

## **The complaint**

A has complained about the way Aviva Insurance Limited handled a third-party (TP) claim against it under its motor fleet insurance policy and the impact this has had on it.

A is represented by Mr K.

## **What happened**

Aviva received a claim from a representative of a TP in July 2023 for damage caused to their vehicle by an employee of A, who was driving one of its vehicles at the time. It contacted A about this via its broker and asked it to provide details of the incident. It transpired that the driver wasn't insured under A's policy, because he was under 30 years of age. Nonetheless, Aviva considered the TP's claim for damage to their vehicle. And, having reviewed the engineer's report supplied by the TP's representative it decided to settle it on the basis the TP's vehicle was a write-off. And it made a payment of £3,390 in settlement of this aspect of the TP's claim.

It seems Aviva also received an injury claim for the TP at some point later in 2023 and passed this to its personal injury team to deal with. And it asked the TP's solicitor to provide a medical report in support of this. It seems this was eventually received at some point after 3 February 2025. I say this because the TP was only actually examined by a doctor with regards to their injuries at this point.

A thought the TP's claim was fraudulent on the basis the impact could not have resulted in the level of damage to their vehicle they had suggested or led to the TP suffering any injuries. And Mr K thinks Aviva has breached its obligations in settling the TP's claim and prejudiced A's position. He thinks the prejudice includes the fact that A had to pay a lot more for a new policy when its policy with Aviva ended in December 2023 due to the claim against it. And he's said that the problems it had getting insurance meant it couldn't add a further vehicle to its policy. And that this in turn led to a loss of revenue and one of its director's resigning. He thinks Aviva should be paying A a large amount in damages because of this.

Mr K submitted a complaint to Aviva about its handling of the claim and the impact it had had on the premium A was having to pay for insurance via its insurance broker. And Aviva issued its final response to this complaint on 11 January 2024. In this it explained that the claim for the TP's vehicle damage had been settled and that a reserve was placed on its system for a potential claim for credit hire. It said the credit hire reserve had affected the renewal premium it had quoted. It then further explained that, as no credit hire claim had been received, it had now removed the reserve. It then said that it had contacted A's broker and suggested it liaise with its underwriting team to discuss the matter further in light of this. Mr K asked us to consider A's complaint in February 2024. However, it took our investigator some time to do this, as she struggled to get the information she needed from Aviva to do so.

The investigator eventually issued her view on A's complaint in March 2025. In this she said that she felt Aviva should have rejected the TP's claim in its entirety on the basis their personal injury claim was fraudulent. And that it could then have recorded the claim as

rejected with no payment made, which would have effectively made it a non-fault claim. She said that this meant that by the time A's policy came up for renewal it would have only needed to declare the rejected claim and it would likely have obtained a policy at a much lower premium. And that, in view of this, Aviva needed to refund the extra premium A had paid because it had to declare an open fault claim. She also said the inappropriate way Aviva had handled the TP's claim had caused A inconvenience and that this warranted a compensation payment to A of £500.

Mr K didn't agree with the investigator's view. He said the whole TP claim was bogus and should have been thrown out. And he believes that Aviva's handling of the claim means that A is entitled to £108,600 in damages.

Aviva responded to the investigator's view by providing the medical report it had received in support of the TP's personal injury claim at some point after 3 February 2025.

I issued a provisional decision on 8 May 2025 in which I set out what I'd provisionally decided and why as follows:

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

*Mr K has raised a number of concerns and made numerous points with reference to what he considers to be the legal position with regards to the issues involved in A's complaint. And I'd like to reassure him that I've considered all of his points, but I've only addressed those I consider relevant to the outcome of the complaint. This isn't meant as a discourtesy, it merely reflects the informal nature of this service.*

*I should say at the outset that Aviva's lack of co-operation with us when investigating this complaint and the number of unnecessary and inappropriate objections it made, along with its failure to provide the relevant evidence our investigator had asked for, has made the whole process unnecessarily protracted.*

*I've considered Aviva's approach to the claim it received from the TP's representative. And, from what I've seen, its approach from the point it realised the driver of A's vehicle wasn't insured under A's policy was inappropriate. I say this because at this point it should have asked A to sign a consent and indemnity form giving Aviva permission to handle the claim on its behalf as Road Traffic Act (RTA) insurer. This is because under the terms of the RTA Aviva is only liable for judgements obtained against A in respect of vehicles it was insuring at the time of an accident if they weren't covered by the terms of A's policy. And I can't see that the terms of the policy gave Aviva any right to take over and handle a third-party claim resulting from damage or injury caused by an uninsured driver without it having A's permission to do so. It had the right to take over and handle claims under the policy, but the claim against A is not covered by the policy it had. And it doesn't look like Aviva even asked A to sign a consent and indemnity form.*

*And, instead of obtaining A's permission to handle it, Aviva proceeded to settle the TP's claim for damage to their vehicle. It then continued to deal with the TP's injury claim and still didn't obtain a consent and indemnity form from A, despite it still being clear it was only the RTA insurer.*

