

## **The complaint**

Mrs J complains about Aviva Insurance Limited's handling of a claim under her motor insurance policy.

Aviva has been represented by its agents during the claim, and Mrs J has been represented on the claim and complaint by the named driver. All references to Aviva include its agents and all references to Mrs J include her representative.

## **What happened**

Mrs J had a motor insurance policy with Aviva, and in July 2023, she made a claim after the insured vehicle was involved in an accident (the accident) with a third-party vehicle.

Mrs J chased Aviva on the claim in February 2024 and in March 2024, Aviva took the vehicle in and arranged a hire car.

In around April 2024, Aviva offered cash in lieu of repairs (CIL). This was for £2,613.17 before the policy excess of £250. Mrs J declined the offer. She complained about the delays, and poor communication. She also obtained her own quotes for repairs because she said Aviva's offer wasn't sufficient.

Aviva issued two complaint responses.

In May 2024, it offered Mrs J £150 compensation in acknowledgement of delays and poor service. But it maintained its CIL offer. It said damage such as the paint spillage Mrs J claimed for was not covered, along with damage to tyres and the radar brake support system. Aviva paid the CIL settlement and extended Mrs J's hire car by another 10 days.

In July 2024, Aviva maintained the interior damage to the car, and the faults to the radar support and cruise control were not caused by the accident. It maintained its decision to cash settle the claim, but accepted it had missed some items from its repair estimate. It therefore increased its CIL settlement to £2,875.39 and paid Mrs J the difference of £262.22. In recognition of having missed these items, it offered Mrs J a further £100 compensation.

Mrs J referred her complaint to the Financial Ombudsman Service. She said she was unhappy with the delays and poor communication, and that she'd been advised the vehicle would be written off. She said the settlement Aviva paid was not enough and didn't cover issues such as the steering and suspension. She wanted Aviva to pay the full cost of the repair quotes she obtained, along with the cost of her reports, damaged brake lights, washing costs for the vehicle and private car rental costs.

The Investigator upheld the complaint. They said given the conflicting reports, Aviva should arrange a further assessment by an independent garage, into the areas of dispute, including the marks on the vehicle left by Aviva's engineer, the brake lights and Mrs J's hire car costs.

Mrs J wanted Aviva to cover the paint spillage damage internally to the vehicle, along with the costs to remove the engineer marks on the vehicle's exterior. She said the brake light

damage was Aviva's responsibility along with her car hire costs. She wanted the costs of her reports to be reimbursed.

Aviva didn't agree with the Investigator. It said Mrs J's reports didn't acknowledge the insured vehicle's illegal tyres at the point of the loss. It said it was willing to review matters such as the radar support, cruise control and steering if Mrs J could provide proof of having fit all new tyres on the vehicle along with a subsequent wheel alignment report and road test report.

I issued a provisional decision not upholding the complaint and in it I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."*

*Mrs J has provided a lot of information in support of her complaint. I assure Mrs J that I've taken everything she's provided into account. But in this decision I've focused on what I think are the key issues in this complaint. No discourtesy is intended by this, but it simply reflects the informal nature of the way that the Financial Ombudsman Service reviews complaints.*

*It's important to explain we aren't technical experts. Instead, we rely on the evidence provided by both parties. Where there is conflicting information or expert evidence, we consider which evidence is more persuasive, on balance, to reach an outcome which is fair and reasonable in all the circumstances. That's what I've done here.*

*Mrs J said she's also unhappy with her policy excess not being reimbursed, along with Aviva's decision to settle the claim based on split liability. These matters won't be covered under this decision and Mrs J will need to raise these matters directly with Aviva. If she has already, and she's unhappy with Aviva's response, she can ask our service to look into those matters separately.*

#### *Total loss decision*

*Mrs J said Aviva initially said it would settle the claim based on the insured vehicle being a total loss. Aviva accepts its initial engineer did suggest the vehicle would be a total loss, but it said its subsequent engineer made the decision to cash settle for the cost of insured repairs, as not all of the damage that would support a total loss decision was related to the accident. I think Aviva's decision not to proceed on the basis of a total loss was fair in the circumstances, and I've explained below why I agree not all of the damage was covered.*

