

The complaint

Mr K complains about the position on liability taken by Aviva Insurance Limited ('Aviva') on a claim made on his car insurance policy.

What happened

Mr K was involved in a road traffic accident with another car in April 2023. Mr K reported the incident to Aviva saying that his car was stationary when a third party reversed into it.

Aviva subsequently received allegations from the third party holding Mr K at fault. The third party said their car was stationary and switched off when it was struck by Mr K's moving car. Aviva investigated the claim, but ultimately decided to settle it on a 50/50 basis – meaning Mr K and the third party were deemed to be equally at fault.

Mr K complained about Aviva's decision, and it provided a final response to this complaint on 8 July 2024 saying that the policy terms allowed it to decide how to settle the claim and the third party provided a video showing Mr K offering them money after the incident, but even if this video was disregarded the decision to settle the claim on a 50/50 basis would stand as there was no evidence to support either parties version of events. Additionally, it said that even though Mr K wasn't claiming for the damage to his vehicle, as he said there wasn't any, given there was a confirmed impact it wasn't unexpected for there to be damage to the third party vehicle and the video provided showed that there was.

Dissatisfied with this response, Mr K referred his complaint to us. Our investigator didn't find Aviva had unfairly settled the claim. He said the policy terms allowed Aviva to decide how to settle the claim and because it had considered Mr K's and the third party's version of events but no independent evidence such as a witness statement or CCTV was available, it wasn't unreasonable for it to have settled the claim on a 50/50 basis.

Mr K replied saying he didn't think it had been considered that Aviva appointed solicitors for him and that he has legal cover under his policy and that he wanted to use this. Additionally, Mr K said that his premium had increased due to this incident despite having no claims discount protection.

Our investigator said that under the policy terms Mr K was only entitled to legal protection if the accident wasn't deemed to be his fault and that since the premium issue was raised after Aviva provided its final response, Mr K would need to take that up as a new complaint.

Because Mr K didn't agree, the complaint was referred to me to decide.

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 done so, while I understand Mr K will be disappointed, I've decided not to uphold this complaint. I'll explain why.

I should start by saying my role isn't to decide who was liable for the accident, or to what extent. That's something only a court could decide. I'll instead be considering if Aviva acted fair and reasonably in how it investigated the claim, and in how it reached its decision to settle the claim on a 50/50 basis

I've begun by looking at the policy terms. These say that Aviva has full discretion in the conduct of any proceedings or the settlement of any claim. Car insurance policies typically contain terms such as this, which give the insurer discretion on whether to accept or dispute liability for an accident.

Although the policy terms gave Aviva the discretion to settle the claim on a 50/50 basis, it must have exercised that discretion fairly. So, I've considered if it did.

I've reviewed Aviva's claims notes and these show that it obtained Mr K's version of events and the third party's version of events. But each party was holding the other at fault with Mr K saying he was stationary when the third party hit him, and the third party saying the opposite. So, under the circumstances, unless there was any further evidence such as a statement from an independent witness, or a CCTV recording of the accident itself, I think it would be difficult to prove Mr K's vehicle was stationary.

Since there was no such evidence available, and both parties were holding the other at fault, I don't find it was unreasonable for Aviva to have exercised its discretion to settle the claim on a 50/50 basis. I appreciate Mr K may feel this is unfair if his vehicle was stationary at the time of the incident. But where a dispute concerning liability arises, in addition to considering both parties version of events, an insurer needs to evaluate the likelihood of it being able to prove its insured's version of events over a third party's. Given the lack of supporting evidence showing what happened in the accident, it would not be unreasonable for Aviva to consider the likelihood of it successfully holding the third party fully at fault to be low.

I acknowledge that Mr K says that his car wasn't damaged in the incident. But I don't think that shows the third party's vehicle wasn't damaged and given it wasn't disputed there was an impact and Aviva reviewed the video after the incident and were satisfied it showed damage to the third party's vehicle, I don't think it acted unreasonably by meeting its obligation to settle half of the third party's claim.

I've considered Mr K's comments about a solicitor being instructed. The only reference I can see to this in Aviva's file is that Mr K called it in October 2024 and said he had been referred to a solicitor, but after talking to them they advised him they could only assist with uninsured losses.

Mr K's policy schedule confirms that he had motor legal cover. But the policy terms say that this benefit is only provided for accidents which aren't the fault of the insured. But because I don't think it would have been unreasonable for Aviva to consider there to have been a low likelihood of it being able to successfully hold the third party fully at fault, I don't find it unfair it didn't provide the motor legal benefit on this claim.

Lastly, I understand Mr K was unhappy with his premium increasing at his next renewal after this accident. I can see that Mr K contacted Aviva on 21 October 2024 to express dissatisfaction with his premium. But I haven't seen any further final response from Aviva responding to the complaint about the premium.

Our service can only consider a complaint after it has first been made to the business which it is about and either the business has provided a final response, or more than eight weeks have passed from the date the complaint was made.

Mr K first notified us of his complaint about the liability decision taken by Aviva on 4 November 2024 and we subsequently accepted this complaint as a case on 5 November 2024. But given that I've seen no final response to the complaint about the premium, and Aviva were still within the eight weeks it would have had to provide a response at the point we accepted this complaint as a case, I won't be making any findings here about the premium issue.

However, since Mr K complained about the matter to Aviva in October 2024 and more than eight weeks have passed since then, Mr K can request we set up another case to look into his complaint about his premium increasing.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 August 2025.

Daniel Tinkler
Ombudsman