

## **The complaint**

I, a limited company, is unhappy a claim made under its motor fleet insurance policy was settled 50/50 by Aviva Insurance Limited (Aviva).

## **What happened**

I has a commercial motor fleet policy underwritten by Aviva.

In May 2022, I's van was involved in an accident with a third-party vehicle. Aviva settled the claim on a 50/50 basis. I complained to Aviva as it says it wasn't a fault, so the claim shouldn't have been settled 50/50.

Aviva maintained the claim decision was correct, but they recognised I's broker hadn't been kept updated, so they offered £200 compensation.

As I remained unhappy, it approached this service.

Our investigator said it wasn't the role of this service to decide who was responsible for an accident. Instead, she said we'd consider how the insurer reached their decision, and if that was reasonable. The investigator was satisfied Aviva had reached a reasonable conclusion, so they didn't recommend Aviva do anything further.

I 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.

As explained to I by our investigator, the role of this service isn't to decide who is responsible for an accident. That is the role of the courts. Instead, we consider whether the insurer has conducted a reasonable investigation and reached a reasonable conclusion based on the information they had.

Whilst I recognise I is unhappy Aviva took the decision to settle the claim rather than taking it to court, the policy terms allow Aviva to decide whether to defend or settle claims. This is very common in insurance policies. But when making that decision, we'd expect an insurer to take into account the evidence and circumstances when doing so.

Aviva referred the circumstances of the accident to their appointed experts. They concluded, based on their experience and the circumstances, that at best the claim would be 50/50. So, Aviva settled it on this basis. I don't think Aviva acted unfairly by doing so based on the advice of the likelihood of success.

I do note that I says there were two employees in the vehicle at the time of the accident who could provide witness statements. Aviva recognised this, but also said that their impartiality

could be called into question. And in the absence of third-party independent witnesses, Aviva concluded it would be unlikely able to defend things in court.

Whilst I says the witnesses could be called into court, and cross examined, Aviva determined that it was unlikely to be successful based on the differing versions of events, and lack of independent witnesses neither connected to I or the third-party. So, Aviva decided to settle the claim on a 50/50 basis.

As outlined, it's not our role to decide who was responsible for the accident. And I think the conclusions Aviva have reached, relying on the advice they received about the likely outcome based on circumstances, is fair and reasonable. So, whilst I recognise it'll disappoint I, I'm not going to ask Aviva to do any more.

However, Aviva recognised that it didn't update I's broker with what was happening in relation to the liability decision, and they offered £200 compensation for this. I think that's fair and reasonable in the circumstances, so I'm not going to direct them to increase this.

### **My final decision**

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

So, my decision is that Aviva should pay I the £200 compensation already offered, if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask I to accept or reject my decision before 10 November 2023.

Callum Milne  
**Ombudsman**