*In addition, I've seen photos of the damage from the accident, and I consider these support the conclusion of Aviva's engineer that there was light impact to the right hand side of the car. So, in these circumstances, I consider it unlikely damage caused by a light impact would render a car similar to Mrs J's a total loss.*

#### *Cash in lieu decision*

*The terms of Mrs J's policy allow Aviva to pay a cash settlement equal to the loss or damage. Aviva said its decision to cash settle in the circumstances was based on Mrs J's vehicle having previously been declared a Category S total loss, and due to the insured vehicle's condition prior to the accident. And in these circumstances, I consider Aviva acted fairly in exercising its right to cash settle for the cost of insured repairs, instead of arranging repairs itself.*

*I've considered below whether Aviva offered a fair cash settlement in the circumstances.*

### *Interior paint damage*

*Mrs J claimed for the cost of repairs to the vehicle's interior. She said there was paint inside the vehicle when the accident occurred, and this caused the paint to spill, causing damage.*

*I've reviewed the photos of the vehicle provided by Aviva. I agree that these support Aviva's conclusion of light damage and impact to the vehicle's driver's side and of various paint marks in different places within the interior of the vehicle.*

*In addition, I've not seen evidence that the paint spillage was raised by Mrs J around the date of the accident in July 2023. And if she had, I'd have expected to see Mrs J sent Aviva evidence of the paint spillage damage at the time, for example photos. But I can't see that this happened, and Mrs J said she no longer has photos from the time of the accident.*

*In addition, Aviva's engineer said given the light nature of the damage on the right-hand side of the vehicle, the paint spill as described was unlikely. Aviva has also pointed out that paint in the circumstances is unlikely to just tip over and spill, as paint containers normally have to be opened with some force. I agree with Aviva in the circumstances and on balance, I think it's more likely than not that the paint damage claimed for was not caused by the accident.*

*I acknowledge Mrs J provided estimates and reports that suggest the spillage could've been caused by the accident, but I'm not sufficiently persuaded by them as I don't think they sufficiently explain why the spillage was likely caused despite the light damage. In addition, I can see that in the latest report, Mrs J advised the engineer to ignore the other paint damage and splatters within the car. I consider the other paint damage to be a relevant consideration in determining the general condition and usage of the car, and whether the paint spillage claimed for was likely caused by the one off accident. So I don't consider the conclusion of the recent report persuasive in the circumstances.*

### *Quarter panel*

*Mrs J also claimed for repair costs to the quarter panel of the vehicle.*

*Aviva's engineer reviewed the damage and didn't consider this to be accident related based on the nature and direction of the damage. I've reviewed their comments and I consider this to be persuasive in the circumstances.*

*Mrs J's report of January 2025 accepted there were likely prior marks and scuffs, But the engineer said the accident may have caused additional scuffs and scratches. But I consider Aviva's engineer's comments to be more persuasive in the circumstances as I think they provided a more detailed explanation to support their conclusion.*

### *Tyres and steering*

*Mrs J claimed for damage to the vehicle tyres and said the steering was affected by the accident.*

*I've reviewed the photos of the vehicle provided by Aviva, and I consider they demonstrate the tyres on the vehicle were worn past the legal limit. And based on the condition of the tyres, as demonstrated in the images, I consider it's more likely than not the vehicle's wheels had been out of alignment for some time, and likely prior to the accident, given the tyres appear to have worn unevenly.*

*Mrs J's initial report acknowledges the steering on the vehicle veers to the left, but I can't see that it acknowledges the evidence the tyres were likely worn below the legal limit at the*

*time of the loss. And I can't see that the reporting company was made aware of the previous front-end damage that led to the Category S total loss in January 2020. So I don't consider the conclusion of this report to be persuasive.*

*In Mrs J's recent report of January 2025, it's made clear the engineer wasn't given much information apart from Mrs J's description of the accident. So again, I'm not satisfied the engineer was able to consider the evidence the tyres were likely worn below the legal limit at the time of the loss, or the previous Category S total loss. So for the same reasons as above, I don't consider the conclusion under this report to be persuasive.*

