

The complaint

Mr T is unhappy with the information Aviva Insurance Limited trading as Quotemehappy.com (Aviva) have recorded on the Consumer Underwriting Exchange (CUE) regarding a claim on his motor insurance policy.

References to Aviva include its agents.

What happened

In January 2021 Mr T's wife (a named driver on his motor insurance policy) was involved in a collision with a third-party. The accident was reported to Aviva.

Aviva proposed to Mr T that liability should be split between the two parties on a 50/50 basis. Mr T didn't agree with Aviva's liability assessment. He said he had dashcam footage from his vehicle at the time of the collision which he wished to provide to Aviva. I can see Aviva received the dashcam footage. Aviva on its initial review remained of the opinion liability should be split between the two parties on a 50/50 basis.

Mr T continued to dispute Aviva's liability assessment. Aviva said it would carry out a further review of the dashcam footage and after doing so, the case notes show Aviva says it may be a matter its able to defend.

The third-party insurer however made an offer to settle liability on a 50/50 basis. Around the same time, Aviva asked Mr T if his wife would be willing to attend court if necessary and Mr T said yes, she would.

In March 2022, the case notes show on further review of the dashcam footage by Aviva, it would be settling the matter without prejudice on a 50/50 split liability basis between the two parties. I've seen the reason given by Aviva for its liability decision on the case notes. It says, it was unable to confirm if any of the vehicles had been on the wrong side of the road as there were no markings on the ground.

Again, Mr T disagreed with Aviva's liability assessment and raised a complaint. Following this, I can see Aviva provided the dashcam footage to an independent advisor to assess liability. The case notes say the independent advisor compiled a report advising it should pursue 100% non-fault.

In May 2022 Aviva provided this information to Mr T. It said the independent review of the claim circumstances were such that pursuit of full non-fault was advisable. Aviva's claims team were asked to proceed with this stance with the aim of making a full recovery. Aviva however, said to Mr T there was no guarantee a full recovery was possible.

In March 2023 Mr T complained again to Aviva. Mr T referred to correspondence received from Aviva in which he said it appeared Aviva's email to him suggested fault on Mr T's behalf. Within the case notes, Mr T references a call with Aviva in which he said it advised him it would progress recovery of the claim from the third-party and his no claims discount, would be unaffected. I've not been provided with a copy of that call recording between Mr T

and Aviva. I can't therefore verify Mr T's account of that conversation.

In response to Mr T, I can see from the case notes Aviva advised Mr T by email that settlement had been reached on a 50/50 liability split and at the same time apologised to him.

In December 2023 Mr T said when renewing his insurance, he was advised by his new insurer there was a fault claim registered against him on the CUE database. Mr T was unhappy and asked Aviva to update CUE to show this was a non-fault, otherwise it would affect his insurance costs going forward and he'd need to make a complaint.

Responding to Mr T's complaint in December 2023, Aviva confirmed following the independent assessor's review it was unable to settle on a non-fault basis and the matter was instead settled on a 50/50 without prejudice basis. Aviva also said under Mr T's policy terms it was allowed to take over conduct of the claim and deal with the matter as it saw fit. Aviva acknowledged there had been delays and this could have been communicated better to Mr T. Aviva offered to Mr T £200 for the distress and inconvenience suffered.

Unsatisfied Mr T brought his complaint to this Service.

Following Mr T's complaint being brought to this Service, Aviva have confirmed in May 2024 that Mr T has been offered £200 and it has allowed his no claims discount.

I issued a provisional decision in November 2024 setting out I planned to uphold Mr T's complaint. I said:

"My role isn't to consider who was responsible for the accident. It's to look at whether Aviva has carried out a fair investigation, reviewed all the evidence it has available and reached a reasonable decision.

At page 28 of Mr T's policy terms and conditions booklet, Aviva is allowed, like other motor insurance policies to; -

"If we want to, we can take over and conduct in your name or that 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"

The policy term therefore allows Aviva to settle the claim on the best terms it feels possible and that it has the final say in how to settle a claim. The term doesn't mean that Aviva can do as it pleases when settling a claim. Its decision must be reasonable and based on the facts and evidence.

Fault and Non-Fault

I'd like to clarify the meaning of the terms "fault" and "non-fault" as these terms have been used by the parties in correspondence and this terminology can be misleading.

A "fault" claim is more colloquially used, but the actual terminology is "no claims bonus disallowed". It doesn't mean the policyholder is necessarily to blame for the accident but reflects the fact where a claim has been made and the insurer hasn't recovered its outlay. An insurer will be required to register the claim following the Claims and Underwriting Exchange ("CUE") guidance. When recording the claim, the insurer can select bonus disallowed. This doesn't mean the policyholder was to blame; it simply means the insurer has been unable to

recover all its costs in full from another party.

