

The complaint

Mrs R complains that Aviva Insurance Limited mishandled a claim on her motor insurance policy.

What happened

For the year from late March 2022, Mrs R had a comprehensive policy with Aviva.

The subject matter of the claim and the complaint is a sports utility vehicle. Mrs R acquired the car new in early June 2022 on a finance agreement.

From early June 2022, Mrs R put the car on the policy. Any claim for damage (except a glass claim) was subject to a policy excess of £300.00.

Unfortunately, in mid-December 2022, Mrs R reported that a third party vehicle had hit the rear of her car and shunted it into a parked vehicle.

At first, Mrs R dealt with the third party's insurer.

From late January 2023, Mrs R asked Aviva to deal with her claim.

By mid-April 2023, Mrs R had complained to Aviva about delay, poor communication and poor service.

Aviva said the car was a total loss.

In early June 2023, Aviva offered Mrs R £25,350.00 as the pre-accident value of the car. Aviva's file says that on 9 June 2023, it told Mrs R of her right to bring her complaint to us.

Mrs R asked us to investigate.

our investigator's opinion

Our investigator recommended that the complaint should be upheld in part. He thought that Aviva had made a fair offer of £25,350.00. However, he thought that Mrs R struggled to communicate with Aviva on several occasions, there were avoidable delays in getting the car from the third party's insurer and in assessing the car and reaching a reasonable settlement. The claim process has had a serious effect on Mrs R's health, the investigator said.

The investigator recommended that Aviva should pay Mrs R £300.00 for distress and inconvenience.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs R and to Aviva on 27 November 2023. I summarise my findings:

I would've expected Aviva to make payment within a month of receiving the claim. So (in the absence of a copy of the finance agreement) I was minded to find it fair and reasonable to direct Aviva to pay Mrs R interest at our usual rate on the figure of £25,350.00 from 28 February 2023 to 6 June 2023.

Aviva's shortcomings caused Mrs R extra upset and inconvenience at an already difficult time for her. I was minded to agree with the investigator that £300.00 is fair and reasonable in line with our published guidelines.

Subject to any further information either from Mrs R or from Aviva, my provisional decision was to uphold this complaint. I intended to direct Aviva Insurance Limited to pay Mrs R:

1. simple interest at a yearly rate of 8% on the amount of £25,350.00 from 28 February 2023 to 6 June 2023. If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs R how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
2. £300.00 for distress and inconvenience.

Mrs R disagreed with the provisional decision. Her representative says, in summary, as follows:

- The accident happened outside her property.
- Our investigator increased the offer to £500.00.
- They have provided medical evidence.
- She has suffered excessive stress and anxiety. Her doctor will support this.
- Aviva did lose her vehicle.

Aviva hasn't responded to the provisional 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.

Initial claim-handling

At first, Mrs R was dealing directly with the third party's insurer. I think that insurer provided her with a hire vehicle. The third party's insurer was treating the damaged car as a total loss.

I don't hold Aviva responsible for anything that happened before Mrs R asked Aviva to handle her claim – in late January 2023. From Aviva's file, I think that it supplied a hire car from early February 2023.

I'm satisfied that Aviva contacted the third party's insurer promptly.

The third party's insurer and its vehicle salvage company were responsible for the location of the damaged car. So I don't accept that Aviva lost the car. I don't hold Aviva responsible for the salvage company's delay in responding to Aviva.

In late March 2023, Aviva considered terminating the hire car, but decided to extend it.

In mid-April 2023, the third party's insurer confirmed to Aviva that it accepted liability.

From about 19 April 2023, Aviva looked into new car replacement.

New car replacement

Aviva's policy terms included the following:

"New car replacement

We will replace your car with one of the same make, model and specification (providing one is available in the UK) if the principal policyholder, vehicle policyholder or partner are the first registered keeper...and within 12 months of buying it from new:

- any repair cost or damage in respect of one claim is more than 60% of the car's UK list price (including car tax and VAT), or*
- it is stolen and not recovered.*

We will only replace your car if the principal policyholder, vehicle policyholder or partner purchased it:

- outright, or*
- under a finance agreement where ownership passes to the principal policyholder, vehicle policyholder or partner and the Finance Company agrees."*

So Aviva would replace a damaged car if those criteria were met.

In mid-May 2023, the finance company agreed to accept new car replacement. However, Aviva found that the UK list price of the car was over £30,000.00. Its engineer estimated the cost of repairs at about £12,500.00.

