

The complaint

Mr D complains about the way Aviva Insurance Limited handled his car insurance claim after he was involved in a road traffic accident. He's unhappy Aviva has recorded it as a 'fault' claim when, he says, there is evidence that the third-party involved accepted liability, in full, not long after the accident.

Mr D is represented in this complaint by Mrs K but, for ease of reading, I'll refer mainly to Mr D throughout.

What happened

Mr D's car was involved in an accident in February 2022. Shortly after reporting the claim to Aviva, Mr D said he wanted details for legal representation under the legal cover element of his policy. Liability was still under investigation, but as Mr D wanted *"to speak to solicitors about injury"*, Aviva instructed a solicitors' firm I'll refer to as 'C'.

According to the claim notes, in May 2022 the third-party's insurer (represented by a company I'll refer to as 'O') gave notice to Aviva that it would be commencing court action as its claim remained outstanding. Around the same time, Mr D contacted Aviva asking why his renewal documents mentioned a 'fault' claim. Aviva explained this was because liability was not yet resolved.

On 17 May 2022, Aviva sent Mr D proof of his no claims discount (NCD), which he'd protected. The letter said: *"Years of No claim discount 15"*. Mr D didn't renew his policy when it expired on 31 May 2022. His cover summary said he had 13 years no claims discount.

Aviva chased its own outlay from the third-party's insurer in September 2022. The communication between Aviva and the third-party's insurer then stalled. And, on 7 November 2022, the claim was closed on the basis of *"no correspondence"*. Aviva notified Mr D that the claim had been closed as 'fault', adding:

"The important thing to remember is that a fault claim and being to blame aren't the same thing, but if we as the insurer are unable to recover the money from someone else then it is treated as fault."

In March 2023, O chased Aviva for payments, and the claim was re-opened. O told Aviva it would be issuing court proceedings. On review, Aviva accepted that Mr D was at fault and paid the third-party's claim.

Aviva sent Mr D a notification that the claim was closed, again as 'fault', on 1 September 2023. The letter included the same wording as the previous closure notification did, with no further explanation regarding the 'fault' decision.

In January 2024 Mr D queried Aviva's decision to record this as a fault claim. In February 2024 he complained about it – he felt strongly that the accident hadn't been his fault. On 12 February 2024, Mrs K provided Aviva with the full complaint and a document she'd recently received from C, titled *"Official Injury Claim Compensator's Response"*. In summary, this document included the following:

"Date created: 21/04/2022"

Portal number: [#]

In what capacity is the insurer acting in this case? Insurer in contract

Liability response: Liability admitted in full

Comments: [Blank]

Date of notification: 21/04/2022

Compensator details: [name of a claims and risk management services provider I'll refer to as 'G']

Handler's name: [name given]

Reference number: Not Supplied

The claimant states that they were wearing a seatbelt. Does the defendant agree?
[Yes, ticked]

Do you have the defendant's version of events? [Blank]

Summary of facts: [Blank]"

Within the complaint Mrs K also queried why Aviva had seemingly removed two years of Mr D's NCD.

Aviva initially responded to Mr D's complaint on 22 March 2024. It explained that having examined the circumstances, it had determined that responsibility for the accident lay with Mr D, that a court would likely agree, and that it would not be changing its stance without further evidence. However, it acknowledged that its communication around the liability decision had been poor and offered Mr D £150 as an apology.

Mr D didn't accept this. Aviva considered the further points put by Mrs K but didn't change the liability decision. It said that under the General Conditions of the policy Aviva has the right to manage claims with "*full discretion*". But, to resolve matters, it said it would be happy to increase its offer to £200.

Again, Mr D didn't accept that outcome. Mrs K said Aviva had "*overlooked*" the "*Compensator's Response*" which she felt must have been available to Aviva in April 2022. She said Aviva had wrongly closed the claim as 'fault' in November 2022 and had then failed to properly defend it, by reference to the "*Compensator's Response*", when the third-party insurer made contact again in March 2023. She was also unhappy that there'd been no response to the issue she'd raised relating to a discrepancy in the number of years NCD Mr D had.

Mr D referred his complaint to this service.

