loss of income as a result.
- They wanted Aviva to reimburse the cost of their independent assessment.
- They felt the repairs were not completed to a satisfactory or roadworthy standard and involved non-approved parts.

After our Investigator shared O's comments with Aviva, it agreed to arrange a further inspection to review Mrs and Mr Ws' areas of concern. Aviva agreed to do this at a manufacturer approved site chosen by Mrs and Mr W, with its own engineer present. Aviva also said it had not been made aware of their vulnerabilities during the claim.

Our Investigator issued a further view in September 2024. Her view was:

- Aviva's agreement to allow further inspection at a manufacturer approved site chosen by Mrs and Mr W, with its own engineer attending, is fair.
- The terms don't require Aviva to use original manufacturer parts.
- Aviva failed in its obligations under the Consumer Duty.
- Aviva's actions meant Mrs and Mr W were without a roadworthy car for an extended period, albeit they could have mitigated the impact of this.
- It is Aviva's commercial decision on the agents it appoints, and this isn't something the Financial Ombudsman Service would influence.
- There was insufficient evidence of Mrs and Mr W's loss of income.
- Aviva should pay a total of £600 compensation to Mrs and Mr W.
- Aviva should reimburse in part the costs Mrs and Mr W paid to O. She felt Aviva should reimburse £557.42 plus VAT, which represented the costs for the inspection, diagnostics, supply and fit of two rear tyres, disposal and two hours labour.

Mrs and Mr W didn't agree. They said they were out of pocket by close to £1,000 plus loss of earnings. They were paying for car insurance despite not using their car for months. They felt the other brake pads and discs needed replacing due to seizing while under Aviva's care.

They were not happy with the compensation the Investigator recommended.

Aviva questioned the basis on which our Investigator had recommended the further £300.

I issued a provisional decision partially upholding the complaint and I said the following:

***“What I’ve provisionally 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 should first set out that the Financial Ombudsman Service is a dispute resolution service, not the regulator of the insurance industry. So it's not our role to fine and punish a business. Our role is to look at whether a business has acted fairly in the circumstances of the complaint and decide what it needs to do where it hasn't.*

*Mrs and Mr W have referenced various legislation. It is important to note that it is not the role of the Financial Ombudsman Service to judge whether a party has breached the requirements of legislation. That's for the courts to assess and I won't be making any findings on whether any law has been breached. My role is to decide what's fair and reasonable in the circumstances of the complaint, taking into account the relevant law.*

*Mrs and Mr W have provided a lot of information in support of their complaint. I assure them that I've taken everything they've provided into account. But in this decision I've focussed on what I think are the key issues in this complaint. No discourtesy is intended by this, but simply reflects the informal nature of the way that this service reviews complaints.*

#### *Initial repair and roadworthiness*

*Mrs and Mr W felt their car was not roadworthy following the initial repair.*

*In November 2023, they told Aviva the steering was sensitive and catches when turning. To find that the initial repair rendered the car unroadworthy, I'd need to be satisfied the steering issues rendered the car unroadworthy and this was caused by the incident or repairs.*

*The AR carried out a wheel alignment check, geometry test and test drive before confirming in January 2024, the steering and suspension was setup within manufacturer guidelines.*

*K (manufacturer dealership) inspected the car in February 2024, and the invoice shows they investigated the clunking noise with a road test. The invoice also shows the advice K provided was that the discs and pads required replacement all round in order to address this issue. I note Mrs and Mr W's concerns that K was not informed of the prior accident and repairs, and I accept that the AR ought to have informed K of this. But I don't think this detracts sufficiently from K's opinion for me to disregard it completely. I'm satisfied K inspected the vehicle with a view to understanding the cause of the issue and I'm satisfied K reached the conclusion the fault likely relates to the discs and pads requiring replacement.*

