

The complaint

Mr B has complained about the way in which Aviva Insurance Limited ('Aviva') handled a motor insurance claim made by a third-party. For the avoidance of doubt, the term 'Aviva' includes its representatives and agents for the purposes of this decision letter, and the term 'Mr B' includes reference to submissions made on his behalf by his representative.

What happened

Mr B was insured by Aviva at the relevant time and his complaint related to Aviva's handling of a third-party claim about a motor incident allegedly involving Mr B in mid-June 2023. The third party claimed that Mr B had caused damage to her unattended vehicle when Mr B parked next to it at a car park. The claim didn't come to Mr B's attention until October 2023.

Mr B was extremely unhappy that Aviva had settled the claim on a fault basis, as this then appeared on Mr B's driving record and led to a significant increase in his insurance premiums. Having complained to Aviva, it maintained its stance and Mr B therefore complained to this service.

The relevant investigator didn't uphold Mr B's complaint. It was his view that it was reasonable for Aviva to have considered that the third-party claim would have been successful in any court proceedings, and to settle accordingly. He said that if claim costs couldn't be fully recovered, then it was reasonable for the insurer to record this as a fault claim. He didn't consider that Aviva had acted unfairly. He also considered that the level of claim costs was in line with necessary expectations. As to Aviva's standard of communication, the investigator considered it to be below expectations, however this didn't impact upon the liability decision, and he didn't think that Aviva needed take further action.

As Mr B remained unhappy about the outcome of his complaint, the case has been referred to me to make a final determination in my role as Ombudsman.

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.

The key issue for me to determine is whether Aviva acted in a fair and reasonable manner in the handling of the third-party's claim. In all the circumstances, I can't say that Aviva acted unfairly or unreasonably, and I'll explain why.

In reaching this decision, I've also considered the detailed submissions of the parties as summarised below. Turning firstly to Mr B's submissions, in summary, he stated that his complaint related to Aviva's handling of a '*fallacious claim*'. He considered that Aviva had failed in its duty of care to himself as customer, by simply accepting the third-party's version of events. He'd expected Aviva to take his side. In the absence of evidence and witnesses, he didn't feel that he should be held liable. He said that being parked next to a car which happened to have a scratch or other damage wasn't evidence of an incident or liability.

Mr B said that he didn't report the *'so-called accident because as far as I was concerned I had nothing to report, there being no damage whatsoever to my vehicle...'* He said that any vehicle which had been parked next to the third-party vehicle could have been responsible. Whilst he'd given his details at the hotel, he did so in the naïve belief that it was also taking the details of other guests who had parked their cars in the vicinity. He didn't recall hitting any vehicle in the car park, nor having admitted that he may have done so.

Mr B added that Aviva had never inspected his vehicle, and it had taken it four-and-a-half months to write to him about the alleged incident. He was sceptical about the evidence of a *'so-called later witness'* who he didn't consider to be independent. He acknowledged that he'd admitted fault for a different incident at the beginning of November 2023, but he said an inflated figure of more than double the cost was being claimed *'to remedy a minor scratch on the side of a car'* for this incident where he hadn't admitted responsibility. He felt that the costs claimed for repairing a moderate scratch were outrageous.

In summary, Mr B was extremely unhappy that his driving history now recorded a fault which he'd never accepted, and this resulted in a very large increase in premium and would impact upon his no claims bonus. He considered Aviva's practices to be discriminatory and contrary to the principles of natural justice. He now wanted Aviva to remove the disputed claim from his driving history. He'd found the whole experience to be upsetting and felt that Aviva was in effect calling him a liar, whereas he believed that he'd been the victim of *'an outrageous scam...'* Mr B said that the whole saga showed, in the starkest terms, the inherent unfairness of the way the insurance industry operates. He felt that the policyholder had no legal rights, with the insurer being the arbiter in the event of a dispute.

I now turn to Aviva's submissions in response to Mr B's complaint. It relied upon the terms and conditions of the relevant motor insurance policy which specified that the insurer would be entitled to take over the defence or settlement of any claim. It explained that its decisions were based on the information obtained from both parties. In this case, it acknowledged that it was one person's word against another and that there was no independent evidence to support either version of events. It assured Mr B that it wasn't the case that it disbelieved Mr B, but that it simply couldn't prove what had happened, and that it wasn't likely that it would be able to successfully defend the claim at court.

Aviva noted that Mr B had said that he'd noticed a scratch on the vehicle next to his, and that he ran his finger down the side of the vehicle. Mr B said that there was no damage to his own vehicle, and he had no recollection of hitting any other vehicle. Aviva noted the contents of the third party's statement to the effect that she'd heard people asking whether Mr B had just hit a vehicle and the third party saw Mr B inspect the damage and polish the third-party's car with his sleeve. Finally, Aviva provided a breakdown of the claim amount which included significant sums for both repairs and hire of an alternative vehicle, and it noted that the third-party said the damage had occurred over two panels.

