

The complaint

Mrs R has complained about her car insurer Aviva Insurance Limited, regarding a failed windscreen replacement.

What happened

Mrs R had a car insurance policy with Aviva which gave her cover for replacing her windscreen. On 2 December 2023, having made a windscreen claim on the policy, Mrs R had a replacement windscreen fitted by Aviva's approved repairer (AR). On 8 December 2023 the car wouldn't start and Mrs R found that there was water ingress.

Over the next several months Mrs R dealt with the AR to try and resolve the problem. Aviva was involved for a time, however it subsequently explained to this Service that it had withdrawn from matters as it felt the insurance contract and issues arising from it had been fulfilled. When this Service asked for Aviva's file it wasn't prepared to provide it and argued there was no complaint for it to answer.

Aviva's answer in that respect was given even though its AR – which is not a regulated financial business in its own right but can provide complaint final response letters (FRLs) on behalf of Aviva – had issued a FRL to Mrs R about the water ingress issue. The FRL seemed to accept liability for the problems Mrs R now had with the car – diagnosed as an intermittent fault with the immobiliser, meaning the car would sometimes not start. The FRL said there were three remedies available to Mrs R to resolve the problem. Mrs R was unhappy with all three of the proposed remedies – 1) pay for the manufacturer to complete any water ingress repairs, 2) pay £7,000 to purchase the car from Mrs R, 3) pay 50% of the repair estimate Mrs R had obtained from her chosen garage – so she brought her complaint to the Financial Ombudsman Service.

Our Investigator, when reviewing whether this was a complaint which we could consider against Aviva, explained that she felt that it was. Essentially Mrs R's complaint stemmed from a faulty claim repair undertaken by Aviva's agent, meaning we could look at everything which had happened, including the proposed remedies, in a complaint against Aviva.

Subsequent to that, the AR, on behalf of Aviva, did engage with our Service, although little detail was provided by it. Some additional evidence Mrs R had obtained was also shared with the AR. Other than confirming it had not seen this evidence before – an expert report confirming the vehicle's immobiliser had been affected by water ingress – no further comment was made on the new evidence.

Our Investigator then reviewed the merits of the complaint. She explained that as proposals for resolution were made, it wasn't really important for her to make much comment on the events which led to those remedial offers being made. She noted the offer to buy the car from Mrs R – and having checked the car's market value felt the sum offered was fair. She said if Mrs R wasn't happy with that – the other two options remained open to her, and they also seemed fair, as long as they took into account the immobiliser work identified in the expert report. Our Investigator said Aviva should also pay £500 compensation, but wasn't minded to make it reimburse the cost Mrs R had incurred for the expert report.

Mrs R wasn't happy with the outcome. Not least because she wanted to keep the car and have it repaired.

Aviva also disputed the outcome. The AR, replying on behalf of Aviva, said that its offer to buy the car for £7,000 was in excess of the market value to account for compensation. It said it shouldn't have to pay a further £500 on top (of the £7,000).

The complaint was referred to me for an Ombudsman's decision. When I reviewed it, I felt Aviva had failed Mrs R in this instance. I thought it should be paying her repair estimate, £1,500 compensation and paying for the scratched windscreen to be replaced. So I issued a provisional decision to explain all of that. My findings were:

"The parties will note that although my background above is not brief, it is light on the detail of what occurred in the run up to the FRL being issued. I also haven't included much detail on the complaint itself. I'll note here that Mrs R, when submitting her complaint to this Service, set out 30 complaint points and added a similar amount of questions she said she'd like answers to. I trust Mrs R will understand that I mean no disrespect when I say I won't be addressing each of those points or setting out and answering the questions asked. Ours is an informal Service, with our key role being to get to the heart of the complaint. In this case that is the problem with the car and what reasonably needs to be done to resolve it. So that is where my focus will be – and within my findings, where necessary, I'll set out and draw in any relevant background detail.

From what I can see Aviva itself has had only limited involvement in this post claim issue. To an extent I understand that – because it had an AR that it was happy to delegate authority to for dealing with complaints. However, I find the way this post claim issue was handled to be disappointing and unsatisfactory. Aviva's policyholder had identified a major issue of concern with their vehicle after Aviva's agent had completed what should have been a very simple piece of work under the policy. I'm not sure it was appropriate, in the circumstances, for Aviva to have left handling that complaint to the very entity which was alleged to have caused this potentially significant and likely costly damage.

