

## The complaint

Mr N complains about Aviva Insurance Limited (Aviva) mis-selling a motor insurance policy.

References to Aviva in this decision include their agents.

## What happened

In April 2024 Mr N used a comparison website to look for motor insurance. Of the options available, a quote from Aviva was his preferred option. Mr N wanted to include protection for his No Claims Discount (NCD) of two years, but the comparison website wouldn't allow him to add protection of his NCD as part of the quote from Aviva.

Mr N contacted Aviva to ask whether they offered NCD protection. Aviva replied with an NCD table detailing the optional cover for NCD protection. Mr N had difficulty understanding the information and asked Aviva whether he could add protection to the policy he had been quoted once he had taken out and paid for the policy. He said he had two years' NCD. Aviva replied to say they could add additional cover to protect his NCD once the policy had been purchased, at which point they would advise what effect it would have on his premium.

Based on what he had been told, Mr N went ahead and took out the policy. He also asked whether, should adding the protection not be at a suitable additional premium, he could cancel the policy without cost. Aviva said if he cancelled before the policy start date they would refund the full premium paid without charge, if he cancelled within 14 days of the policy start there would be a £28 cancellation fee and pro-rata premium for the time on cover. Cancelling after 14 days would attract a £56 cancellation fee and pro-rata premium for the time on cover.

When Mr N received confirmation of his policy being taken out (in May 2024, but before it was due to come into effect) he contacted Aviva again to ask about adding protection of his NCD. However, Aviva replied to say that a minimum of three years' NCD was needed in order to add protection and also that protection could only be added at policy inception or at policy renewal (not between these dates).

Given what Aviva said contradicted what they'd previously told Mr N, he challenged Aviva's stance he didn't have the minimum NCD required for protection to be taken out and couldn't be taken out once a policy was taken out. Aviva apologised for what he had [wrongly] been told initially, saying they couldn't offer protection for two years' NCD. They offered a goodwill gesture of £25 and, subsequently, to cancel the policy with a full refund of the premium paid. (and £50 compensation). Mr N wasn't happy with Aviva's response and offer, so he complained.

In the meantime, Mr N looked for alternative cover that included protection of his NCD, but the only quote he received that included protection (for two years NCD) was some £5,900 (compared to the £1,197 cost of his Aviva policy, without NCD protection). Given the significant difference in cost, Mr N said he had no option but to keep his policy with Aviva (as their cost was otherwise competitive).

In their final response, issued in June 2024, Aviva upheld the complaint. They said their agent had told Mr N he could add protection to his NCD after the policy had been taken out but hadn't checked what Mr N had earlier said about only having two years NCD, having been unable to add the protection through the comparison website. Aviva said the agent hadn't deliberately mis-informed Mr N about being able to add protection after the policy had been taken out (or that they required a minimum of three years NCD before they would offer protection). As Aviva couldn't offer protection with just two years NCD, they'd offered to cancel the policy and refund the premium paid in full (as the policy hadn't commenced). Aviva apologised and offered £75 compensation to Mr N.

Unhappy at Aviva's response, Mr N complained to this Service. He thought his policy had been mis-sold and he'd been misled into purchasing a policy that was a bad deal for him. The compensation offered by Aviva didn't reflect the damage he'd suffered, and the stress and anxiety caused to him. He also thought Aviva had backdated their final response by two months compared to when Aviva said it was issued to him. He said he didn't receive the final response (by email) in June 2024 (Aviva re-sent it, by email and post, in August 2024).

Our investigator noted Aviva had increased their offer of compensation to £100 (having previously increased it from £25 to £50 and then £75). Our investigator put Aviva's revised offer to Mr N but he rejected it.

Our investigator then considered the complaint, concluding increased offer was fair. Mr N had been told he could add NCD after taking out the policy, having been unable to add it during the application process. But was then told it could only be added at policy inception or renewal. And Aviva required a minimum of three years NCD for protection to be added, whereas Mr N only had two years (which he'd told Aviva). Aviva accepted they incorrectly advised Mr N and offered to cancel the policy and refund the premium paid in full, as the policy hadn't started.

Looking at what happened, the investigator thought Mr N had been mis-advised by Aviva, but noted Mr N could only find one alternative policy offering NCD protection for two years' NCD, at a much higher premium (just under £6,000 compared to the £1,197.10 premium of his policy with Aviva) which wasn't affordable to Mr N. Continuing the policy with Aviva, albeit without NCD protection, was the most affordable option for Mr N. The investigator also accepted that Aviva's underwriting criteria precluded their offering NCD protection with only two years' NCD (when the criteria required three years' NCD). Mr N was left with a policy without NCD protection but hadn't made a claim to date and the lack of NCD protection would only become an issue should he need to make a claim. As this hadn't happened, it wasn't possible to quantify the impact.

On the backdating of the final response letter, Aviva sent the letter to Mr N by email in June 2024 to the address Mr N provided to this Service when making his complaint. Aviva had apologised to Mr N that he hadn't received it and re-sent it by email and post in August 2024. The investigator concluded there was no evidence to suggest the letter had been backdated.

Mr N disagreed with the investigator's view and asked that an ombudsman consider the complaint. He didn't think the £100 compensation sufficient given the impact of what had happened, and the errors made by Aviva as he had detailed in his complaint to this Service.