However, when liaising with customers, rather than use the term bonus disallowed, insurers will often instead say "fault". Use of this terminology can make the policyholder think they were the party to blame for the accident, rather than the insurer having been unable to recover all its costs.

Alternatively, a "non-fault" claim means bonus allowed. This will be where an insurer has been able to recover its costs in full from another party.

When providing my decision below I will use the terms bonus disallowed and bonus allowed.

Decision to settle

Mr T has maintained throughout that his wife wasn't responsible for the incident, providing in support dashcam footage to Aviva from the time of the collision.

As stated above, it's not for me to decide who was responsible for the accident, but whether Aviva has taken Mr T's comments and all other evidence into consideration when deciding whether to concede liability or not.

From Aviva's case notes, whilst there is reference to Aviva reviewing Mr T's dashcam footage and saying at one point it may be able to fully defend the case, at the time of making its liability decision Aviva had reviewed the dashcam footage further. The dashcam footage was the only piece of independent contemporaneous evidence to show the collision with the third-party vehicle. Aviva's case notes say following this further review it based its liability decision on it being unable to confirm if any of the vehicles had been on the wrong side of the road as there were no markings on the ground. Aviva had not sought at this point any input from any independent assessor with regards to liability.

Aviva in reaching its liability decision utilised the terms it was afforded under page 28 of the policy terms and conditions booklet (referenced above), as it was entitled to.

I'm satisfied Aviva considered the available evidence when reaching its liability decision and that it followed a fair and reasonable process in assessing whether to deal with the third-party claim.

However, as I will reference below, despite Aviva's assessment of liability, it has said it will allow Mr T's no claims discount.

CUE Database and Aviva's Offer

CUE is a database most insurers use to update any claims or incidents a customer reports. Insurers that use CUE have a duty to make accurate records, which includes the amount it has paid out on a claim.

As Aviva settled the third-party's claim on a 50/50 split liability without prejudice basis, Mr T's claim has been recorded on CUE as bonus disallowed. As explained above, this will be where an insurer has been unable to recover its claim costs in full from another party, not necessarily that Mr T was responsible for the collision. I hope this distinction is clear.

Following Mr T bringing his complaint to this Service, Aviva have said they will allow Mr T's no claims discount. Although our Investigator has said no further action is required by Aviva, I don't agree.

If Aviva are allowing Mr T's no claims discount, this effectively means it's treating the claim as bonus allowed. Because of Aviva's decision to treat this matter as bonus allowed, Aviva

should be amending the record held on the CUE database to reflect this, so Mr T's claims history can be updated.

By making the amendment to the CUE database, Mr T may be able to ask any new insurer he has obtained motor insurance with to recalculate the insurance premium as if the claim had been recorded as bonus allowed from inception of the policy and, to refund any difference in premium to him."

My provisional decision therefore said that Aviva Insurance Limited trading as Quotemehappy.com had already made an offer to pay £200 to settle Mr T's complaint and I thought the offer was fair in all the circumstances. I said, if the compensation had not already been paid to Mr T, Aviva Insurance Limited trading as Quotemehappy.com should do so. I also said Aviva Insurance Limited trading as Quotemehappy.com should also record Mr T's claim on CUE as no claims discount allowed.

Mr T said he accepted my provisional decision. Aviva sought further clarification as to what I planned to tell it to do.

The complaint has therefore been passed back 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.

Having considered the response to my provisional decision from both parties I see no reason to reach a different conclusion to the one reached in my provisional decision.

Aviva has pointed to part of my provisional decision where it thinks I said the case wasn't sent to an independent assessor when it was. I would refer Aviva to the sentence in the extract of my provisional decision above beginning "*Aviva had not sought at this point...*" and ending "*...independent assessor with regards to liability.*"

I think there may have been a misunderstanding. It wasn't that Aviva hadn't sent the case to an independent assessor. But at the time Aviva's liability assessment had been made, which Mr T disagreed with, the independent assessor had not been instructed. The independent assessor was only instructed after this.

Aviva in allowing Mr T's no claims discount should ensure that the CUE database is updated to reflect this, so Mr T's claims history can be updated. Additionally, Aviva paying the £200 it offered in compensation to Mr T, if it has not already done so.

So, I uphold the complaint for the reasons I set out in the provisional decision.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Aviva Insurance Limited trading as Quotemehappy.com to do the following to put things right, if it hasn't already:

1. Pay £200 to Mr T, if the compensation has not already been paid.
2. Record Mr T's claim on CUE as no claims discount allowed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 January 2025.

Lorna Ball
Ombudsman