My other issue with what happened after the water ingress issue was identified is that at no time did Aviva, or its AR, look to have an independent engineer assess the car. That to me, would have been a reasonable path to take. I note the car was taken to the manufacturer garage relatively early on. And that was at Mrs R's request. But I also note that the AR did not leave the manufacturer garage to investigate and come to an independent conclusion as to whether the issue with the car starting was related to the water ingress it (the AR) had caused. I think Aviva, if it had been handling this issue, caused by its agent, in a reasonable manner, would or should have appointed an independent engineer.

I know that prior to putting forward the available remedies in the FRL, the AR did offer to have the car returned to the manufacturer for further assessment. At that time Mrs R wasn't happy to allow that. Given the AR had interfered before, by not leaving the manufacturer garage to complete a full investigation, I think that was a reasonable view for Mrs R to take. I think this was another point where Aviva, as it hadn't stepped in before to appoint an independent engineer, could and should reasonably have offered that at that stage. But it didn't, the complaint moved to a point of deadlock and an FRL was issued.

I'll recap here, and add a little detail, the three offers put forward in the FRL:

1) pay for the manufacturer to complete any water ingress repairs – at this time the AR did not accept that all of the problems with the car, particularly with it starting, were related to the water ingress it had caused, so this wasn't an offer to completely repair the vehicle. The

extent of the offer, as a result, was dependant on the manufacturer garage assessing each issue with the car and the AR paying for any work the manufacturer garage established to the AR's satisfaction were water ingress related.

2) pay £7,000 to purchase the car from Mrs R – no detail as to the basis for this offer was given in the FRL, the FRL certainly did not explain that some of the sum was to be paid in respect of the market value for the car and some for compensation.

3) pay 50% of the repair estimate Mrs R had obtained from her chosen garage – the estimate was £8,446.23, it included work to resolve the car's starting/immobiliser problem.

I think 1) is not a fair offer. That is because it's too vague and leaves Mrs R open to unknown costs and the arbitrary determinations of the AR judging the findings of the manufacturer.

Option 2), quantum aside, would be the sort of remedy I might expect an insurer to put forward under the policy where repairs are necessary or are to be undertaken in line with the policy terms. That is not the case here. Here insured work was completed. But completed poorly by Aviva's agent. Meaning the damage occurred and the repairs are necessary as a result of Aviva's agent's poor work. I can see no good reason why Mrs R, who was quite happy with her car prior to this poor work occurring, should have to be put in the position of needing to replace her car. Simply put, she shouldn't have to, unless she wants to. She doesn't want to, so 2) is unfair.

In my view, 3) is the closest of the three resolutions to a fair remedy. But it falls short of being fair because it still does not reflect all of the repair cost likely required on account of the AR's poor work.

Mrs R has said she wants to have the money so she can have the car repaired. The estimate obtained in that respect is for £8,446.23. Other than the dispute I'm aware of, about the immobiliser, I've seen no objection from Aviva on the content of the estimate. And I'm satisfied the expert view obtained by Mrs R resolves any concerns that may have existed about the immobiliser issue. In short, I'm satisfied that it's linked to the water ingress the AR caused and so the cost of repair should be covered by Aviva. Aviva might argue that it could have work done for less – but if Aviva wanted to control this issue, it should, as I've said, stepped in earlier and been more proactive to assist its policyholder with damage its agent had caused. I'm satisfied Aviva is liable for the full estimate price.

The estimate is now a year old. I'm going to require Aviva to add interest to the estimate sum to account for any increase which may have occurred.

However, the estimate also includes an element of VAT. VAT is only due for payment when work is completed. So it wouldn't be fair for me to require Aviva to pay the VAT portion of the estimate upfront. As such, I intend to require Aviva, initially, to deduct any VAT sum from the estimate. It can then add interest to the remaining sum, applied from the date of the estimate until settlement is made, and pay this sum to Mrs R.