*Aviva then arranged an inspection by another engineer in April 2024. The engineer reviewed the AR's geometry check and the report from K. Again, I note Mrs and Mr W's concerns about any reliance on K's report, but I'm satisfied the engineer had access to all the relevant information in order to reach their own conclusion. Mrs and Mr W say the engineer was not independent of Aviva, but I'm satisfied they were independent of prior involvement, and I'm satisfied their conclusions are reliable. The engineer said the suspension, brake discs, pads and the underside of the vehicle were heavily corroded and this was a wear and tear issue.*

*None of the inspections and reports concluded the car was unroadworthy or unsafe to drive, or that any issues reported were linked to the incident or repairs. Both K and the*

engineer said the issue was likely due to wear and tear issues with the brake pads and discs. For this reason, I'm not persuaded the issues Mrs and Mr W reported in November 2023 rendered the car unroadworthy, and I'm not persuaded that they related to the incident or repairs. Because the policy terms exclude cover for wear and tear, I don't think Aviva was responsible for the issues identified with the brake discs and pads.

For the reasons outlined above, I don't think Mrs and Mr W's car was unroadworthy following the initial repair.

#### Mrs and Mr W's report

Mrs and Mr W took their car for an independent inspection by O in July 2024. They also provided a copy of O's report following the inspection. They'd not driven their car since Aviva returned it to them in May 2024.

I've commented on what I consider the key issues below.

#### Tyre damage

O reported one of the car's tyres (offside rear) was destroyed on a flat spot, and this is supported by the pictures Mrs and Mr W have provided. O said this was likely caused by the car being dragged by a flat-bed truck incorrectly. On balance, I'm persuaded this was likely the case and that this would have rendered the car unroadworthy.

Mrs and Mr W didn't report any tyre damage until O's inspection in July 2024. Nor was any tyre damage reported in any of the inspections before O's. It wasn't until May 2024 that arrangements were made for recovery of the car to Mrs and Mr W's home address. So on balance, I'm persuaded the damage to the tyre only occurred in May 2024. So, although I do think on balance, Aviva is responsible for the tyre damage, I don't think the car was unroadworthy, prior to May 2024.

I agree with our Investigator that Mrs and Mr W would reasonably be expected to mitigate their losses. O's email to Mrs and Mr W in July 2024 suggests the tyre was replaced at that time, so I'm satisfied Mrs and Mr W were able to replace the tyre shortly after O's inspection. But I accept having to do this would have inconvenienced them and cost them money.

Because I'm satisfied Aviva was responsible for the damaged tyre, I think it should pay Mrs and Mr W the costs associated with the fitting of that tyre. On reviewing O's bill for two tyres, I consider this to include half of the £292.42 tyre supply cost, half of the £40 fitting and the full £5 disposal cost. This comes to a total of £171.21. I won't require Aviva to cover the costs for the other tyre as I'm not satisfied this needed replacing due to damage caused by the incident or by Aviva while the car was under its care.

But given that the report did identify some damage that Aviva is likely responsible for, I think Aviva should also reimburse Mrs and Mr W for the vehicle inspection fee (£60) and the diagnostics (£40) that form part of O's bill. Adding these costs to the £171.21 mentioned above, brings the total to £271.21. This is what I will require Aviva to pay. I also think Aviva should add interest to this amount, as Mrs and Mr W had to pay this amount and were therefore without this money.

#### Brake discs and pads

O's bill in July 2024 included costs (including labour) to supply and fit discs and pads.

*Mrs and Mr W say that other than one set of brake pads and discs, all the others needed replacing due to seizing while under Aviva's care.*

*I'm not persuaded this is the case. None of the reports say damage was caused to brake pads and discs while the car was in Aviva's care. And the recommendation to change the brake pads and discs all round was made by K as early as February 2024. Despite Mrs and Mr W's concerns that K was unaware of the history of the car, I don't think this would have prevented K from being able to review the condition of the brake pads and discs.*

*For the reasons outlined above, and because the policy doesn't cover wear and tear, I won't be directing Aviva to cover these costs.*

#### *Front bumper*

*Mrs and Mr W questioned whether Aviva had used genuine parts for the bumper repairs and pointed out fitment issues with the part Aviva used. I'm satisfied the policy terms allow Aviva to use parts not supplied by the original manufacturer.*