*I suspect if Aviva had asked A to sign a consent and indemnity form it would have refused and indicated that it wanted to defend the TP claim itself on the basis both aspects of it were fraudulent. I say this because everything Mr K has said suggests to me that he and A think the claim is fraudulent and that it could or can be successfully defended.*

*However, the reality is that Aviva has now got so far down the line in dealing with the TP's claim that I do not think it is practical or appropriate for me to make it withdraw from the process and hand over control of the TP's claim to A. This could result in considerable costs if the matter comes into court and result in Aviva having to make a much larger payment than would be the case if it handles the claim. And this would in turn impact A, as Aviva will have a right of recovery from it due to the driver of its vehicle being uninsured.*

*I do of course understand Mr K's concerns about the part of the claim Aviva has already settled in respect of the TP's vehicle. But I don't think its decision to accept that it was a write-off as a result of damage caused by one of A's vehicles was wrong in itself. I say this because the engineer's report strongly supports damage caused by A's vehicle reversing into it. And, while Mr K has argued the impact was minimal, there is only A's testimony to support this. And I presume this came from a conversation with the uninsured driver. But I can't see the driver has actually provided a signed statement. And, even if he had done this or would be willing to do so, it would be his word against the TP's. And, in view of the fact he has admitted he did reverse into the TP's vehicle, I consider Aviva's view that he would be held liable for all the damage claimed for to be a reasonable one. I appreciate there is case law which shows judges have on occasions criticised the adequacy of an engineer's inspection. But, I think that having been presented with what looks like a bone fide and comprehensive engineer's report, Aviva's decision on liability and the extent of the damage was reasonable.*

*In view of the timing of the TP's claim for damage to their vehicle and the notification of the personal injury claim, I do not consider there was any way Aviva or A (if it had opted to do so) could have successfully defended it by the time A's policy came up for renewal in December 2023. This means that, whatever had happened, A would have needed to declare it had an outstanding claim against it when it took out a new policy at this time. Therefore, I do not consider the way Aviva dealt with the claim had an adverse effect on A in terms of the premium it had to pay and the difficulty it had getting insurance at a reasonable price. As I see it, this was the result of A allowing an uninsured driver to drive one of its vehicles and this driver then negligently reversing into the TP's vehicle. And, whatever happened, this was always going to have a significant impact on the premium A was going to have to pay for its next policy. So any impact this had on its business was, not in my opinion, due to anything Aviva did wrong.*

*I do think Aviva's suggestion in its final response that the fact it had removed the reserve for credit hire could have some sort of impact with its underwriters if A's brokers contacted them to discuss the matter was inappropriate. I say this because by the time Aviva issued its final response A's policy had lapsed and it had taken out a new policy with another insurer. Also, Aviva has since said that its underwriters had decided not to offer renewal to A because it had allowed an uninsured driver to drive one of its vehicles. So I can't see why it suggested A's broker liaised with its underwriter in its final response, as this would have been a pointless exercise.*

*In summary, it should be clear from what I've said that I consider Aviva's handling of the TP's claim once it became aware it was RTA insurer was inappropriate. But I do not consider this has prejudiced A's position in any way or caused it any additional inconvenience. I say this because if Aviva had given A the option to sign a consent and indemnity form and A had refused to sign it and chosen to defend the TP's claim itself, it would have then most likely have become involved in a legal dispute with the TP's representatives, which would have become protracted and could well have resulted in a court case. And I think it is most likely A would have ended up having to pay what Aviva paid for the damage to the TP's vehicle and whatever Aviva ends up paying for the TP's injury claim. As it is Aviva has dealt with the TP's claims thus far and saved A or Mr K from having to do so. And I can't see that Aviva's inappropriate comments about the impact of removing the reserve for credit hire caused A*

*any inconvenience either, as it had already taken out another policy by this point.*

*I appreciate that Aviva's inappropriate approach to its role as RTA insurer will have caused some distress to the director or directors of A and to Mr K. But our rules do not enable me to award them compensation for this.*

### ***My provisional decision***

*In view of the fact I do not consider any of Aviva Insurance Limited's inappropriate actions have prejudiced A's position in any way financially or caused it any additional inconvenience, I have provisionally decided its complaint should not be upheld.*

I gave both parties until 22 May 2025 to provide further comments and evidence in response to my provisional decision.

Aviva has responded to say that it accepts my provisional decision. And it has not provided any further comments or evidence.

Mr K has responded on behalf of A to say that it doesn't agree with my provisional decision. He has made numerous further comments. And, while I do not think I need to detail them all here, I have listed what I consider to be his key points below.

