

The complaint

Mr D complains that Aviva Insurance Limited held him at fault following a claim made on his motor insurance policy. He wants his policy excess refunded and the claim changed to non-fault.

What happened

Mr D was involved in a collision with a lorry when he changed lanes. Aviva initially held Mr D not at fault. But the other driver disputed liability. So Aviva considered the evidence available and accepted liability on Mr D's behalf. Mr D thought this was unfair as Aviva hadn't asked for his further testimony. He said he'd been stationary at the time. And he said the other driver had dashcam footage that Aviva hadn't obtained.

Mr D was also concerned about errors in the claim handling. He said he hadn't been told the other driver denied liability, that the case was going to arbitration and the outcome of this. Aviva agreed that its communication with Mr D had been poor at times and it offered him £100 compensation for this. But Mr D refused this.

Our Investigator didn't recommend that the complaint should be upheld. She thought Aviva had reasonably considered the evidence available and the prospects if the matter went to court before admitting liability. She thought it already had Mr D's version of events. Mr D hadn't told it about the dashcam footage until nine months after the accident. And there was no telling what this would have showed if provided. She thought the policy excess was always payable. And she thought Aviva's payment of compensation was fair and reasonable.

Mr D replied asking for an Ombudsman's review, so his complaint has come to me for a final decision. He said Aviva's legal partner didn't respond to his calls or emails and so he couldn't tell it about the dashcam. He said the lorry driver was at fault. He said the legal partner also confused this accident with a previous one.

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 D said he'd changed lanes in front of the lorry which was then stationary and some distance away in order to avoid a broken down van. He said he had then been stationary when the lorry driver rolled into his car. And in a later statement he said he hadn't been able to complete his manoeuvre due to other traffic. The lorry driver said Mr D had changed lanes when it wasn't safe to do so.

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 D the same as someone else in his position.

Aviva is entitled under the terms and conditions of its policy with Mr D to take over, defend, or settle a claim as it sees fit. Mr D 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 and consider the evidence available before making its decision on liability.

I can see that the evidence Aviva had to consider was Mr D's initial statement of what happened, allegations from the other driver's insurer, and the damage caused to the rear driver's side of Mr D's car. It thought that this showed that Mr D had changed lanes when he should have been aware of the lorry, and this led to the collision. Mr D later provided his version of events. Aviva considered this, but it didn't change its decision.

There were no witness statements for Aviva to consider. And there was no CCTV footage available. Mr D later told Aviva that the lorry had dashcam footage. But I think it's very unlikely that this would have been provided if it showed that the lorry driver was at fault. And it's under no compulsion to provide this if asked. And so I can't say that Aviva not obtaining this would have made a difference to the outcome for Mr D.

Aviva considered the evidence and thought it would be unlikely to successfully defend the matter in court. So it admitted liability, as I'm satisfied it's entitled to by the policy's terms and conditions. So I can't say that Aviva treated Mr D unfairly or unreasonably.

Aviva agreed that there had been poor communication with Mr D. It hadn't told him that the other driver disputed liability. It didn't then send him its accident forms asking for a detailed description and diagram of the event, alongside any dashcam or CCTV footage that may have been available. It later told Mr D that the matter went to arbitration, but this wasn't the case.

So I think Aviva's communication caused Mr D avoidable upset. But I don't think that better communication would have changed the outcome for Mr D as Aviva already had his initial statement and his video of the aftermath. And I think Aviva's offer of £100 compensation for this is fair and reasonable as it's in keeping with our published guidance for the impact caused. I don't require Aviva to increase this offer.

Mr D wanted Aviva to refund his policy excess. But this would always need to be paid as the first part of a claim, no matter the outcome. And so I can't require Aviva to do this.

Mr D has raised further concerns about how Aviva handled his claim. But I can't consider those here as Mr D would firstly need to raise these with Aviva to give it a chance to respond. Mr D also raised concerns about the legal firm, but he would again need to raise those with it and, if he remains unhappy with its response, then take this further with the Legal Ombudsman.

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 D to accept or reject my decision before 30 January 2025.

Phillip Berechree
Ombudsman