

The complaint

Mrs P is complaining about Aviva Insurance Limited's (Aviva) decision to settle a claim she made under her car insurance policy as a fault claim, and she is unhappy that it hasn't refunded her excess.

What happened

Mrs P's car was damaged in an accident with a third party's vehicle. The driver of the other vehicle fled the scene of the accident. Mrs P contacted Aviva to claim for the damage on her car, and provided the registration of the third-party vehicle, witness contact details and police report reference. As the driver didn't stop, Mrs P was unable to provide the driver's name or contact details.

Mrs P paid her excess and Aviva arranged for her car to be repaired. As Mrs P didn't consider she was at fault for the accident, she didn't think it was fair Aviva declined to refund the excess. Mrs P believes the third party was uninsured, so she referred to Aviva's uninsured driver promise that says it will refund her excess if she's hit by an uninsured driver and it's not her fault.

However, Aviva said the terms of the policy required Mrs P to provide the name of the driver, their contact details and the registration. It said as Mrs P had only provided the registration number for the car, she wasn't eligible for this promise. And it said it had settled the claim, and wasn't able to recover its outlay from the third party's insurance policy.

Mrs P didn't think she'd been treated fairly and referred her complaint to this Service. Our investigator didn't uphold the complaint as she said Mrs P hadn't provided everything she needed to under the terms of the uninsured drivers promise. She noted Aviva had contacted the police, and up until the final response letter (February 2025), it hadn't received the police report containing the third-party name and contact details. She didn't think Aviva had acted unfairly in not refunding the excess and recording the claim as 'fault' as it was unable to trace the third party to recover the costs of Mrs P's claim.

Mrs P disagreed. In response she said:

- She did all she could to identify the third party.
- The uninsured driver promise contains a condition, which makes it impossible to meet and, so, considers it an unfair term.
- There was a lack of communication after the final response letter was sent, and she doesn't think Aviva did enough to chase the police report.
- The investigator's assessment isn't consistent with another ombudsman's decision which she believes set a precedent in the term being unfair.

So, the case has been passed to me to make a 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.

I've decided to not uphold this complaint and I'll now explain why.

Firstly, I acknowledge I've summarised Mrs P's complaint in less detail than she's set out. Our rules as an informal dispute resolution service allows me to do that. I assure Mrs P and Aviva that I have read and considered everything all parties have provided. However, my decision focuses on what I consider to be the key issues.

Mrs P's complaint is about two separate issues which I have considered separately.

Uninsured drivers promise

Mrs P says that Aviva have failed to honour the uninsured driver promise. I've first considered the policy terms and conditions, and these say:

"If you are hit by an uninsured driver and provide us with the other driver's name, contact details and their vehicle registration number, we will refund the excess you paid. This only applies where the driver of your vehicle is not at fault".

I think the terms of the policy clearly set out what Mrs P needed to provide; all of the driver's name, contact details and their vehicle registration number to be eligible for the promise. This is standard in all similar terms across the insurance market. And I don't think it's unreasonable for Aviva to want this information, as it needed to be able to pursue the third party directly to recover its outlay.

I'm satisfied the uninsured driver promise is transparent and clearly explained on the front page of the Insurance Product Information Document (IPID) and in the policy terms and conditions with what Mrs P needed to provide. If Mrs P was unhappy with the conditions set out in her policy, she could've contacted Aviva to raise concerns when she received her policy documents. She had the opportunity to cancel her policy, at this time, without charge.

I sympathise with the situation Mrs P finds herself in. Her car was damaged, and I appreciate she was unable to obtain the third-party's details as they fled the scene. But ultimately, as Mrs P didn't provide the information she was required to provide, I can't say Aviva has been unfair in not refunding the excess under the terms of the uninsured driver's promise.

While I recognise Mrs P says she could never comply with this term, I don't agree. There are several situations where policyholders can benefit from this policy benefit. But insurers are entitled to set out the terms upon they wish to provide the benefit, and I don't consider the requirements included are unreasonable.

I've thought carefully about Mrs P's view regarding the uninsured driver promise represents an unfair term. I should first set out that this Service is unable to say whether a term is "unfair" under the Consumer Rights Act 2015 – as Mrs P avers. Only a court can conclude that. Our role is to assess whether it was fair and reasonable for Aviva to rely upon the term in the way it has. I understand her argument about the likelihood of an uninsured driver remaining at the scene of an accident and voluntarily providing their details as this would expose them to criminal prosecution. But I'm not persuaded Aviva has treated her unfairly.

When an insurer can't recover its costs, it's usual that it's customer's no claims discount (NCD) will be reduced. No costs are recoverable when the other party involved in the claim has no insurance. So, Aviva's uninsured driver promise offers additional protection from a NCD being reduced and the excess not having to be paid if the policy conditions are met.

In my decision I can only consider up to the date Aviva issued its final response letter, which was February 2025. If Aviva is successful in identifying the third party and pursuing the recovery of its costs, this will mean Mrs P's excess payment can be refunded. But if Mrs P has any concerns relating to issues after the date of Aviva's final response letter, she must make a separate complaint to the business. If she's dissatisfied with its response, or it doesn't respond within eight weeks, she can ask our Service to consider the matter.

I appreciate Mrs P has said Aviva's inactivity in not pursuing the police report is a delaying tactic and without the report it doesn't have to refund her excess. However, I do not agree, as Aviva will still wish to recover the repair costs it has paid. Aviva has confirmed after asking for the police report up to the final response letter, it hadn't been received. Unfortunately, it can take many months for the police to provide the information required but I am unable to hold Aviva responsible for the time taken with this as it is not within its control. I'm not persuaded that Aviva has acted unfairly.

I note Mrs P has made reference to a previous decision. But this Service will always consider each complaint on its own merits.

Taking everything into consideration, I can't say Aviva has acted unfairly in not refunding the excess under the uninsured driver's promise.

Claim categorisation

Mrs P is unhappy her claim is being deemed as 'fault'. I should firstly explain our Service doesn't decide who is at fault for an accident, as that is the role of the courts. Our role is to look at whether Aviva has carried out a fair investigation, reviewed all of the evidence it has and come to a reasonable conclusion.

I would also like to clarify the meaning of the terms "*fault and non-fault*". Reference to a "*fault claim*" is often used, but the actual terminology is "*no claims bonus disallowed*". It doesn't mean the policyholder is necessarily to blame for the accident but reflects the fact where a claim has been made that the insurer hasn't recovered its outlay. An insurer will be required to register the claim following the Claims and Underwriting Exchange (CUE) guidance. When recording the claim, the insurer can select bonus disallowed. This doesn't mean the policyholder was to blame; it simply means that the insurer has been unable to recover all its costs in full, from another party. The alternative is a "*non-fault*" claim meaning "*no claims bonus allowed*". This will be where an insurer has been able to recover its costs in full, from another party.

I appreciate how strongly Mrs P feels about this case and I also recognise the impact of this has had on her. She has lost out through no fault of her own, but contractually, Mrs P is required to pay the excess as part of any claim. And for the reasons I set out above, I can't say it was unfair that Aviva didn't refund it under the policy terms and conditions of the uninsured driver promise.

I think Aviva has acted fairly and in line with its terms and conditions, so I'm not upholding Mrs P's complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 18 November 2025.

Lorraine Ball
Ombudsman