*But, O's report, and the images Mrs and Mr W provided, do support their point about fitment issues. Although this didn't render the car unroadworthy, I'm persuaded further works are likely required to rectify the fitting of the front bumper. Aviva has already agreed to arrange a further inspection, in order to review and inspect the areas of concern. I think this is fair.*

#### *Other points*

*O's report also said the undertray was unsecured due to a loose bolt, and this is supported by the photos and video footage provided.*

*The report and images also show damage to the plastic trim covers for the lane assist radar. The report goes further to say the lane assist feature on the car is not functioning correctly and needs to be calibrated correctly by the manufacturer.*

*I don't consider that any of the above issues rendered the car unroadworthy. But Aviva has already agreed to arrange a further inspection at a location of Mrs and Mr W's choosing, in order to review these concerns, and I think this is fair. As it stands, I'm satisfied that the securing of the undertray was related to the insured repairs, so I'd expect Aviva to review this. As for the other points, I think it's fair for Aviva to review whether they relate to the incident or the repairs. And I think the further inspection at a location of Mrs and Mr W's choosing, with its engineer present, is a fair way of doing this.*

#### *Service from the AR*

*A large part of Mrs and Mr W's complaint concerns the actions of the AR, so I've reviewed this below.*

#### *Collection of AR's courtesy car*

*Prior to the collection, Aviva emailed Mr W to inform him the AR would collect its courtesy car and that Aviva had booked a courtesy car with another supplier. So I think Mrs and Mr W were aware the AR would come to collect its courtesy car.*

*On the day of the collection, Mrs and Mr W say the AR arrived at their address and*

*attempted to drive off with its courtesy car. They've said the AR did this without first knocking on their door, despite them still retaining possession of their key for the car. As a result, Mr W had to rush out of his home to return their key. Aviva doesn't dispute this is what happened, and on balance, I'm persuaded it did. And I think this amounted to poor service by the AR, causing Mrs and Mr W unnecessary distress and inconvenience.*

*Mrs and Mr W say the AR drove dangerously, but I can't see how this would have caused them loss. And as outlined above, it's not my role to decide if a law has been broken.*

#### *The AR's communication*

*Prior to the day of collection, Mrs and Mr W also say the AR called them multiple times without leaving a voicemail. They've also said the AR sent them a threatening email demanding the return of its courtesy car, or it would be reported as stolen. They've said this caused them anxiety and stress and amounted to intimidation, aggression and harassment.*

*Mrs and Mr W have outlined in detail the calls they received, and I'm persuaded on balance they did receive multiple calls from the AR prior to the day of collection. I've also seen evidence of the AR's email. Given that the reports up to that point showed no issue related to the incident or repairs, I don't think the AR was wrong to want its car back, or to contact Mrs and Mr W for this reason. Although I don't agree its actions amounted to harassment, I do think the manner in which the AR approached this, amounted to poor service, and this would have caused Mrs and Mr W distress and inconvenience.*

#### *Aviva's use of the AR*

*Mrs and Mr W say the AR Aviva chose to use in this case was not registered with the retail motor industry. But I'm not aware that Aviva is required to only use such agents. I agree with our Investigator that it is for Aviva to decide what agents it wishes to use when handling a claim, and that this is a commercial decision we wouldn't usually comment on.*

#### *Aviva asking Mrs and Mr W to collect the car from the AR*

*Mrs and Mr W told Aviva they wouldn't be able to collect their car from the AR due to its hostility. I've not seen sufficient evidence to show the AR was hostile, or acted in such a way that it was unfair for Aviva to ask them to collect their car from the AR's site.*

*Mrs and Mr W say Aviva failed to make reasonable adjustments in asking them to go to the AR, including for the engineer's assessment. They've referenced the Equality Act 2010, but it's not for the Financial Ombudsman Service to judge whether Aviva is in breach of this law, as that's for the courts to decide.*