### **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.

My role here is to decide whether Aviva have acted fairly towards Mr N.

The key issue in Mr N's complaint is whether Aviva mis-sold the policy. Mr N says he was told he could add protection for his NCD after he took out the policy, having also told Aviva he had two years' NCD. Aviva accept they mis-advised Mr N by not telling him they would only offer protection for a minimum of three years' NCD – not the two years Mr N had - and that he could add protection after policy inception (which was also incorrect). Aviva have offered an increased sum of £100 compensation, in addition to previously offering to cancel the policy with a full refund of premium, as the policy hadn't come into force at that point.

Mr N is also unhappy he didn't receive Aviva's final response when they said they sent it (June 2024) until he followed up on his complaint.

On the first issue, whether the policy was mis-sold, I've considered the sequence of events when Mr N took out his policy as set out above. What is clear – and Aviva accept – is that Mr N was wrongly advised by the agent he initially contacted that he could take out protection of his NCD after he'd purchased the policy. And that he could take out protection with two years' NCD (when Aviva would only offer protection for a minimum of three years' NCD. So, it's not disputed Mr N was wrongly advised and based on this, took out his policy with Aviva.

So, the key issue is whether Aviva have acted fairly and reasonably in their response to their mistakes. They've offered compensation (now £100) and also, when the mistake became clear, to cancel Mr N's policy before it was due to come into effect with a full refund of the premium he'd paid.

On the latter aspect of Aviva's offer, that would have put Mr N into the position he was in before he took out his policy with Aviva. And given that offer was made before the policy was due to come into effect, then it would have enabled Mr N to look for alternative cover that included protection for his two years' NCD. But from what Mr N said, he could only find one insurer willing to offer cover including protection for two years' NCD at a quoted premium of £5,900 (compared to the £1,197 he'd paid for his policy with Aviva). Given the significant difference in cost, it was for Mr N to decide whether protection of his NCD was sufficiently important to him to take out cover at the much higher cost.

In the event, he decided to keep his policy with Aviva, albeit without NCD protection. Given the difference in the premiums, I can understand why he took that decision. But in offering to cancel his policy, without charge and a full refund of premium, I think Aviva made a fair and reasonable offer, putting him back in the position he was before taking out the policy. Given also Aviva's policy was only to offer protection of NCD with a minimum of three years' NCD.

While I can see Mr N had difficulty understanding the NCD table Aviva sent him, the table (which is also included in the policy booklet) does set out what would happen should a claim(s) be made at each level of NCD – beginning with three years' NCD (and then four years, five years or more). Which would indicate protected NCD would only apply with a minimum of three years' NCD (had it applied to two years' NCD, I would have expected to see that scenario included in the table). And the fact that the comparison website wouldn't allow Mr N to take out protection of his NCD with two years' NCD would also be an indicator Aviva wouldn't offer that cover with that level of NCD.

I appreciate what Mr N has said about the anxiety and stress of having a policy that doesn't include protection for his NCD, should he have to make a claim during the policy period. However, that would be a contingency dependent on a future event, which may not happen (and should he not need to make a claim during the policy period, he would then have three years' NCD at renewal and could opt to protect his NCD at that point, at additional cost for him to consider). And as I've noted, the only alternative policy he was quoted for would have included protection of his NCD, but at a much higher premium.

Taking all these points into account, I've concluded Aviva acted fairly to offer to cancel Mr N's policy, without charge and with a full refund of premiums, before it came into effect.

The other part of Aviva's response is to offer compensation, initially £25 but then subsequently increased, up to the £100 offer made as part of their response to our investigation of Mr N's complaint.

Mr N says this doesn't compensate him for the impact, should he need to make a claim where he doesn't have protection for his NCD. But as I've said, that is contingent on a future event (claim) being made and the consequent impact on his next policy renewal premium. Which would be unknown at this point. So, it isn't possible to assess whether the risk of such an eventuality and the consequence would outweigh the cost of Mr N taking out alternative cover that did include NCD protection (at the much higher cost he was quoted).

But it is clear Avia mis-advised Mr N initially when he was taking out his policy, leaving him with a policy that doesn't include NCD protection. That meant distress and inconvenience to Mr N, as well as a loss of expectation (that he would have been able to add NCD protection after taking out the policy).

Having considered the circumstances of the case and the published guidance from this Service on awards for distress and inconvenience, then I consider Avia's revised offer of £100 compensation is fair and reasonable, so I won't be asking them to make a further award. But they should now pay Mr N the £100 compensation they've offered.

On the issue of whether Aviva, as Mr N says, backdated their final response (to June 2024) and that he didn't receive it at that time, I've looked at the evidence available. In the information provided by Mr N when he made his complaint to this Service, there's a copy of the final response which includes a header indicating it was emailed to Mr N in June 2024. The email address for Mr N matches that he provided to this Service in the complaint form he submitted with his complaint.

While I can't know whether the email was in fact received – Mr N is clear that it wasn't – given the email address matches, then I can't reasonably conclude Aviva deliberately backdated the final response.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr N's complaint. I require Aviva Insurance Limited to:

- Pay Mr N £100 compensation for distress and inconvenience.

Aviva Insurance Limited must pay the compensation within 28 days of the date we tell them Mr N accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 April 2025.

Paul King  
**Ombudsman**