

The complaint

Mr J complains Aviva Insurance Limited unfairly accepted him as being at fault for a motor insurance claim.

What happened

Mr J was involved in an accident with another car in June 2024. He was driving down a one lane country road when there was a collision between the cars. An independent witness who was driving the car behind Mr J volunteered his information and said he had dashcam footage. Mr J passed this information to Aviva along with a detailed testimony.

In July 2024, Aviva told Mr J that without any independent evidence, it's difficult to prove sole negligence against one party, meaning that they couldn't defend the claim in full – and that they'd look to deal with the claim from the third party on a 50% split liability (50/50).

Mr J wasn't happy with that. He felt he wasn't at fault and Aviva failed to investigate what happened adequately. When he requested more information, Aviva admitted they hadn't contacted the witness and needed to be chased several times internally before they did. Aviva tried calling the witness twice, but both times the call went to voicemail, and the witness didn't call back when Aviva left their details. Aviva told Mr J that they wouldn't be changing their stance on liability.

A complaint was raised and Aviva admitted to not handling his complaint fairly. But didn't change their position on liability, saying the delay in contacting the witness wouldn't have made a difference.

Mr J wasn't happy with this so asked our Service to intervene. He doesn't accept that Aviva considered all the evidence he submitted and instead agreed to 50/50 without proper consideration. He said that because of the amount of time it took to ask the witness for their dashcam footage, it was likely deleted which is why they didn't respond. And if they'd asked earlier, the footage would have found the other party at fault. He also said that even without the footage, there's enough evidence for the third party to be considered at fault for the accident.

To resolve things, Mr J said he wants Aviva to amend internal and external records to show he wasn't responsible for the accident; refund his premiums; and pay additional compensation in recognition of the amount of time he's spent dealing with what happened.

Our Investigator felt Aviva's decision to accept 50/50 for the incident was reasonable and the compensation Aviva offered was fair. So, she didn't recommend they do anything differently. Mr J didn't agree, and the complaint was passed to me to decide.

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.

Mr J has made considerable submissions in bringing his complaint. And although I don't intend to respond in similar detail, I have read all his correspondence and taken it into account when making my decision – along with everything submitted by Aviva. If I don't mention any particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. I hope Mr J doesn't take this as a discourtesy – it's just a reflection of the informal nature of our service.

It isn't the role of this Service to decide liability – that's a matter for the courts. We do, however, look to see that insurers have acted in a fair and reasonable way. The policy, like most motor insurance policies, says Aviva are entitled to take over and conduct in the name of Mr J the defence or settlement of any claim. This means Aviva can make a claim decision he disagrees with but must act reasonably when doing so.

The policy continues that Aviva can take proceedings to recover any payment they make. It's their choice to do so, but court proceedings can be expensive, so insurers will usually consider whether it's likely they will recover costs from the other party involved before pursuing them through the courts.

Aviva admitted they were premature in their liability decision in the first instance, but when they attempted to contact the witness in late August and early September, they didn't receive a response – so needed to proceed with the 50/50 liability decision. Mr J and the third party had conflicting accounts of what happened. They said that, in this case, it's one person's word against another and there's no independent evidence to support either version of events.

They said that whilst it was an error in judgement to inform Mr J the claim would be marked as 'fault' against him when they did, contacting a witness two months after an accident is acceptable and any longer would have been an issue.

Mr J has corrected Aviva, showing it was closer to three months before they contacted the witness. He also said Aviva failed to adequately consider both the photographic evidence Mr J submitted and the geography of the location of the incident, including discrepancies between the statement of the other driver and the photographic and topographical evidence.

Mr J said it was unsurprising that in view of the time that had passed since the accident, the witness didn't respond to Aviva's calls. He said it seems likely that, having not heard anything from Aviva, the witness eventually deleted the footage. And that it's recommended that dash camera users format their SD cards regularly, some manufacturers saying it should be done every month.

Insurers have an obligation to handle claims promptly and fairly. An insurer should contact a witness who likely has independent evidence which may be able to show clearly the details of the accident in a reasonable time after it happened. I don't think Aviva met these obligations when they took nearly three months to contact an independent witness.

I've gone on to think about whether Aviva's mistakes impacted the outcome of Mr J's claim. Mr J asserts that it's likely the witness deleted the footage, and if Aviva had contacted them sooner, the evidence would have shown the other party was at fault.

For me to agree that it would have made a difference to the claim, I'd need to be persuaded that Aviva contacting the witness any earlier means the witness would have likely answered and provided the footage – and that the evidence they gave will have changed the outcome of the claim. But the witness didn't let Aviva know that the footage was deleted – they didn't

respond at all to Aviva's calls or voicemails. Since Aviva had no response from the witness, I don't think I have, on balance, enough evidence to show things would have been different if Aviva contacted the witness soon after the accident. This is because I'm not satisfied the witness would have responded even if Aviva contacted them in a reasonable time.

Mr J did submit a detailed report of what happened to Aviva along with photographs and other information, but this evidence simply paints a clearer picture of Mr J's testimony. I do think it's reasonable for Aviva to assert that there's not enough evidence to pursue the other side's costs because it would be Mr J's word against the third party's if the case was disputed in court. So, I'm persuaded by Aviva's reasoning as to why their decision to settle liability at 50% is a fair one and one they're entitled to take.

Although I'm not persuaded the outcome of the claim was impacted by Aviva's poor handling, I do think their delays in not contacting the witness have caused Mr J some additional distress and inconvenience. It will have been frustrating for him to learn Aviva were going to agree to settle the claim without contacting the witness in the first instance, and additional distress caused since he believed Aviva's unnecessary delays in contacting the witness impacted the outcome of the claim.

Mr J said that Aviva paid £150 previously for the delay in handling his complaint, not for his complaint about their handling of the claim. I can see that Aviva mentioned complaint delays specifically when Mr J was awarded compensation, and he said he hadn't brought that point to us to consider. But thinking about the amount of compensation that is appropriate for what happened more generally, I'm satisfied Aviva have paid enough for what went wrong overall. This is because, even removing an amount for what might be appropriate for any non-claim related delays, £150 is in line with what we would usually award in similar circumstances.

My final decision

For the reasons above, I don't uphold this complaint.

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

Andrew Wakatsuki-Robinson
Ombudsman