Aviva's case-notes showed that, according to the third-party's version of events, on the evening of the incident, the third party had asked Mr B for his details and that Mr B duly gave his name and number after being confronted. She said that Mr B had said that he might have hit a car and left a minor scratch, but that he didn't think it was anything to worry about.

As for the level of claim and, in particular, the hire costs of an alternative vehicle, Aviva stated that it was bound to first attempt to settle within the terms and spirit of industry agreements, taking into consideration the third-party's car type. It said that it was its practice to fully investigate any claimed period of hire and to settle promptly to avoid cost escalation.

I now turn to the reasons for not upholding Mr B's complaints. I appreciate that any incident would have been distressing for both parties. I also appreciate that it would have been

upsetting for Mr B to be notified of a claim so long after the alleged incident. The reasons for the delay are not clear from the file. I also appreciate that it would then have come as a shock for Mr B to discover in May 2024 that his motor insurance premiums were now much higher than they had been in 2023/2024.

Firstly, I must consider the wording of the policy, as this forms the basis of the contract between the insurer and the customer. The policy states that the customer should report all incidents immediately. Mr B said that he didn't recall hitting the car and this is why he didn't immediately report the incident. The policy is also clear that Aviva can; *'take over and conduct in the name of the person claiming under the policy the defence or settlement of any claim or take proceedings for our own benefit to recover any payment we have made under this policy.... We shall have full discretion in the conduct of any proceedings or the settlement of any claim.'* Aviva was obliged therefore to consider the available evidence and to act in a responsible fashion in relation to its approach to liability.

I appreciate that Mr B considers that this was a case of one person's word against another, and that there was no independent evidence. I agree, that if there had been any witnesses to a collision, then these witnesses didn't come forward. Mr B said that he had no recollection of hitting the third-party car and he was adamant that no damage had been caused to his own car. In the light of the available information however, Aviva considered that there were no prospects of success in defending the claim. I'm satisfied that this was a reasonable position to take, and that it hadn't been necessary to inspect Mr B's car in the light of the following information.

Mr B accepted that he gave his name and address to the third-party following the incident. He also accepted that he had run his hand along a scratch line on the side of the third-party car after getting out of his car. In his initial response to the third-party's claims company, Mr B said that he didn't accept the description *'accident'* but acknowledged that parking was *'quite a tight fit'* and that the car park was busy that evening. Mr B's course of action would suggest that he was aware that there may well have been an impact, even if Mr B wasn't entirely sure of the extent of damage. Whether Mr B had run his finger along the side of the car, or polished it with his sleeve, both parties' accounts broadly match and acknowledge that Mr B had felt it necessary to check any damage. Mr B said that he didn't recall telling the third-party that he might have hit a car. I make no formal finding in this respect; however, such comment would be consistent with the above actions.

In the circumstances, I can't say that Aviva acted unreasonably in saying that if it disputed the claim, that it was likely that the matter would be taken to court, and that it was unlikely to succeed in defending the claim based on this information. Based on the fact that the parties' statements broadly match in term of Mr B checking damage and giving his details to the third-party, the lack of any other evidence, and Aviva acting within with its policy terms to settle the claim as they see fit, I can't find Aviva acted in an unreasonable manner in reaching its decision on liability.

As to the increase in premiums which Mr B faced, the new premium was ultimately levied by a different insurance company. Whilst the increase in premiums was likely to have been partly as a result of this 'fault' incident, there was also a subsequent incident in November 2023, where Mr B fully accepted that he'd been responsible. This too will have had an impact on future premiums. In view of my decision above as regards liability, I can't say that the level of premiums was as a result of any unfair or unreasonable action taken by Aviva. Nor have I seen any evidence to suggest that Aviva acted in a discriminatory manner, or any differently here to the way that it would have acted as regards any other customer.

With regard to the level of the settlement paid to the third-party, I note that Aviva has evidenced the level of costs incurred by the third party. The largest elements of the claim

included the damage and also the cost of hire of an alternative vehicle whilst repairs were being carried out. I've seen photographic evidence of the damage in this case, and it's described by independent engineers and assessors who reported on the damage to be a moderate scratch over two panels. I'm also satisfied that Aviva investigated and were able to verify the necessary hire costs. In the circumstances, I can't say that Aviva acted in an unfair or unreasonable manner in deciding to meet these claims in view of the 'fault'.

Finally, in relation to communication issues, I note that Mr B is unhappy that Aviva didn't respond to certain correspondence, including a letter from his representative. Aviva has explained that this was due to an administrative error. Whilst I agree with the investigator that this was below expected standards, I don't consider that this merits any compensatory award. I would however expect Aviva to review its administrative processes to ensure that similar errors of this nature are avoided in future.

My final decision

For the reasons given above, I don't uphold Mr B's complaint and I don't require Aviva Insurance Limited to do any more in response to his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 May 2025.

Claire Jones
Ombudsman