

The complaint

Miss Y complains that Aviva Insurance Limited (“Aviva”) didn’t provide a new car replacement, under her motor insurance policy, after her car was written off due to an accident.

What happened

Miss Y was involved in a car accident. She made a claim to Aviva. It determined the car was a total loss. It was owned by Miss Y’s father and had been bought using a finance agreement. Aviva told her that in these circumstances it would pay the market value of the car to the finance company in settlement of Miss Y’s claim. This left £3,384 owing on the finance agreement.

Miss Y says her policy provides for a new car replacement when the insured vehicle is less than 12 months old. Her car was around six months old at the time of the accident, so she didn’t think Aviva’s settlement was fair.

In its final complaint response Aviva says it should’ve looked at providing a new vehicle replacement as an option in these circumstances. It says it’s reviewing its policy terms as a result of this. Aviva says it should’ve contacted the finance company initially to see if it could transfer the finance to a new vehicle. If it agreed it could then have sourced a replacement. Aviva did contact the finance company but not until after it had cash settled the claim. The finance company said it wouldn’t agree to transfer finance from one vehicle to another.

Aviva says the only viable option in light of the finance company’s response was to settle Miss Y’s claim based on the pre-accident valuation of her car. This is what it did. It acknowledged that it made some errors and there were instances of poor communication in its claim handling. It offered Miss Y £200 compensation to recognise its poor service.

Miss Y didn’t think she’d been treated fairly and referred the matter to our service. Our investigator upheld her complaint in part. He thought it was fair that Aviva contacted the finance company as a result of Miss Y’s complaint. But he says it made clear it wouldn’t have transferred the finance to a replacement vehicle. Because of this our investigator agreed with Aviva that it had to settle the claim based on the vehicle’s pre-accident value. But in light of the poor communication, and loss of expectation Miss Y experienced he says Aviva should pay her a further £300 compensation.

Miss Y disagreed. She refers to a letter her father received from the finance company in response to a complaint he’d made against it. In this letter it says it can consider a replacement vehicle where the original has been written off. The request to do so must come from the insurance company. If this is received, the finance company says it will then consider this option.

Aviva accepted our investigator’s findings, but Miss Y maintained that she’d been treated unfairly and asked for an ombudsman to review her complaint.

It has been passed to me to decide.

I issued a provisional decision in January 2025 explaining that I was intending to uphold Miss Y's complaint. Here's what I said:

provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so my intention is to uphold Miss Y's complaint. Let me explain.

Miss Y's policy terms under section one, "Loss of or damage to your car" say:

"New car replacement

We will replace your car with a new car of the same make, model and specification (if one is available in the UK) if, the principal policyholder, vehicle policyholder or partner are the first registered keeper of your car, (or second registered keeper where it was pre-registered and the mileage of your car was less than 250 miles) and within 12 months of buying it from new."

And:

"...We will only replace your car if the principal policyholder, vehicle policyholder or partner purchased it: - outright; or – under a finance agreement where the ownership passes to the principal policyholder, vehicle policyholder, or partner and the Finance Company agrees."

The policy schedule states that Miss Y is both the principle policyholder and the vehicle policyholder. It confirms the vehicle owner as, "Parent". Miss Y confirms that her father is the owner.

Based on the policy terms a new vehicle replacement isn't provided for in these circumstances. This is because although Miss Y is the principle and vehicle policyholder, she isn't the first registered keeper of the car.

That said, I've read the various emails exchanged internally between Aviva's underwriters and its other departments. The outcome of this is confirmed in its final complaint response. Aviva says it should've considered a new vehicle replacement where a parent is the vehicle owner. One of the emails says that it should find out if the finance company would have accepted the new vehicle replacement. If it would have, then the fairest outcome is to settle the balance of the finance owing and reimburse the £1,000 deposit that had been lost.

Aviva contacted the finance company. It responded definitively to say it does not offer the option to transfer a finance agreement from vehicle to vehicle on any secured loan. It says the only option is for the insurer to settle on behalf of the client. Or to partially settle and for the client to cover the remaining finance owed.