*Under the Act, businesses must take reasonable steps to remove barriers people face as a result of their disability, so that as far as possible, people with disabilities receive the same service as people who don't have a disability and are therefore not placed at a substantial disadvantage. Mrs and Mr W didn't have a disability that prevented them from driving, and they had more than one car. So I can't see Aviva failed to make reasonable adjustments in asking them to collect their car from the AR, or in offering them the chance to attend when the engineer inspected the vehicle.*

### *Storage charges*

*Mrs and Mr W raised concerns about the AR threatening storage charges. I can't see such charges were applied, and it's not for me to make a finding on whether the AR breached the law, so I've not considered this point further.*

### *Consumer duty*

*Because the Investigator said the Consumer Duty was relevant, I've covered this in my decision.*

*This includes the consumer understanding outcome, which requires Aviva to give Mrs and Mr W the information they need to allow them to make informed decisions. In arranging the inspections and communicating the outcomes, I'm satisfied Aviva met this duty.*

*I accept the AR's actions amounted to poor service, causing Mrs and Mr W distress and inconvenience, but I don't think this amounts to failure of this particular duty.*

*The consumer support outcome requires Aviva to deliver support that meets the needs of customers, including those with characteristics of vulnerability.*

*I think Aviva has done this in the support it has offered Mrs and Mr W. I can't see Aviva communicated with them in a way that was not accessible to them. And despite Mrs and Mr W being able to drive, Aviva arranged to have their car recovered to their address.*

*While I accept there was likely damage caused during the recovery, and there are issues with the car that need further investigation, I don't think they amount to a failure of this duty.*

### *Impact on Mrs and Mr W*

*I've outlined above why I think that:*

- *The insured car was not unroadworthy prior to May 2024.*
- *The issues raised in November 2023 were not related to the incident or repairs.*
- *Aviva's AR did provide poor service to Mrs and Mr W.*
- *Aviva is responsible for the damaged tyre following recovery to Mrs and Mr W's address in May 2024. This was replaced shortly after O's inspection in July 2024.*
- *Mrs and Mr W's report does show there are further matters Aviva needs to review, albeit these issues don't make the car unroadworthy.*

*So I do think some of Aviva's actions caused Mrs and Mr W avoidable and unnecessary distress and inconvenience.*

*I've therefore gone on to consider the impact of Aviva's actions on Mrs and Mr W given their specific circumstances, and what they've said about the losses they've incurred.*

*Aviva said the AR provided a courtesy car during the initial repairs and when the car went back to the engineer. Aviva said it provided a courtesy car while its engineer was assessing the car, and I understand this was till 29 April 2024. I've kept this in mind.*

### *Loss of income*

*Mrs and Mr W said being without a second car impacted on their ability to purchase or convey stock to retail premises, where they sell handmade boards.*

*Mrs and Mr W have not provided evidence to substantiate the losses they've claimed, so I'm not persuaded this was a loss they suffered.*

*In any case, I don't think it's fair to hold Aviva responsible for any such losses in the circumstances, for the following reasons:*

- *I'm not satisfied their car was unroadworthy prior to its recovery in May 2024.*
- *Mrs and Mr W took till July 2024 to arrange their own inspection, and the work to make the car roadworthy was carried out shortly after this. Aviva had no control over the time taken to do this and Mrs and Mr W had a duty to mitigate their losses.*
- *Mrs W has said during this time, she was in and out of the hospital, so this too would likely have impacted on their business and earnings.*
- *The policy documents from 2022 and 2023 show Mrs and Mr W were both employed, and the permitted use for their insured car was 'social, domestic and pleasure including commuting'. So I don't think it would have been reasonable for Mrs and Mr W to rely on the car relevant to this complaint, for use in connection with their business.*

*Mrs and Mr W's vulnerabilities*

*Mrs and Mr W say they informed Aviva they had two children with additional support needs and that they themselves had multiple disabilities.*

*Prior to their email to Aviva in May 2024, I've not seen they informed Aviva about the additional support needs for their children, or their own disabilities. So, I don't think it's fair to say Aviva was aware, or that it should have acted on this information, prior to this.*

