

## **The complaint**

Mrs M complains about how Aviva Insurance UK Limited ("Aviva") decided on liability following a claim on her motor insurance policy.

Mrs M is represented in her complaint, but for ease I'll refer to her throughout.

## **What happened**

Mrs M had a motor insurance policy with Aviva covering her car.

In December 2022 Mrs M was involved in a collision with an emergency services vehicle which was responding to an emergency.

Mrs M reported the collision to Aviva and made a claim.

Aviva initially decided that Mrs M was 100% at fault for the collision and it did this on a 'without prejudice' basis. Mrs M wasn't happy about this and complained.

Aviva's looked into it and assessed that, if the case went to court, liability would probably be 60% for Mrs M and 40% for the other driver.

Aviva said it hadn't handled the initial claim very well because it hadn't reviewed dashcam footage before it established the initial 100% liability. It paid Mrs M £175 compensation because of this.

Mrs M remained unhappy and brought her complaint to this service. Our investigator looked into it and didn't uphold it. She thought Aviva's offer of compensation was fair.

Mrs M didn't agree with the view and asked that her complaint was reviewed by an ombudsman. So it has been passed to me to make a 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.

I'd like to begin by noting I've set out the background above in less detail than the evidence in the file. I want to assure Mrs M that I've read and considered all the available information, including her responses and further questions to the investigator.

I'm not going to comment on every point made and raised. No discourtesy is intended by my approach which reflects the informal nature of this service as an alternative to the courts.

I can hear from the initial calls setting up the complaint with this service that Mrs M cares significantly about what happened and its impact on her. I note how strongly Mrs M believes she was not responsible for the collision.

But having looked at the evidence, I'm not upholding Mrs M's complaint. I appreciate this will

come as a disappointment to her and I'll explain why.

### ***Liability for the collision***

It's this service's role to see if Aviva acted fairly and reasonably in how it assessed liability for the collision. It's not our role to assess the collision itself and establish liability as this is a matter for the courts.

Aviva's policy wording includes the following section:

*"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 type of wording is common in motor insurance and I don't think it's unreasonable of Aviva to use it here. What this wording means is that Aviva can proceed to handle Mrs M's claim as it wishes. I understand Mrs M feels particularly aggrieved about this, but I'd emphasise that Aviva's actions here are in line with the policy wording.

Mrs M has expressed her disappointment about Aviva not accessing various types of third-party evidence, such as the police report and CCTV or dashcam on the emergency vehicle. Again, I can understand her disappointment, but Aviva has a responsibility to mitigate claim costs by not allowing claims like these to escalate to court. So paying fees or charges to obtain further external evidence is only likely to happen if Aviva are sure it will result in a favourable outcome in terms of liability.

Simply put, Aviva has to take into account what the prospects for success are in pursuing the third-party on the basis of them being 100% at fault.

And it's this point that I think is the most significant. Aviva's liability expert has commented on the likely outcome of a court case. The expert has provided two case law examples which vary in terms of the liability outcome between 60/40 and 20/80. The expert said they thought Aviva's 60/40 decision was realistic but it was possible that this position might be improved given the police's assessment that the emergency service driver might be sent for further training.

It's very important that I say at no point did the expert assess that Mrs M might escape liability.

Taking that into account leads me to conclude that Aviva's position on liability is not unreasonable – that doesn't mean it is necessarily 'right' but that it's simply the case that there are some very clear issues that Aviva would have to overcome if it were to look beyond a split liability settlement which means it's reasonable for it to not pursue that course of action.

I've reviewed the evidence about the collision and I've considered the case law, the highway code, camera footage and the expert's opinion. Taking everything into account, I don't think Aviva has acted unfairly in how it has decided the split liability for the collision.

I've also thought about Aviva's service, especially in the early part of the claim when it made the early 100% fault decision about the collision. I agree with Mrs M that Aviva's communication with her and its service wasn't very good. I've look at this service's guidelines and I think Aviva's payment of £175 compensation is fair and I'm not going to ask it to pay more.

**My final decision**

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 2 August 2023.

Richard Sowden  
**Ombudsman**