*Overall, I'm not satisfied there's sufficient evidence to show the tyres on the vehicle were roadworthy at the time of the loss, and that they then suffered damage as a result of the accident that rendered them unroadworthy. And because I think worn tyres can significantly affect wheel balance, and keeping in mind the light nature of the damage, I'm not persuaded it's fair to direct Aviva to cover damage to the tyres or issues with the steering.*

*Aviva said it will reconsider matters further if Mrs J can provide evidence to show she has fit four new tyres, along with a wheel alignment report and a road test. I think this is fair in the circumstances, so I won't ask Aviva to do anything else.*

#### *Advanced driver assistance systems (ADAS)*

*Mrs J wants Aviva to cover the costs to address issues with the vehicle's radar support and cruise control.*

*The terms of Mrs J's policy say Aviva will cover ADAS defects where they are due to the insured incident (the accident).*

*Aviva's notes show it found evidence of the vehicle having been declared a Category S total loss in January 2020. This was following damage to the front of the vehicle and the categorisation suggests there was structural damage to the vehicle.*

*I've not seen evidence to show the works carried out following the previous total loss in January 2020. Given the damage in 2020 appears to have been more substantial, and more directly to the front of the vehicle (where the relevant sensors are likely to be located), and that worn tyres can affect ADAS performance, I consider on balance, that the ADAS issues were not caused by the accident, and they more likely than not existed prior to this.*

*Mrs J's reports suggest a minor knock, such as the accident of July 2023, can affect the relevant sensors, but as outlined above, I can't see that these conclusions were reached with knowledge of the previous Category S total loss, which would've involved a more substantial impact, and therefore more likely to have affected the relevant sensors. So I don't consider the conclusions reached in Mrs J's reports to be persuasive in the circumstances.*

*As above, Aviva has said it will reconsider matters further if Mrs J can provide evidence to show she has fit four new tyres along with a wheel alignment report and a road test. I think this is fair in the circumstances, so I won't ask Aviva to do anything else.*

#### *Brakes*

*Mrs J said there were issues with her brakes (rear brake lights) after Aviva returned her vehicle.*

*I've not seen evidence of any reports to explain how the accident, or Aviva's handling of the vehicle, would have caused any damage to the brake lights. And because Aviva didn't carry*

*out any repairs to the vehicle, I'm not persuaded that Aviva caused this damage, or that it's responsible for covering the cost of addressing this under the policy terms.*

#### *Marks left by engineer*

*Mrs J complained about marks left by Aviva's engineers on the vehicle's exterior. I've reviewed the photos and I'm satisfied that marks were left on the vehicle's exterior, likely to highlight damaged areas, and likely left by Aviva's agents.*

*But I've not seen sufficient evidence to show the marks were left in a way not consistent with normal industry practice, or otherwise not removeable with a general clean. And given that a lot of the markings are on areas where Aviva has covered the cost of repairs, including paint and paint work, I don't think it's fair to ask Aviva to cover the entire cost to remove and clean the markings.*

*In the circumstances, I think it's fair that Mrs J carries out the repair works using Aviva's settlement and then raise any remaining areas of marking with Aviva directly.*

#### *Loss of use and roadworthiness*

*Mrs J said she was left with a vehicle that was not safe to drive.*

*As outlined above, I consider the images of the damage support Aviva's conclusion that the accident resulted in light damage to the driver's side of the vehicle. And given that I don't consider Aviva is responsible for covering the cost of other issues outlined above, I'm not satisfied Aviva's actions left Mrs J with a car that was not roadworthy. I'm also conscious that the evidence shows Mrs J's vehicle was likely not roadworthy at the date of the accident, given the condition of the tyres.*

*In addition, I can see that the vehicle passed its MOT in June 2024 and was therefore deemed roadworthy according to the applicable legal standards. Because the prior failure a few days before was limited to addressing the rear lamps (which I've said Aviva was not responsible for), I'm not persuaded Aviva did anything wrong that left Mrs J with a vehicle that was not roadworthy following the accident.*