Then, once Mrs R receives a final invoice for work, showing VAT is due, Aviva will have to reimburse the VAT, plus its related interest. I intend to require it to add interest to the VAT sum from the date of the estimate until the date of the final invoice for work. I think that is fair. If Aviva delays in reimbursing the VAT sum plus interest to Mrs R, then application of further interest will become due. Aviva should make the reimbursement payment to Mrs R within a fortnight of receiving the final invoice. If settlement isn't duly made, interest will have to be applied from the date two weeks after Aviva received the invoice and until settlement is made. Mrs R may like to send the invoice to Aviva by recorded delivery or similar.

There is no doubt that Mrs R has suffered substantial distress and inconvenience on account of this issue. As I said above, a simple windscreen replacement has caused significant and

totally unexpected damage to an otherwise cared for car. I bear in mind that between the 14 December 2023 and 8 February 2024, the AR did cover the cost of a hire car for Mrs R, and I understand that Mrs R's husband does have a car. That said I think being without her own car has clearly caused difficulty for Mrs R. And because Aviva did not put forward a reasonable resolution – and not even one which would have allowed Mrs R to go ahead with some repairs – Mrs R has now been without use of her car, or a replacement car of her own, for nearly a year. From the detail Mrs R has provided to us I can see that has had a substantial impact on her daily life, with particular worry being caused when caring for family members was required. Previously Mrs R had asked for compensation of £1,500 to be paid by Aviva. In the circumstances here, I don't think that was an unreasonable request. I'm minded to make Aviva pay this sum.

I know Mrs R has referenced having some additional costs due to using public transport. However, I haven't seen any details of any costs incurred. And I bear in mind that, if Mrs R had had use of her car, she'd have been incurring costs such as for fuel and road tax. So, even if Mrs R can show some of her transport costs incurred, it may well be that I wouldn't find Aviva should have to pay them – because they'll likely be off-set against savings from not using the car. So, at this point, I'm not intending to require Aviva to pay anything for financial costs Mrs R incurred due to using public transport.

Mrs R did incur a financial cost for the expert report. That wouldn't have been necessary if Aviva had handled matters better. I'll require Aviva to reimburse this cost of £84 plus interest applied from 25 July 2024, which is the date of the report, and until settlement is made.

There is a remaining issue with the windscreen itself. It is scratched. This was identified, seemingly by the AR itself whilst it was refitting the windscreen on 8 December 2023. With Mrs R noticing it and highlighting it to the AR when the car was returned to her in 2024. The AR has refused to deal with the scratched screen because it says Mrs R drew the issue to its attention outside of the 14 day warranty period it provides for its work. In the circumstances here I think that is a little disingenuous – not least as the issue was notified to it after the car was returned to Mrs R after its re-work was done and it had had custody of the car for a significant period of time. I also note that Aviva does not set out such a warranty period in the policy under the "Section 5 Glass" cover. I think Aviva is reasonably liable for replacing the scratched windscreen.

With that in mind, I think Aviva might argue that the AR should have the chance to replace the windscreen under warranty. In a 'normal' warranty situation I might agree with Aviva. But in the circumstance here I don't think that solution would be workable in practice. In all of the circumstances here I think it's fair to say Aviva should be paying for this issue to be resolved. To do that, I think that Mrs R should obtain an estimate for a reasonable like-for-like replacement and present it to Aviva for it to pay – less any VAT initially, with VAT becoming due for payment by it upon receipt of a VAT invoice from Mrs R."

Aviva said it disagreed with my findings. It said our Investigator had found that the offers it had made were reasonable. Aviva asked why the Service's view on the complaint had changed. It reiterated its view that those offers were reasonable and said that as Mrs R had unreasonably refused them, it had been unable to have the car fully assessed. As such it was unfair for the Ombudsman to find it must cover the full repair cost. It said the compensation award was too high, with the circumstances not meeting the guidelines for such an award. It said the matter had remained unresolved because Mrs R had not agreed any of its reasonable resolution options. Finally, Aviva sent a copy of its windscreen agent's terms and conditions which include a 14-day time limit for clients reporting to it "damage caused by us". So it said it was unfair to make it pay for a replacement.