So the estimated cost of repairs was much less than 60% of the list price and Mrs R didn't meet the criteria for new car replacement. I don't consider that Aviva treated Mrs R unfairly by applying its criteria.

Total Loss

I can see why Mrs R's representative said that Aviva should repair the car. But I haven't seen enough evidence to support his statement that Aviva agreed to do a repair. Rather I've seen evidence that Aviva wanted to assess the vehicle.

Aviva's policy terms allowed it to decide whether to repair the car or to pay its pre-accident market value. Nevertheless, we would expect an insurer to treat a damaged vehicle as a total loss if the estimated cost of repairs was a high percentage (say 60-70%) of the vehicle's pre-accident value.

In Mrs R's case, the estimated cost of repairs was about £12,500.00 which was about 50% of the pre-accident value of about £25,000.00.

However, the third party insurer had already treated the car as a total loss. Aviva made the same assessment. The vehicle had suffered damage to its rear and front. Aviva said it had structural damage.

I don't consider that there's enough engineering evidence to say that both insurers were wrong to treat the car as a total loss. I don't consider that Aviva treated Mrs R unfairly by treating the car as a total loss rather than repairing it.

Aviva waived the policy excess of £300.00. It paid the finance company an early settlement figure of £24,124.98 and paid Mrs R the balance of £1,225.02.

Delay and Service

I've reviewed the emails from Mrs R's representative and Aviva's file. I consider that Aviva should've communicated more clearly about important issues such as the third party's acceptance of liability and the waiver of the excess. Overall, Aviva should've been more proactive in settling Mrs R's claim before early June 2023.

Financial loss and interest

From its file, I find that Aviva asked Mrs R for a copy of the finance agreement, but she didn't provide it. Nevertheless I have no reason to doubt her representative's statement that Mrs R was paying about £450.00 per month.

Mrs R had, no doubt, committed to make such payments (including an element of interest) or to settle the agreement early. It's not uncommon for an early settlement figure to exceed the current market value of the vehicle. (That can be covered by "GAP insurance" but I understand that Mrs R had no such cover.)

Also Aviva provided a hire car (albeit probably smaller than hers).

So I wouldn't find it fair and reasonable to direct Aviva to reimburse any of Mrs R's monthly payments or road tax during any identifiable period of delay.

However, I would've expected Aviva to have made a total loss valuation much sooner, and to have made at least an interim payment to Mrs R much sooner than early June 2023. I would've expected Aviva to make payment within a month of receiving the claim.

So (in the absence of a copy of the finance agreement) I find it fair and reasonable to direct Aviva to pay Mrs R interest at our usual rate on the figure of £25,350.00 from 28 February 2023 to 6 June 2023.

Distress and inconvenience

In my view, the accident and the need to make a claim were bound to cause Mrs R upset and inconvenience including the need to contact Aviva and to provide information. I don't find it fair and reasonable to hold Aviva responsible for that. Also I don't hold Aviva responsible for the acts and omissions of the third party, their insurer or (while it was acting for that insurer) the salvage company.

I have no reason to doubt that Mrs R has suffered a great deal. However, there's not enough medical evidence to show cause and effect between the shortcomings in Aviva's service and Mrs R's mental health.

Nevertheless, I accept that Aviva's shortcomings caused Mrs R extra upset and inconvenience at an already difficult time for her. I conclude that £300.00 is fair and reasonable in line with our published guidelines.

Response to the provisional decision

After his opinion in July 2023, our investigator asked Mrs R's representative whether she would accept £500.00, in which case he would try to mediate that with Aviva. But the representative said Mrs R would not accept such a settlement.

As I've said, there's not enough medical evidence to show cause and effect between the shortcomings in Aviva's service and Mrs R's mental health.

As I've said, the third party's insurer and its vehicle salvage company were responsible for the location of the damaged car. So I don't accept that Aviva lost the car.

Putting things right

Overall, I conclude that it's fair and reasonable to direct Aviva to pay Mrs R:

1. interest at our usual rate on the figure of £25,350.00 from 28 February 2023 to 6 June 2023; and
2. £300.00 for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Aviva Insurance Limited to pay Mrs R:

1. simple interest at a yearly rate of 8% on the amount of £25,350.00 from 28 February 2023 to 6 June 2023. If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs R how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
2. £300.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 8 January 2024.

Christopher Gilbert

Ombudsman