

The complaint

Miss A complains about how Aviva Insurance Limited settled a claim made on her motor insurance policy.

Reference to Aviva includes its agents.

What happened

Miss A holds a motor insurance policy with Aviva. When her car was involved in an incident, she called and let Aviva know. She said she wasn't looking to claim and nor was the third party involved in the collision - TP1. Miss A thought another third party -TP2, that wasn't hit, but drove off, was at fault for the incident because they cut into her lane, causing her to swerve and hit TP1.

Miss A later found TP1 did want to claim and that Aviva would be looking to settle their claim with Miss A at fault for the incident. Miss A again let Aviva know she didn't think she was at fault and that TP2 was but heard nothing back.

Ultimately Aviva settled the claim paying TP1's insurers for its outlay. The claim was recorded as a fault claim against Miss A's policy.

Miss A didn't think this was fair, she said she had footage of the incident and Aviva never requested it. She sent the footage to Aviva. It said it could hold TP2 at fault based on the footage but it said it couldn't see the registration plate so couldn't pursue it further.

Miss A then provided stills of the footage, clearly showing the registration plate of TP2. Aviva confirmed this plate matched the description of the vehicle involved and confirmed it was insured. But it said because the driver was unknown, it couldn't take matters forward and quoted a Supreme Court case supporting its stance.

Miss A didn't accept this and complained. She didn't think Aviva had done enough to help her and communicate what was happening. She's said the fault claim has had an effect on her premium which she doesn't think is fair.

Aviva acknowledged its communication throughout the claim was poor and offered Miss A £250 compensation. But it maintained its decision to settle the claim as it did was a reasonable one.

Miss A remained unhappy and brought her complaint to us.

One of our Investigators didn't think it should be upheld. They thought the decision to settle the claim was reasonable. And they were satisfied the £250 compensation offered for the poor communication was fair.

Miss A didn't agree and asked for an Ombudsman's decision.

I issued a provisional decision explaining why I was thinking of upholding the complaint. It said:

- *Miss A's policy with Aviva says it can "...take over and conduct in the name of the person claiming under the policy the defence or settlement of any claim..." This means ultimately the final say on how any claim made on Miss A's policy, whether made by her or a third party, lies with Aviva. Naturally this means at times, it might make a decision she doesn't agree with. But Aviva needs to rely on this term fairly, carrying out a sufficient investigation, basing its decision on all the available evidence.*
- *I don't find that Aviva did that here. It's said it couldn't pursue because the driver was unknown. It's quoted case law to support that position. That case law may well be correct in respect of issuing proceedings, but it misses out a vital step.*
- *Aviva confirmed the registration plate of TP2 matched the description of the vehicle and it confirmed the vehicle was insured. So Aviva could and should have contacted that insurer with the allegations that it's insured was at fault for the incident, if it thought that was the case. And looking at the claim note, it did think that TP2 could be at fault for the incident.*
- *I'm not at all persuaded by Aviva's stance that TP2's insurer wouldn't have to disclose the name of their insured and therefore wouldn't need to deal with the claim. It's common practice to be notified of an incident with just the vehicle details. The insurer of that vehicle then has a duty to investigate that claim, especially when provided with evidence, such as would have been the case here with the CCTV footage.*
- *Aviva has hinted that if it were the insurer of TP2, it wouldn't assist, which is somewhat concerning.*
- *It may well be that the driver of TP2 may have said they weren't driving at the time of the incident. The car could have been stolen, or less suspect, a driver with third party only cover could have been driving at the time. So it may well have got to the point that no proceeding could have been issued against TP2 or its insurers. But to simply not make contact on the assumption no assistance would have been given is poor and against industry practice.*
- *So I find that Aviva should have contacted TP2's insurers. But I have to consider whether if it did so, the outcome of the claim would have been different. But as stated above, Aviva in its claim notes seems to suggest, after viewing the footage, that TP2 could be held at fault for the incident. Ultimately, it's not for me to decide who or who wasn't at fault but seen as Aviva thinks TP2 could have been at fault, I'm satisfied it's prejudiced Miss A's position by not even attempting to contact TP2's insurer.*
- *Therefore, to put things right, Aviva should record this claim as bonus allowed. It should re-rate any policy premium Miss A has paid it following the renewal of this policy following the incident.*
- *If Miss A has since moved insurers, Aviva should write her a letter confirming the claim is now recorded as bonus allowed and therefore non-fault, so that insurer can re-rate her current policy accordingly.*
- *If Miss A moved insurers, and those policies have since lapsed, Aviva should refund her the difference in between what those policies would have cost with Aviva with the claim recorded as fault, and what those policies would have cost with Aviva with this claim recorded as non-fault.*

- *In terms of the communication, it's accepted this wasn't good enough, and like our Investigator, I'm satisfied £250 is sufficient compensation for the distress and inconvenience that caused.*
- *But Miss A has had the added distress and inconvenience of having a fault claim recorded against her policy. So overall, Aviva should pay £400 compensation.*

I recommended Aviva:

- *Record this claim as bonus allowed on CUE, effectively making it a non-fault claim. It should re-rate any premium Miss A has paid it following the renewal of this policy following the incident.*
- *If Miss A has since moved insurers, Aviva should write her a letter confirming the claim is now recorded as bonus allowed, so that insurer can re-rate her policy accordingly.*
- *If Miss A moved insurers, and those policies have since lapsed, Aviva should refund her the difference in between what those policies would have cost with Aviva with the claim recorded as fault, and what those policies would have cost with Aviva with this claim recorded as non-fault.*
- *Pay Miss A a total of £400 compensation.*

Aviva responded and said that Miss A hadn't moved insurers. It didn't directly accept or dispute the decision, but it let us know the fault claim had no affect on the price of Miss A's policy. And we were also made aware from Miss A that it had made contact to pay her the £400 I'd recommended.

Miss A also didn't directly accept or dispute my decision. She asked some further questions, but these relate to future actions, so they're not included in this decision.

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.

Because neither party has provided any more information to make me change my reasoning, it remains the same as set out in my provisional decision above.

However, I'm now aware Miss A stayed with Aviva so some of what I recommended to put things right is no longer relevant or appropriate. Therefore the part of my recommendation relating to what Aviva needed to do if Miss A had moved insurers no longer stands.

However, the remainder of that provisional decision now forms my final decision.

My final decision

For the reasons set out above, I uphold this complaint. To put things right, Aviva Insurance Limited needs to:

- Record this claim as bonus allowed on CUE, effectively making it a non-fault claim. It should re-rate any premium Miss A has paid it following the renewal of this policy following the incident.

- Pay Miss A a total of £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 15 April 2025.

Joe Thornley
Ombudsman