- The employee at A in administration who checked the details of the driver who was driving the vehicle involved in the accident giving rise to the claim against A may have missed the fact he was below the age of drivers allowed to drive A's vehicles under the terms of its policy because of a Disability.
- He's cited previous decisions issued by ombudsman at the Financial Ombudsman Service, including one by me, which he thinks are relevant and which he has referred to as 'previous case law'.
- He thinks it was unfair for Aviva to settle the TP claim against A without its consent. And it should have been left to make decisions regarding the defence of the claim as it was not covered by A's policy.
- Aviva incorrectly advised A's broker nothing had been paid out on the claim against A.
- Aviva failed to comply with its obligations under Article 75 of the Motor Insurers Bureau (MIB) Articles of Association when dealing with the TP claim against A.
- The whole claim against A should have been dismissed as fraudulent for the reasons he had set out previously and which he reiterated in his response to my provisional decision. Basically, he still thinks Aviva overlooked serious fraud by the third party.
- He thinks I have overlooked key evidence in deciding that it wouldn't be possible to prove the TP claim is fraudulent.
- Aviva could have dismissed the TP claim as fraudulent in August 2023. And from what I can gather he thinks this means the claim could have been closed as rejected by the time A's policy came up for renewal in December 2023. And it does not think it follows that if Aviva had refused to settle the TP claim it would still have impacted A when its policy with Aviva ended and it took out a new policy in December 2023.
- Aviva is in breach of contract in the way it has dealt with the TP claim. And he has set out why he thinks A is entitled to a damages award because of this.

### **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 am not going to comment on all the points Mr K has made in response to my provisional decision because of the informal nature of our service. And because I am satisfied I considered most of them before issuing my provisional decision and addressed the ones I thought to be important in it.

However, I have addressed the further points that Mr K has made that I consider relevant to the outcome of A's complaint.

The reason A allowed a driver that was not actually insured under its policy due to his age to drive one of its vehicles does not alter the fact that it had a responsibility to make sure this didn't happen. Therefore, I think A must bear some responsibility for what has happened since the TP claim was submitted to Aviva.

Previous decisions issued by ombudsman at this service do not set precedents and cannot be considered as case law in the same way that judgements issued by judges in the courts are. We are an informal dispute resolution service, and each case is decided on its own merits. And I am satisfied that I have fulfilled my role to decide this complaint on its merits based on all the evidence and arguments provided.

I appreciate that in one of the decisions Mr K has cited I decided that it was not appropriate for the insurer to pursue what it had paid out on a TP claim as RTA insurer from the policyholder. But – as far as I am aware – Aviva has not pursued A for recovery of its outlay. However, if it does so and A is unhappy about this it will need to make a new complaint about it.

I agree it was inappropriate, and so unfair, for Aviva to settle the TP claim without A's consent. But I do not consider that Aviva has financially prejudiced A's position in doing so as things currently stand. This is because, as I explained in my provisional decision, I am satisfied the TP's claim for damage to their vehicle was reasonable and would have been supported if it had gone to court based on the evidence available.

Even if Aviva did provide incorrect information to A's broker about the TP claim, I do not consider this prejudiced A's position in any way. I say this because even if A had known that Aviva had made a payment there was nothing it could really do about this once it had happened.

I appreciate Mr K considers the whole claim is fraudulent. But I can assure him I have looked at the photographs provided of the TP's vehicle and the description provided by A that it was a low velocity impact. But the reality is that if it came to court the judge would consider the fact A's driver admitted he reversed into the TP's vehicle, the nature of the impact and the evidence of damage. Plus, I am aware that there can be hidden damage following impact with a bumper and that overall repairs can cost a lot more than a lay person thinks.

So, I am satisfied I haven't overlooked key evidence and have based my view on all the evidence available, including the photographs of the TP's vehicle and Mr K's comments about the extent of the damage to it and the repair cost.

I do not agree that Aviva has breached its obligations under Article 75 of the MIB Articles. It is the RTA insurer as a result of A's driver being uninsured and would be obliged to settle any judgement against A for this reason. What it actually failed to do was recognise it was the RTA insurer and that it needed to obtain A's consent to deal with the TP claim against it. But I do not consider this itself has caused A a financial loss or caused it unnecessary inconvenience to the extent that compensation is warranted.

I do not agree Aviva could have dismissed the TP claim in August 2023 as fraudulent. It

could have passed it on to A for it to deal with, but as I see it whether A refused it or not, the claim against it would still have in effect been with them and open when it took out a new policy in December 2023. And it would have needed to let its new insurer know about the situation. And its premium would have been impacted. So, I do not accept Aviva's settlement of part of the TP claim and any reserve it placed on the remainder of it makes it most likely that A paid a higher premium for its new policy in December 2023 than it would have done if Aviva had passed the claim on to A to handle itself.

I do not consider Aviva is in breach of contract in the way it has dealt with the TP's claim against A. It is not actually dealing with the claim under the contract it had with A. It is dealing with it because it is the RTA insurer as a result of A's driver being uninsured.

In summary, it remains my view that, while Aviva should not have taken on and handled the TP claim against A without its consent, the fact it did so has not prejudiced A financially or caused it inconvenience to the extent that warrants compensation. And I do not consider it is appropriate for me to require Aviva to pass the handling of the remainder of the claim over to A.

### **My final decision**

For the reasons set out above and in my provisional decision, I have decided not to uphold A's complaint about Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 19 June 2025.

Robert Short  
**Ombudsman**