DRN-5628352

The complaint

Mrs A complains that Aviva Insurance Limited mishandled her claim on a motor insurance policy.

What happened

The subject matter of the insurance, the claim and the complaint is an electric car, made by a European car-maker. Mrs A acquired the car from new in October 2018. She says the battery belonged to a finance company associated with the car-maker and was leased to her.

For the year from 1 October 2023, Mrs A had the car insured on a comprehensive policy with Aviva. She said the car was valued at £8,250.00. Any claim for damage (except a glass claim) was subject to an excess of £250.00.

Also for a similar period, Mrs A had an extended warranty on the car.

On 2 October 2023, the car passed an MOT test with a recorded mileage of about 74,000. The MOT certificate was due to expire on 21 October 2024.

On about 6 August 2024, a repairer changed the front brake discs on the car.

In early September 2024, a tyre company changed the rear tyres and provided a “vehicle health check”.

On 13 September 2024, Mrs A reported that the car’s front nearside wheel had come off at a roundabout.

Aviva said that the car was a total loss.

On 30 September 2024, the policy expired. Around the same time, the extended warranty expired.

By about 4 October 2024, Aviva or its salvage agent had said that the pre-incident value of the car had been about £5,000.00.

The finance company said that Mrs A owed about £2,800.00 for the battery.

By a letter dated 16 October 2024, Aviva said the policy didn’t cover the claim because the damage was wear and tear.

Mrs A complained to Aviva.

On about 6 November 2024, Aviva sent Mrs A an engineer’s report.

By a final response dated 7 November 2024, Aviva turned down the complaint.

Mrs A brought her complaint to us on about 8 November 2024.

our investigator's opinion

Our investigator recommended in early March 2025 that the complaint should be upheld in part. The investigator thought that Aviva applied the policy terms in line with industry standards. He didn't ask Aviva to reconsider its stance on the claim.

The investigator thought that Mrs A called Aviva on numerous occasions and didn't get call-backs as requested. The investigator recommended that Aviva should pay Mrs A £150.00 compensation for the distress and inconvenience caused.

Aviva accepted the investigator's recommendation.

Mrs A disagreed with the investigator's opinion. She asked for an ombudsman to review the complaint.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs A and to Aviva on 30 May 2025. I summarise my findings:

> Aviva treated Mrs A unfairly by the way it dealt with her claim.
>
> I'd also noted shortcomings in the way it communicated with her, in particular by not calling her when it had said it would.

Subject to any further information either from Mrs A or from Aviva, my provisional decision was to uphold this complaint. I intended to direct Aviva Insurance Limited to:

1. reconsider Mrs A's claim in line with all the terms of the policy; and

2. insofar as that results in a payment to Mrs A, pay simple interest at a yearly rate of 8% on the amount of such payment, from 13 October 2024 to the date of such payment. If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs A how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and

3. pay Mrs A £500.00 for distress and inconvenience.

Mrs A agreed with the provisional decision. She added the following:

> "*I wanted to make sure you are aware that the vehicle was scrapped because back in April I received emails from Aviva pressuring me to make the decision to scrap it because they were not covering the claim. I was terrified of the storage costs and the monthly battery payments so had no choice but to let the vehicle go since it was a write-off anyway*."

Aviva disagreed with the provisional decision in part. It says the following:

> "*I am happy to pay the customer £500 for delays and poor communication, as you are correct I did not properly address those issues in my complaint.*

I have reached out to the engineer who reviewed the customers vehicle, also spoken to the file handler, they are still not willing to reconsider the customers claim. The engineer is an expert in his field, and he has reviewed the area of road with the potholes and he says its not possible for the state of the road to cause such an extensive damage to the vehicle, he also was able to review the vehicle and is certain this is wear and tear."

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.

Aviva's policy terms included the following:

> "*Section 1. Loss of or damage to your car – exclusions*
> *We won't pay for:*
> *Loss of use, wear and tear, loss or damage which happens gradually, loss of value following repair, depreciation, failure of electronics, mechanical breakdown or breakage, or tyre damage caused by braking, punctures, cuts or bursts*."

That excluded a number of things, including wear and tear and mechanical breakage.

The incident and the need to make a claim were, in my view, bound to cause Mrs A distress and inconvenience.

Aviva's engineers noted a recorded mileage of about 91,000. The reports included the following:

> "*NSF WHEEL APPEARS TO HAVE BECOME DISCONNECTED FROM THE HUB DUE TO ALL FOUR WHEEL SECURRING BOLTS WORKING LOOSE OVER TIME, FALLING OUT ALLOWING THE WHEEL TO BREAK FREE CAUSING CAR TO MAKE CONTACT WITH THE GROUND AT SPEED.*
> *NSF WHEEL IS NOW MISSING ALONG WITH ALL SECURRING BOLTS.*
> *RESULTANT DAMAGE SUSTAINED DEEMS THE CAR TOTAL LOSS*."

I note that this includes the phrase "*BOLTS WORKING LOOSE OVER TIME*".

Nevertheless, Mrs A has provided good evidence that the tyre company checked the wheel nuts and bolts less than 250 miles before the accident. So I'm not at all persuaded that the failure of the bolts or nuts was wear and tear.

Further, I consider that the policy term excluding wear and tear would only exclude replacement bolts and nuts. I don't find it fair and reasonable for Aviva to have relied on "wear and tear" to exclude liability for the damage that resulted when the wheel came off and the hub hit the ground. From the engineers' photographs, that damage included damage to the wheel arch.