However, I've also read the finance company's response to Miss Y's father's complaint. This contradicts the earlier response it sent to Aviva. It says a replacement vehicle may be considered if the request comes directly from the insurer. It will then review on a case-by-case basis. The finance company says that as Aviva approached it retrospectively, it was unable to review Miss Y's father's case. It says that as a result it advised Aviva that a replacement vehicle couldn't be offered.

I've thought carefully about what this means. Aviva's internal email discussions refer to a recent change that allowed a parent to own a vehicle as long as the main user was the principle policyholder. The conclusion of this discussion was that a new vehicle replacement should be extended to Miss Y's circumstances.

Our service isn't a regulator. We can't tell Aviva how it should run its business or determine what should go into its policy terms and conditions. But in this case it clearly accepts that it didn't treat Miss Y fairly by not offering the option of a new vehicle replacement. It's also indicated that it will review its policy wording in light of the concerns raised here.

I think it's fair that Aviva reconsidered its approach. However, I agree with Miss Y that by settling the claim and then retrospectively contacting the finance company, Aviva prejudiced her position. The finance company says it will consider a new vehicle replacement on a case-by-case basis. I asked Miss Y if she could obtain a more definitive response to whether it would've transferred the finance to a new vehicle in this case. The finance company responded to her to reiterate its earlier response. Namely that it would consider this on a case-by-case basis if a request is received from an insurer. It says the vehicle would need to be of equivalent value and typically a similar make and model.

I asked Aviva to comment on the finance company's response. It responded to say the company hasn't definitely said it would have accepted a replacement vehicle. Only that it would have considered it. However, it says that had the finance company confirmed it would accept a new vehicle replacement, it would've settled the remainder of the finance agreement. In addition, it says it would've offered a pro-rata refund of the deposit paid.

Having considered all of this I think Aviva should've offered a new car replacement option to the finance company. From what it says its criterion for accepting this would've been met by the cover Miss Y's policy provides. Had it done so Miss Y wouldn't have had to pay an amount to settle the remaining finance. And wouldn't have had to pay a full deposit for a new vehicle. To put this right, it should refund Miss Y with the payment she made to settle the finance agreement plus 8% simple interest. It should also pay her a pro-rata refund of the deposit she originally paid. From the figures Aviva has supplied, a £1,000 deposit would result in a pro-rata payment of £883. Miss Y can provide proof of the deposit payment to Aviva in support of the original payment she made.

I've thought about the concerns Miss Y raised about the standard of communication and service she received from Aviva. She refers to communication being very difficult. The business accepts that it made errors and communicated poorly. It acknowledges Miss Y's claim wasn't handled to the standard she should expect. Miss Y has had to find an alternative car and the funds to buy it. This wouldn't have been necessary had Aviva dealt with her claim fairly from the start. Given the inconvenience and distress all of this has caused I agree with our investigator that Aviva should compensate Miss Y with a further £300 payment. This is on top of the £200 it has already paid.

I said I was intending to uphold Miss Y's complaint and Aviva should:

- refund Miss Y the additional payment she made to settle her finance agreement, in addition to 8% simple interest from the date she made this payment until the refund is made;
- pay Miss Y a pro-rata refund of the deposit she originally paid to the finance company, plus 8% simple interest from the date she paid the final settlement figure to the finance company until this refund is made; and
- pay Miss Y a further £300 compensation payment for the distress and inconvenience it caused her.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Aviva didn't respond with any further information or comments for me to consider.

Miss Y responded to say she hadn't received the original £200 compensation Aviva offered her. But she accepted my provisional findings.

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've reconsidered all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party has made any further submissions or provided further evidence for me to consider, I see no reason to change my provisional findings.

So, my final decision is the same as my provisional decision and for the same reasons. Aviva should ensure it pays the original £200 compensation payment if it hasn't already. But this doesn't constitute a change to the outcome here.

My final decision

My final decision is that I uphold this complaint. Aviva Insurance Limited should:

- refund Miss Y the additional payment she made to settle her finance agreement, in addition to 8% simple interest from the date she made this payment until the refund is provided;
- pay Miss Y a pro-rata refund of the deposit she originally paid to the finance company, plus 8% simple interest from the date she paid the final settlement figure to the finance company until this refund is made; and
- pay Miss Y a further £300 compensation payment for the distress and inconvenience it caused her.

If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss Y how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 27 February 2025.

Mike Waldron
Ombudsman