Our Investigator's view

Our Investigator asked Aviva to comment on the "*Compensator's Response*" form. It said the document didn't change its position, and that there is no evidence on its file that the third-party had accepted liability. Regarding the NCD discrepancy, Aviva explained it had incorrectly sent Mr D, in May 2022, Proof of NCD of 15 years, when it ought to have been 13 years. Aviva confirmed it's happy to honour the 15 years NCD.

Having considered everything, our Investigator didn't think Aviva needed to take any further action. She didn't think the "*Compensator's Response*" carried any weight in terms of the liability decision as it concerns only the personal injury claim. And she thought the offer of £200 for the communication failings was fair.

Mr D didn't accept the Investigator's opinion.

As no agreement could be reached, the complaint was passed to me to review afresh and decide.

My provisional findings

I issued a provisional decision on 3 October 2025 in which I explained that I didn't intend to uphold Mr D's complaint, but that I wanted to give different reasons for my conclusions than the Investigator had done. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm broadly in agreement with the outcome reached by the Investigator – I don't think Aviva needs to do more than it's already offered to resolve this complaint. I'll explain why.

Ultimately, under the General Conditions of the policy Aviva had full discretion to decide to defend or settle the third-party's claim. So, having received a claim from the third-party it was entitled to decide to accept that Mr D was liable and pay that claim.

Mr D considers this isn't fair because, in his view, the accident was the third-party's fault, and he thinks the third-party clearly and unequivocally accepted liability, in full, in April 2022. He's relying here on the "Compensator's Response" form, the contents of which, I've summarised above. But I'm not persuaded that this form makes Aviva's liability decision unreasonable.

Our Investigator said the form didn't change things because it relates only to the personal injury claim; the claim being handled by C. But I don't think that's the main reason why it doesn't make a difference.

I think there is limited information on the "Compensator's Response" form to firmly connect it to this claim. I note, for example, that the third-party's representative seems to have been O, not G. And I've seen no evidence that Aviva was even privy to this form before Mrs K obtained it from C and shared it with Aviva in February 2024. But even if the form does relate to this claim, and the third-party was, as the form suggests, accepting liability in April 2022, it's clear that by as early as May 2022, when it gave notice to Aviva that it would be commencing court action, it had changed that position. And by March 2023 it was clearly pursuing a different course – it was ready to issue court proceedings. In these circumstances, and given the discretion Aviva had, I can't say it reached an unfair decision to settle and record this as a fault claim.

I do, however, think that Aviva's communication with Mr D regarding its liability decision, and his NCD, could have been clearer. It seems to have given no reasons to Mr D for the initial decision to close the claim in November 2022, or the decision to re-open and finally close the claim as fault in September 2023. And, as it's already accepted, it gave inconsistent and inaccurate information about how many years NCD Mr D had accrued by May 2022. So, overall, I consider Aviva contributed to creating a confused picture about what was happening with the claim.

But I also think that Aviva's offer to pay Mr D £200 in recognition of its communication failings is fair. I'm persuaded that this amount recognises Aviva's communication has been poor and caused frustration, but also that the outcome of the claim itself remains unchanged."

In response to my provisional decision, Aviva agreed with my findings.

Mrs K, on behalf of Mr D, didn't agree. She made the following points:

- She was previously unaware that O had given notice to Aviva that it would be commencing court action in May 2022.
- She'd like to know why O changed from its position as stated on the "Compensator's Response", to giving notice to Aviva that it would be commencing court action.

- Aviva's said more than once that the claim was closed in November 2022 because they had not heard from the third-party's insurer, but there had been a response - the "*Compensator's Response*".
- C has previously told Mrs K that all parties would have had access to the "*Compensator's Response*" from April 2022.
- She still strongly disagrees with the Investigator's conclusion that the "*Compensator's Response*" didn't carry any weight in terms of the liability decision – two people at C have told her it's relevant.
- She was also previously unaware that after the claim was re-opened in March 2023, O told Aviva it would be issuing court proceedings.
- She's already explained to the Investigator why she thinks responsibility for the accident lays with the third-party, not Mr D.
- In the provisional decision I said, "*I'm broadly in agreement with the outcome reached by the Investigator*", but there were errors in the Investigator's view and Mrs K understood the review by an Ombudsman would be independent of the Investigator.
- She's not satisfied I've had access to all the emails exchanged between her and the Investigator and the Investigator's manager.
- This whole process has had an impact on her personal health and time, and she's found it very stressful – especially as she's been unhappy with our Investigator.