Mrs R said she largely agreed with the findings. But she said that between February and October 2024 she'd had to pay for insurance and road tax for a car she could not use, at a cost of £810.47. She asked that was reimbursed. Mrs R also asked that the compensation sum was reviewed. She explained she'd lost her independence and there'd been an extra toll on her husband too. Mrs R asked for a sum of £2,500-£3,000 to be awarded.

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 note Aviva's concerns that my view on the complaint was different to that reached by our Investigator. But as Aviva is aware this Service operates a two-stage process and when a complaint is referred to that second stage – the Ombudsman stage – an Ombudsman is tasked with reviewing the complaint afresh. An Ombudsman's review is independent. An Ombudsman must reach their own view on the fair and reasonable outcome for the complaint. And where that view differs from an Investigator's, a provisional decision will be issued to explain the Ombudsman's findings. That is what has happened here.

I've reviewed the comments Aviva has made again explaining why it thinks the offers it made were reasonable. I've nothing to add to what I said provisionally in this respect. I remain of the view the offers were not reasonable. I also remain of the view that the fair and reasonable outcome is for Aviva to cover the repair cost put forward by Mrs R.

I see that whilst Aviva thinks the suggested compensation award of £1,500 is too high, Mrs R has asked for it to be increased. I've considered what both parties have said in this respect, but in assessing compensation for upset I took into account the upset Mrs R, as the policyholder had suffered. I noted provisionally that, for nearly a year, she was without her own car, I accept this affected her everyday life. I'm satisfied that an award of £1,500 is in line with our guidelines which say we'll award up to £1,500 where there's *"been serious disruption to daily life over a sustained period, with the impact felt over many months, sometimes over a year"*. I'm satisfied my suggested award is in line with other awards made by this Service in similar situations. I remain of the view it is fair and reasonable, so I'm not going to amend it.

Mrs R has asked that I require Aviva to reimburse her car insurance and road tax costs incurred from February 2024 to October 2024. I accept the car wasn't being used during this period – but these were costs Mrs R needed to pay in the normal course of owning her car, they weren't additional costs she suffered because of Aviva's failings. It was in February and early March when a position of stalemate regarding the car was reached between the parties. So Mrs R knew the car wasn't working and all that could be done was progress a complaint. It was only in October that the insurance was update and road tax cancelled. I'm not persuaded it would be fair to require Aviva to reimburse the costs incurred in the interim.

Aviva has referred to the terms and conditions of its windscreen agent to explain why it thinks it's fair for it to rely on a 14-day warranty period for notification of damage. But that ignores what I said both about Aviva's policy wording, and that here, in these circumstances, relying on a 14-day term to decline liability is simply unfair. To clarify, Mrs R, under the policy terms, had a windscreen fitted by Aviva's agent. Aviva's agent, in trying to fix a problem with that windscreen, scratched it. I'm satisfied that Aviva should pay for that windscreen to be replaced on a like-for-like basis. Mrs R has provided some estimates which I'll have our Investigator forward to Aviva.

I've reviewed the parties' responses to my provisional decision. They haven't changed my view on what Aviva did wrong, or what I think is fairly and reasonably required to put matters

right. As such, my provisional findings, along with my comments here, are now the findings of this my final decision.

Putting things right

I require Aviva to:

- Pay Mrs R £8,446.23 less any VAT, plus interest* applied from the date of the estimate until settlement is made.
- Pay Mrs R, upon production by her of a VAT invoice – issued when work is completed, the VAT sum on the estimate, plus interest*, applied from the date of the estimate and until the date of the VAT invoice.
 - This to be paid within two weeks of the date of receipt of the invoice. If payment is delayed, then further interest* will have to be applied starting from the date two weeks after the date upon which the invoice was received at Aviva's offices, and to the date settlement is made.
- Pay £1,500 compensation.
- Reimburse the expert report cost of £84, plus interest*.
- Pay for Mrs R to replace her scratched windscreen – payment should be made against an estimate submitted by Mrs R for a reasonably like-for-like replacement (to the one which was scratched). Aviva will only become liable for paying any VAT element of the windscreen estimate to Mrs R upon receipt of a VAT invoice.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Aviva to take off tax from this interest. If asked, it must give Mrs R a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Aviva Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 20 March 2025.

Fiona Robinson
Ombudsman