*Following the email, Aviva did arrange for recovery of the insured car to Mrs and Mr W's address, and I think Aviva acted fairly in doing so. Following O's inspection, Aviva agreed to arrange a further inspection, I think this too is fair.*

*For all the reasons outlined above, I think Aviva did get some things wrong, that would have caused Mrs and Mr W distress and inconvenience, requiring a reasonable amount of effort to sort out. But I think the £300 compensation Aviva originally offered is fair and reasonable in the circumstances. So I won't direct Aviva to pay more compensation than this."*

Aviva said it had no further information to provide. Mrs and Mr W didn't agree with my provisional decision for the following reasons:

- There were a number of questions they wanted answered, including about the cost of the inspection, the cost of the repairs, rectification of existing damage and inspection of other parts.
- They said I'd assumed they drove the vehicle after it was returned, but they didn't.
- They said the other discs and brakes on the car deteriorated because the car was sat for months, exposed to the elements.
- They said they had been impacted financially and emotionally.



## **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.

Aviva has agreed to arrange the further inspection and it said it made contact with Mrs and Mr W to arrange this. So I'd expect Aviva to cover the cost of this inspection.

On the matter of repairs, I'd explained in my provisional decision that I think it's fair for Aviva to review Mrs and Mr W's concerns, and whether they relate to the incident or the repairs. So I'd expect Aviva to cover the cost of repairs to any damage that is found to relate to the incident or repairs. I wouldn't expect Aviva to inspect other areas of the car if there is no evidence of damage or potential damage. If there is a dispute over Aviva's conclusions following the inspection, on matters the Financial Ombudsman Service hasn't decided on, Mrs and Mr W can raise a new complaint with Aviva.

Mrs and Mr W said the other discs and brakes were fine prior to the incident. But I'd explained in my provisional decision that none of the reports said damage was caused to any brake pads and discs while the car was in Aviva's care. And because the recommendation to change the brake pads and discs all round was made by K as early as February 2024, I'm not persuaded that Aviva is responsible for the cost of replacing them.

Mrs and Mr W said I'd made the assumption they'd driven their car after it was returned. But this isn't what I said in my provisional decision. I'd explained in my provisional decision why I didn't think Mrs and Mr W's car was unroadworthy following the initial repair. But I did acknowledge they told Aviva they wouldn't drive the car until works were done to the required standard. I also acknowledged they'd not driven their car since Aviva returned it to them in May 2024.

Mrs and Mr W said they'd been impacted financially and emotionally. I'd explained in my provisional decision that Mrs and Mr W hadn't provided evidence to substantiate some of the losses they've claimed. And I've not been provided any further evidence since then. I'd also explained why I don't think it's fair to hold Aviva responsible for loss of business income in the circumstances. I did say I would direct Aviva to refund Mrs and Mr W the cost they paid to repair the damaged tyre, along with the inspection fee and diagnostic costs.

I did accept that some of Aviva's actions caused Mrs and Mr W avoidable and unnecessary distress and inconvenience. But having considered the impact of Aviva's actions on Mrs and Mr W, I said that the £300 compensation Aviva originally offered is fair and reasonable in the circumstances. I've seen no further evidence to persuade me otherwise.

For the reasons outlined above, I've come to the same conclusion as I did in my provisional decision.

## **My final decision**

My final decision is that I partially uphold this complaint and require Aviva Insurance Limited to:

- Arrange the further inspection at any of the three locations Mrs and Mr W provided.
- Pay Mrs and Mr W £271.21. Aviva should add interest on this amount and it should be calculated from the date Mrs and Mr W paid this, to the date of settlement. The rate of interest is 8% simple interest per year.\*
- Pay Mrs and Mr W £300 compensation in total if it hasn't done so already.

\*If Aviva Insurance Limited considers that it is required by HM Revenue & customs to take off income tax from that interest, it should tell Mrs and Mr W how much it has taken off. It should also give Mrs and Mr W a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 30 December 2024.

Monjur Alam  
**Ombudsman**