

The complaint

Mr and Mrs S complain that Aviva Insurance Limited's (Aviva) unfairly recorded a 50/50 split liability decision following a claim they made, under Mr S's motor insurance policy.

I'll refer to Mr S throughout my decision for ease.

What happened

On 25 July 2020 Mrs S was driving with Mr S in the car when they were involved in a collision. Mr S says the other vehicle changed lanes on a roundabout and was at fault.

Mr S registered a claim with Aviva. He says its agent assured him there would be "*no issue*" with liability as the third party admitted to changing lanes. Mr S received a request for evidence the following day, including a request for CCTV footage. He thought this was an automated request from Aviva given its agent's comments about liability. He was then told on 5 August 2020 that the third-party's insurer (TPI) had accepted liability.

In September 2022 Aviva wrote to Mr S to tell him the TPI had disputed responsibility and it had agreed to a 50/50 split liability outcome. Mr S didn't think this was fair. He says the other driver changed her story and he wasn't notified of this or given the opportunity to obtain witness statements or CCTV footage. Mr S says his insurance premium is now much more expensive because of this. He says that he and his wife have also been caused inconvenience and been distressed by this matter.

In its final complaint response Aviva says that the day after the claim was logged it requested a sketch and description of the accident from Mr S. It says it also asked if there were any witnesses or CCTV footage. It says Mr S was told it would proceed on a non-fault basis, but that this could change to a 50/50 split liability decision. Aviva says Mr S supplied a description and sketch, which it sent to the TPI. But he didn't mention CCTV or a witness.

Aviva says the third party disputed liability for the accident. Because of the lack of evidence, it says it agreed to the split liability outcome. Mr S didn't think he'd been treated fairly and referred the matter to our service. At this point Aviva decided to offer Mr S £200 compensation. It says its agent had incorrectly told Mr S the TPI had accepted liability in August 2020. And it acknowledged its failure in not contacting him about the 50/50 decision until September 2022.

Mr S rejected Aviva's offer. Our investigator upheld his complaint in part. He says Aviva's communication failings impacted on Mr S's ability to provide supporting evidence. He didn't think it'd been shown that there was evidence to support a non-fault liability decision. But he thought it was fair that Aviva should pay Mr S a total of £350 in compensation for the frustration and distress he'd been caused.

Mr S disagreed and asked for an ombudsman to consider his complaint.

It has been 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.

Having done so I'm upholding Mr S's complaint in part. Let me explain.

Mr S's policy terms and conditions state the following:

"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 is a common term in motor insurance known as subrogation. It essentially means it's for Aviva to decide how to settle a claim. It doesn't need Mr S's permission to do this. We don't think this is unreasonable, as it's the insurer that will pay the costs involved in a claim. However, this doesn't mean Aviva can do anything it wants. It still needs to treat its customer fairly. This is what I've considered here.

The claim records show that Mr S and the other driver both disputed liability for the collision. I note Mr S says the other driver changed their story. I can see that our investigator queried this with Aviva. But I can't see evidence that this was the case. The records show the third party admitted to changing lanes but said that Mr S's car had also changed lanes.

I've listened to a call recording between Mr S and Aviva from 28 July 2020. During this call Mr S mentions the other driver had disputed being at fault and had acted aggressively. Aviva also says there was no change in the third party's account of events. Based on this evidence I can't see that the third party did change their account of what happened. So, I don't agree that Aviva disadvantaged Mr S by not informing him of this.

The claim records show Aviva emailed Mr S on 26 July 2020. I've seen this email. It says, *"this type of accident is often disputed"* and asks Mr S for more information. The email specifically asks for contact details of witnesses, dash cam footage, and CCTV footage.

In the call recording Aviva provided, its agent says she will put the claim down as non-fault. But explains that there are often liability disputes. If the third-party disputes liability the agent says that they may have to settle the claim on a 50/50 basis as there is no evidence in the form of CCTV footage or witnesses.

Aviva concedes that one of its agents made a mistake when noting a record on Mr S's claim. This resulted in it telling him the TPI had accepted liability when it hadn't. It confirmed this in an email to Mr S dated 5 August 2023. I note his comments that he took no action to obtain evidence after this email. Had he known liability was in dispute Mr S says he would've made efforts to obtain witness details and CCTV footage.

I've thought carefully about this point. Mr S confirms he didn't obtain details from any witnesses at the scene of the accident. He says he took photos at the scene that showed registration plates of cars that had just passed. He says could've tried to contact these drivers. I acknowledge what Mr S says, but I don't think it's reasonably likely that he would've found an independent witness based on this.

Mr S has supplied a map showing the road where the collision occurred. He points to icons that he says show CCTV cameras in place that monitor and record. I don't dispute what he says. But he hasn't provided information from the owner/operator of these cameras that

confirms they were recording at the time, or that the incident was captured. I don't dispute that it's possible there was footage of the collision. But I don't think it can be known with any certainty that there was, based on this information.

I note Aviva's comments that Mr S was initially asked to provide CCTV evidence and he didn't do so. Around ten days elapsed between Aviva's email asking for this evidence until it informed Mr S the TPI had accepted liability. So, I accept he was asked for this information. But the window in which he could've made enquiries about the existence of CCTV footage was effectively shortened.

That said Mr S doesn't mention CCTV or the potential for witnesses in the call recording I've listened to from 28 July 2020.

In its submission to our service Aviva says it's considered the circumstances of the accident. It says both vehicles were moving at the time of the collision, and there is no evidence to support either party's testimony. It says unless there was dashcam footage the liability decision was always likely to be a 50/50 split. It says this would likely be the case even if there was CCTV footage of the incident.

Aviva says it allowed Mr S's no-claims discount. I think this was reasonable. It also confirms Mr S hasn't had to pay his policy excess fee, which he should pay half of in these circumstances.

Having considered all of this, I don't think Aviva handled the claim well. I say this because of the inaccurate information it provided that liability had been accepted by the TPI. In addition to the delay in communicating the 50/50 liability decision. It's fair that Aviva should compensate Mr S for the distress and inconvenience this has clearly caused him. I agree with our investigator that £350 is reasonable.

I don't reasonably think it's been shown that an outcome other than a 50/50 liability split was reasonably likely. Mr S should've had more time to query whether CCTV footage was available. But there is no guarantee that it was, or that this would've been able to support a non-fault outcome. So, although I'm sorry to disappoint Mr S I can't reasonably ask Aviva to do anything more regarding how his claim was recorded.

My final decision

My final decision is that I uphold this complaint in part. Aviva Insurance Limited should:

- pay Mr S £350 compensation, in total, for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 18 January 2024.

Mike Waldron
Ombudsman