Although I've summarised what I consider to be the key points of Mrs K's response here, I have considered it in its entirety.

I am now able to make my final 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.

Having done so, I see no reason to depart from the findings I set out in my provisional decision. Although I'm sorry this will disappoint Mr D to hear, neither party has made any submissions in response to my provisional decision which have led me to conclude that my provisional findings should be changed.

I'd like to start by reassuring Mrs K that I have had access to the entire case file, and everything submitted by both parties. Although I've reached broadly the same outcome as the Investigator did (i.e., I've not upheld Mr D's complaint), I've reviewed everything myself, independently of the Investigator, and reached my own decision. My reasoning was set out in the provisional decision. So, whether the Investigator made factual errors at an earlier stage, or not, is unrelated to the outcome I've reached. I have not relied on the Investigator's analysis of the evidence, but my own.

I am also aware that Mrs K has been unhappy with the Investigator, but my role here is to reach a finding solely on the merits of Mr D's complaint against Aviva, it is not to address any concerns she might have, or have had, about the Investigator.

In response to my provisional decision, Mrs K has highlighted some events she says she was previously unaware of, and she's made reference to the fact that Aviva has told Mr D that the claim was closed in November 2022 due to a lack of contact from the third-party's insurer. She believes there to be a contradiction here. But I remain satisfied that the summary background I gave in my provisional decision, and which I've repeated above, is an accurate reflection of the key events.

Mrs K also maintains that Aviva would have had access to the “*Compensator’s Response*”, even though I’ve seen no evidence that Aviva was privy to this form before February 2024. But whether Aviva had access to it or not, doesn’t change my findings about the relevance of this form. Regardless, the position by March 2023 was that the third-party’s insurer was *not* accepting liability.

Mrs K has also questioned why the third-party changed its position (the one stated on the “*Compensator’s Response*”), to giving notice to Aviva that it would be commencing court action. But this is not something I’d be able to answer. As I explained in my provisional decision, there is little information on the “*Compensator’s Response*” form to firmly connect it to this claim. So, it’s not clear that the third-party’s insurer ever did *change* its position from one of accepting liability to one of disputing it. But, in any event, whatever its position was in April 2022, the position had changed by March 2023.

I appreciate that Mr D, and Mrs K, still feel passionately about which party was to blame for the accident at the centre of this claim. They’ve spent time making their complaint and explaining their point of view, and I note the impact Mrs K says this has had. She’s provided a lot of detail about how the collision occurred, the aftermath, and the particular duties she feels the third-party had to other road users. In this context, I acknowledge that they feel aggrieved with Aviva’s decision not to defend liability, but to instead pay the third-party’s claim and record the claim as ‘fault’. But my role isn’t to decide who was at fault for the accident; it’s to decide whether Aviva handled the claim fairly and reasonably.

As I set out in my provisional decision, under the General Conditions of the policy Aviva had full discretion to decide to defend or settle the third-party’s claim. Aviva was therefore entitled to decide to accept the third-party’s case that Mr D was liable and pay the claim. And I’ve seen nothing to persuade me that Aviva exercised this discretion unreasonably in the circumstances.

However, for all the reasons I set out in my provisional decision, I do still think that Aviva’s communication with Mr D regarding its liability decision, and his NCD, could have been clearer. I also consider that Aviva’s offer to pay Mr D £200 in recognition of its communication failings is fair. I’m satisfied that this amount recognises Aviva’s communication has been poor and caused frustration, but also that the outcome of the claim itself remains unchanged.

Putting things right

Aviva has already made an offer to pay £200 to settle the complaint. I think this offer is fair in all the circumstances.

My final decision

For the reasons set out here, and in my provisional decision, my final decision is that Aviva Insurance Limited should pay Mr D £200 for its communication failings.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 5 December 2025.

Beth Wilcox
Ombudsman