It was shortly after Aviva's letter dated 16 October 2024 that Mrs A provided photographs of potholes. I haven't seen enough evidence that Aviva asked for her to take such photos.

Mrs A considers that the engineers' photographs also show a snapped suspension component. Indeed she has said that this was the cause of the accident rather than an effect. I'm not persuaded that that the engineering evidence supports that conclusion.

In any event, Aviva declined the claim on the grounds of wear and tear to the wheel bolts, rather than wear and tear (or mechanical breakage) of a suspension component.

On about 18 October 2024, Aviva made a file note as follows:

> "*ADVICE & CLOSING COMMENTS*
> *I have responded to the engineer confirming this claim has already been sent to MIT who rejected it stating 'vehicle has had discs replaced and engineer confirms it was mechanical issue, however incident was genuine so the damage caused to front of the car we will have to deal with I have had similar cases and it was always confirmed …that damage caused we will have to deal however the wear tear mechanical element we wont'*."

That points towards a mechanical breakage rather than wear and tear. And it suggests that Aviva should deal with the resultant damage.

The final response dated 7 November 2024 said the following:

> "*My reason for declining your complaint is that our engineer reviewed the vehicle and decided that we will not cover some of the damage as it is pre-accident*"

That said that Aviva would not cover some of the damage as it was pre-accident. However, I haven't seen any evidence of any damage to the car before the incident on the roundabout. Further, the final response implied that Aviva would cover some of the damage. So it's not clear why Aviva turned down the complaint rather than accepting it.

Mrs A's response to the provisional decision

When I wrote the provisional decision, I was aware that Mrs A was concerned that Aviva had told her that – as it wasn't meeting the claim – she would need to contact the salvage company about storage charges and disposal of the damaged car. I wasn't aware that she had agreed to the disposal of the car.

Following Mrs A's response to the provisional decision, I asked the investigator to ask Mrs A for information and documents about storage charges, salvage value and the battery and its lease.

In answer to our questions, Mrs A added the following:

> "*The salvage yard said they claim the cost from the insurance company and would not provide me with any details of this. You can imagine how terrifying that is when I was I imagining Aviva will then come.an claim it all back from me. This contributed my decision to let them scrap the car. They paid me £1250 scrap value for it, including the battery. I enclose a screenshot of the email confirming this.*
> *I cancelled the battery lease after that by making the buy out payment (£2503.20) on 23rd April, so the last monthly lease payment I made was on the 1st of April 2025. That means seven payments of £69 (October - April) were made while this complaint was in progress.*
> *I forwarded all ownership documents to the scrap yard once they took ownership*"

Such information and documents may be relevant to the claim. However, I don't consider that they change the outcome of my provisional decision, directing Aviva to reconsider the claim.

Aviva's response to the provisional decision

I'm pleased to note that Aviva accepts that it should pay Mrs A £500.00 for distress and inconvenience.

Aviva has quoted its engineer as saying that it's not possible for the state of the road to have caused such extensive damage to the vehicle and they are certain this is wear and tear.

However, I don't consider that Aviva has added anything to its evidence.

In particular, Aviva hasn't provided any more evidence that failure of the bolts or nuts was wear and tear. Also, Aviva hasn't provided any more evidence that it would be fair and reasonable for it to have relied on "wear and tear" to exclude liability for the damage that resulted when the wheel came off and the hub hit the ground.

So I see no reason to change my view. For the avoidance of doubt, I don't accept that Aviva's response amounts to a reconsideration of the claim.

Putting things right

Overall, I consider that Aviva treated Mrs A unfairly by the way it dealt with her claim. I've also noted shortcomings in the way it communicated with her, in particular by not calling her when it had said it would.

I've thought about what it's fair and reasonable to direct Aviva to do to try to put things right at this late stage.

I keep in mind that Aviva turned down the claim on the grounds of wear and tear and turned down the complaint on the grounds of pre-accident damage. Mrs A has suggested that a mechanical breakage caused the accident – and Aviva hasn't yet considered the claim in the light of the policy exclusion of mechanical breakage.

I don't consider that there's enough evidence to make it fair for me to direct Aviva to pay the whole (or any defined part) of Mrs A's claim for the pre-accident value of the car (less the excess). Rather, I conclude that it's fair and reasonable to direct Aviva to reconsider the claim in line with all the terms of the policy.

Insofar as that results in a payment to Mrs A, I consider that it would be fair to direct Aviva to add interest at our usual rate from a date one month after the claim (that is 13 October 2024).

From what she has said, Mrs A was able to get a replacement car.

Nevertheless, I accept that – in addition to the trauma of the accident – Aviva has caused Mrs A unnecessary confusion and anxiety over its decision not to pay her claim. The impact on Mrs A has gone on for over eight months.

I accept that there have been times when that has included an inability to sleep properly, and additional worry about her safety to fulfil her job as a driver. So I conclude that (whatever the outcome of Aviva's reconsideration of her claim) it's fair and reasonable to direct Aviva to pay Mrs A £500.00 for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint. I direct Aviva Insurance Limited to:

1. reconsider Mrs A's claim in line with all the terms of the policy; and

2. insofar as that results in a payment to Mrs A, pay simple interest at a yearly rate of 8% on the amount of such payment, from 13 October 2024 to the date of such payment. If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs A how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and

3. pay Mrs A £500.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 16 July 2025.
Christopher Gilbert
Ombudsman