*Aviva provided Mrs J with a hire car up to around July 2024, and this includes a period following Mrs J's vehicle passing its MOT and being deemed safe to drive. So I don't consider Mrs J was left without a roadworthy vehicle during the hire car period or following this. It follows that I don't consider Aviva responsible for any hire car costs Mrs J incurred during or following this period.*

#### *Cash in lieu settlement*

*I've explained above why I don't consider Aviva is responsible for covering the costs of the additional areas and issues Mrs J claimed for.*

*And because Mrs J's quotes include a substantial amount of these works, such as internal works, upholstery works and works to the ADAS, I'm not satisfied there's sufficient evidence to persuade me Aviva's final CIL payment was insufficient. I also don't consider that Mrs J's quotes of more than £7,000 are consistent with the light damage evidenced in the photos.*

*And because I don't consider Mrs J's quotes and reports to be sufficiently persuasive in demonstrating Aviva was wrong, I don't consider it fair to direct Aviva to reimburse the cost of these reports in the circumstances.*

### *Delays and poor service*

*It took from July 2023 to April 2024 for Aviva to make its CIL offer to Mrs J, and I don't consider this to be reasonable. Aviva accepts these delays were due to miscommunication with its agents and human error. It also accepts it communicated poorly with Mrs J and there were shortcomings in its initial CIL payment.*

*I think it would have been reasonable in the circumstances, for Mrs J to chase up on the claim earlier than she did in around February 2024. She has after all claimed there was substantial damage to the vehicle that she felt rendered it unsafe to drive. That being said, I agree Aviva's actions and delays would've caused distress and inconvenience, requiring a reasonable amount of effort to sort out.*

*Aviva offered Mrs J £150 in May 2024, and a further £100 in July 2024. This takes the total compensation it offered to £250. This is in line with what I'd have recommended in the circumstances, so I won't direct it to pay more than this. If Aviva hasn't yet paid this to Mrs J, and she'd like Aviva to do so, she can let Aviva know directly."*

Aviva responded to confirm it had now processed the full £250 compensation payment.

Mrs J disagreed with the provisional decision. She felt her evidence and reports were not taken into consideration. She outlined her objections to each of the points within the provisional decision. She wanted a further independent engineer assessment to be arranged by Aviva.

### **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.

Mrs J says her reports and evidence weren't taken into consideration. But as outlined in my provisional decision, I've taken everything she's provided into account, and I've considered what evidence is more persuasive, on balance, in order to reach an outcome which is fair and reasonable in the circumstances.

### *Category S*

Mrs J says the provisional decision stated the car wasn't roadworthy following the category S total loss, but I'd not said this. What I said was I'd not seen evidence to show the works carried out following the previous total loss, in concluding on balance, that the ADAS/Radar/Cruise control issues were not caused by the accident in 2023. So I don't agree with Mrs J's suggestion of contradictions on this point.

I've covered other aspects of this point later in this decision.

### *Total loss decision*

Mrs J feels Zurich's decision to reverse its total loss decision without explanation was unfair.

I explained in my provisional decision that because I didn't agree all the damage claimed for was caused by the accident in 2023, I thought Aviva's decision not to proceed on the basis of a total loss was fair in the circumstances. I've not seen any further evidence to persuade me to change my decision.

### *Paint spillage*

Mrs J said I'd based my decision on assumptions and dismissed their reports.

As outlined above, I'd considered their reports, along with all the evidence they and Aviva provided, but I'd reached a decision based on what I considered more persuasive.

Mrs J said she didn't take photos at the time of the incident due to shock and focusing on safety. But I explained in my provisional decision I'd not seen evidence Mrs J raised the paint spillage around the date of the accident in July 2023. I also explained why I didn't consider Mrs J's estimates and reports persuasive in the circumstances. And I've not seen any further evidence to persuade me to change my decision.

#### *Quarter panel damage*

Mrs J said any benefit of the doubt should be in her favour, but I don't agree. My role in these circumstances, is to decide what I consider more likely, on balance, having reviewed the available evidence.

I still consider Aviva's engineer's comments to be more persuasive, for the reasons outlined in the provisional decision.

#### *Tyres and steering*

Mrs J said there's no evidence of the tyre condition at the time of the accident and the steering issues arose after this. She said my conclusions were speculative.

