

## **The complaint**

Mr N complains that Aviva Insurance Limited (Aviva) settled a third-party claim against his car insurance policy.

## **What happened**

Mr N has car insurance with Aviva. In December 2024 Mr N's vehicle was damaged in an accident with a third-party vehicle. A passenger in Mr N's vehicle opened their door whilst a third-party was passing and this resulted in damage to both vehicles.

Mr N says that the third-party driver agreed at the scene that they were both at fault. However, Aviva ultimately settled the third-party claim and dealt with it as a fault claim against Mr N's insurance policy. Mr N complained to Aviva about this as he believed it should be 50/50 split liability.

Aviva responded to Mr N's complaint and said they were satisfied they'd reached the correct claim outcome.

As Mr N remained unhappy he approached the Financial Ombudsman Service.

One of our investigators looked into things but didn't uphold the complaint. He said it wasn't the role of this service to decide liability, and the policy terms gave Aviva the right to decide how to settle a claim. He thought Aviva had reached a fair and reasonable decision based on all the information and evidence available to them.

Mr N didn't agree and asked for a final decision from an ombudsman.

## **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, whilst I appreciate it'll come as a disappointment to Mr N, I've reached the same overall outcome as our investigator.

Firstly, I should explain that I don't intend on commenting on every point or argument raised. Instead, I'll focus on what I consider key when reaching my final decision. I don't mean this as a discourtesy to either party, instead it reflects the informal nature of this service and my role in it. However, I'd like to assure both parties that I've considered all the information provided when reaching my final decision.

In addition to this, Mr N has referred to what he says is case law precedent, particular legal cases, and industry standards, which he says support his position on contributory negligence and demonstrates how the liability should be proportioned between him and the third party, and consequently, why he says Aviva has reached the wrong decision on liability. Mr N wants this service to decide the liability is 50/50 between him and the third party. However, as explained to Mr N by our investigator, it's not the Financial Ombudsman Service's role to

determine the liability for an accident or in what proportion each party is liable, only the courts can do that. So, I won't be commenting individually on each legal case or industry standard which Mr N alleges show he's not fully liable.

Instead, my role is to consider if Aviva reached a fair and reasonable conclusion to settle the claim in the way they did based on all the information and evidence available to them. And whilst I recognise it'll come as a disappointment to Mr N, I think they did.

Mr N's policy terms explain:

*"Our rights*

*If we want to, we can take over and conduct in the name of the person claiming under the policy the defence or settlement of any claim or take proceedings for our own benefit to recover any payment we have made under this policy.*

*We shall have full discretion in the conduct of any proceedings or the settlement of any claim."*

This means that ultimately it is up to Aviva to decide whether to settle, accept or defend a claim. And an insurer being able to decide whether to settle, accept or defend a claim is very common in motor insurance policies. So that term isn't unusual.

Mr N says the third-party agreed at the scene that it was jointly their fault. However, there is no evidence which supports the third party agreeing to shared liability at the scene. Aviva did try to settle Mr N's claim 50/50 but this wasn't successful. So, Aviva then considered all the remaining information, including images of the damage to the third-party vehicle and description of what happened, and based on this concluded that they would settle the claim as fault against Mr N's policy. I don't think Aviva reached an unfair decision to do so based on all the evidence available to them, including the images of the damage, albeit I recognise Mr N doesn't agree.

I also acknowledge Mr N has said Aviva has over-relied on one of the rules in the Highway Code to reach their liability decision, however, this was only part of Aviva's wider assessment of *all* the information when deciding how to settle the claim. So, it wasn't solely on the basis of the Highway Code. I also note Mr N has said Aviva ignored witness statements which support his position, however, the witness statements are from family members who were passengers in Mr N's vehicle. So, these witness statements wouldn't be independent of both Mr N and the third party.

Ultimately, whilst I recognise Mr N feels very strongly about what the liability share should be, as outlined above, it's not for me to determine who is responsible for the incident, or what proportion, or to cross examine the different parties about what happened - only a court can do that. My role is to decide whether Aviva reached a fair and reasonable decision overall to settle the claim in the way they did. Aviva took into account all the available evidence, including that provided by Mr N, when reaching their decision. And I don't think the overall decision they reached was unfair based on the information available to them.

### **My final decision**

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 18 December 2025.

Callum Milne  
**Ombudsman**