As explained above, I did consider Mrs J's comments and evidence, but my decision is based on what I consider more likely on balance, and what I consider more persuasive. And having reviewed the photos provided by Aviva, I consider it more likely than not that the tyres were substantially worn at the time of the accident.

I explained in my provisional decision why I didn't find Mrs J's reports persuasive, and why I wouldn't direct Aviva to cover damage to the tyres or issues with the steering.

I still consider Aviva's offer to reconsider matters further, as outlined in the provisional decision, fair. So, I won't direct it to do anything else.

#### *ADAS/Radar/Cruise control*

Mrs J said I'd relied heavily on assumption but again, my decision is based on what I consider more likely on balance, and what I consider more persuasive.

Mrs J said despite the previous category S damage, the car still underwent MOT inspections.

But despite the issues with the above, Mrs J's car did pass its MOT in June 2024, without the above issues noted under 'major defects' or 'advisories'. Mrs J provided reports and estimates following this, quoting for repairs to things like the ADAS. So, I consider it likely previous MOTs would also not have noted these issues even if they were present. Mrs J also acknowledged in her response to my provisional decision, that an MOT doesn't evaluate all faults.

Overall, I still consider Aviva's offer to reconsider matters further, as outlined in the provisional decision, fair. So, I won't direct it to do anything else.

#### *Rear brake lights*

Mrs J said the malfunction only presented itself after Aviva returned the car. She said it had full control of the car prior to this.

But because I've not seen further evidence to explain how Aviva's handling of the car would likely have caused this damage, I'm still not persuaded Aviva is responsible for this. So I won't direct it to do anything else.

#### *Engineer marks*

Mrs J said the marks are not easily removeable and there is still cosmetic damage.

But because I've not seen further evidence to show the marks on areas not already covered are not removeable with a general clean, I still don't think it's fair to ask Aviva to cover the entire cost to remove and clean the markings.

In line with my provisional decision, I still think it's fair Mrs J carries out the repair works using Aviva's settlement and then raise any remaining areas of marking with Aviva directly.

#### *Loss of use and roadworthiness*

Mrs J said the car initially failed its MOT before passing in June 2024. But the evidence shows it failed because of the rear brake lights, and I've explained above why I'm not persuaded this was something Aviva was responsible for.

Mrs J said Aviva was required to return her to the position she was in prior to the accident, but I explained in my provisional decision, and above, why I'm not persuaded all the damage she claimed for, was caused by the accident.

Overall, I still don't consider Mrs J was left without a roadworthy vehicle during the period Aviva provided a hire car, or following this. And I've not seen any further evidence to persuade me to change the conclusion I reached in my provisional decision.

#### *Valuation and CIL settlement*

Mrs J said the cost of her repairs included repairs to the safety systems, repairs to rectify paint damage and other systems affected by the crash.

But I explained in my provisional decision, and above, why I don't consider it fair to hold Aviva responsible for these additional costs. And I've not seen any further evidence to persuade me that Mrs J's quotes of more than £7,000 are consistent with the light damage evidenced in the photos.

#### *Compensation for non-financial loss*

Mrs J said the £250 Aviva has paid is not sufficient to acknowledge the delays, poor communication and multiple failures. She's said this doesn't reflect the real impact on her and there was no explanation of how it was calculated.

I explained in my provisional decision, and above, why I don't consider Aviva responsible for all the points Mrs J raised, and why I don't consider it acted unfairly on those points. I've also explained why I don't agree Aviva left Mrs J without a roadworthy car.

I do agree Aviva caused avoidable and unreasonable delays, and communicated poorly with Mrs J. And I agree this would've caused her distress and inconvenience. But I still think the £250 Aviva offered, and has now paid, is fair and reasonable in the circumstances. And our



service considers what is fair overall, instead of requiring information about, or reviewing, how this was calculated. So I won't direct Aviva to do anything else.

### *Overall*

For the reasons outlined above, having reviewed the further information Mrs J provided, I've come to the same conclusions I outlined in my provisional decision.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 11 June 2025.

Monjur Alam  
**Ombudsman**