

The complaint

Mrs E has complained about the way Aviva Insurance Limited dealt with a claim she made under her car insurance policy.

What happened

Mrs E's car was damaged while parked in a car park. Her car was hit from the rear and pushed into another car, sustaining damage to both the right and left rear of her car.

Mrs E reported the incident to her insurer, Aviva. The following day she said a warning light came up on the dashboard of her car and she said her car felt lower to the ground.

Aviva arranged for an approved repairer (AR) to collect her car and carry out incident related repairs.

When Mrs E's car was returned to her, she said damage to the near side rear door hadn't been repaired and a warning message light came up on the dashboard about the tyre pressure. Mrs E said she noticed the car was still low to the ground. Mrs E said when she turned the ignition on, a warning light would read; "please wait, levels rising".

Mrs E was unhappy with the service provided by the AR and Aviva. She was uncomfortable with her car being driven by the AR as she was worried further damage would be caused. She had concerns about the suspension of the car and believed it had been damaged in the incident, but not identified by the AR. She didn't feel safe driving her car.

Aviva agreed to arrange for Mrs E's car to go back to the AR where they carried out a scan. This identified an issue with the suspension and so following this, arranged for Mrs E's car to go to a dealership garage for further diagnostic testing.

The AR told Aviva that the dealership garage had reported that a fault linked to the suspension had been identified 400 km ago, and had been flagged on the vehicle 22 times since.

So Aviva didn't agree that the issue with the suspension could have been caused by the incident as it had been recorded on the vehicle log beforehand. And it didn't agree the damage to the rear nearside door was incident related.

Both Mrs E and this service asked Aviva to provide a copy of the report where the dealership garage recorded the mileage and the faults. This hasn't been provided. Aviva has provided a visual health check by the dealership garage and an extract from an email where the mileage and the fault is reported. It says the dealership garage hasn't agreed to provide further information.

Mrs E provided a diagnostic report from a garage that specialises in the make of her car, along with two independent engineers' opinion as to the cause of damage.

The diagnostic report showed a fault linked to the suspension occurred for the first time within five miles of the incident occurring. It also flagged that the near rear side wheel wasn't roadworthy.

Our Investigator provided a copy of the information provided by Mrs E to Aviva. Aviva didn't change its stance.

Our Investigator recommended Mrs E's complaint should be upheld. He thought that overall the information available showed it was more likely than not that the suspension damage occurred from the incident. So he recommended Aviva arrange for all suspension issues to be fixed and for an independent engineer to report that Mrs E's car is safe and roadworthy. He recommended Aviva reimburse Mrs E for the costs she paid for a report. And he recommended Aviva pay Mrs E £225 compensation for the distress and inconvenience caused.

Aviva didn't agree and provided a response from its engineer. In summary the engineer says that the engineers on behalf of Mrs E have speculated as to the cause, but there is no evidence to support their view. He said Aviva didn't request a copy of a diagnostic report from the dealership garage as it had no reason to challenge what they told it and it trusts what it told them is correct.

He says that the engineers on behalf of Mrs E have provided generalised comments without identifying the cause of the suspension leak. Without this, the engineer says they are in no position to comment on causation.

It said its AR had carried out a wheel alignment test which showed no distortion and so he disputes the findings of the engineer regarding the rear side rear wheel.

Mrs E was happy that the Investigator recommended her complaint should be upheld. But she said the compensation of £225 isn't enough to reflect the distress and inconvenience caused. She says that their car remains on their drive. After borrowing their daughter's car for several months, she eventually made the decision to buy another car. Mrs E says they have concerns about the condition of the car and didn't feel it was safe to drive. She says she feels morally uncomfortable about selling the car due to her concerns about its safety.

Mrs E wants Aviva to pay her the market value for her car.

I issued a provisional decision on 20 November 2023. I intended to uphold the complaint but my remedy was different to the Investigator. I intended to ask Aviva to do the following:

- Carry out remaining incident related repairs to the suspension, rear near side door and rear near side wheel.
- Arrange for an independent engineer to check the repairs when completed and confirm the car is safe and roadworthy.
- Reimburse Mrs E for the costs she paid for an independent engineer's report with interest at a rate of 8% simple interest from the date she paid to the date of reimbursement.
- Pay Mrs E £750 compensation for the distress and inconvenience caused.

Aviva accepted my provisional decision. Mrs E was happy her complaint had been upheld. But she says the compensation and remedy doesn't put her back in the position she would be in had Aviva not provided the poor service. Mrs E doesn't want her car to be repaired and returned. She wants Aviva to pay a total loss (market value) settlement for it.

So as both parties have replied, the case has been passed back 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.

In my provisional findings I wrote:

“Aviva says it hasn’t asked the dealership garage for a copy of its diagnostic report to support what it says about the fault and when it occurred on Mrs E’s car. I’ve considered the reasons why Aviva hasn’t done this. I’ve looked at the photos of the areas of damage to Mrs E’s car as a result of the incident, where the area of the fault is in relation to the area(s) of damage, and that two independent engineers have reached similar opinions as to the likely cause of the damage.

Ultimately the engineer on Mrs E’s behalf who provided a copy of a diagnostic report has provided reasonable evidence of the fact that a suspension related fault occurred within five miles of the incident, which I find compelling and persuasive. The report, under the heading; “Electric level control” reported that both the rear left and right vehicle level is outside the tolerance, signalling below the permissible limit. It recorded that the first time this fault had occurred was at 83,532 miles. The photo of the odometer that Mrs E provided after the incident recorded the mileage of her car at 83,537 miles.

Mrs E said the first time she saw a warning message on her dashboard was the following day. This seems consistent with the diagnostic report provided by Mrs E’s engineer.

I’ve seen an extract from an email by the dealership which says ;

“So our diagnostic report on this E-Class has identified that the suspension compressor is leaking at the seals. Unfortunately it comes as a whole compressor assembly which would require replacing.

This damage is unlikely to be linked to any accident that has occurred as the fault first appeared 400KM ago and has flagged 22 times since on this vehicle.”

The dealership garage provided a quote for £568.80 including VAT for a “suspension compressor leaking”

This isn’t however sufficient evidence when comparing it to what Mrs E has provided to support her view. I find that the diagnostic report carries more weight in concluding that it is more likely than not that the suspension damage occurred as a result of the incident. Aviva hasn’t provided diagnostic evidence to show that Mrs E’s car reported a suspension fault before the incident occurred.

Key comments from the engineer who provided the diagnostic report are:

“further investigation is required to conclude the source of the leak, but we suspect possible disturbances of the rear air bellows due to impact being focused within close proximity of their location.”

Separately, a second independent engineer provided his opinion that the damage was more likely to have been incident related due to the location of the air suspension compression, being behind the rear side rear wing area (one of the areas where impact damage occurred). He said;

“if the suspension rises and then gradually drops then that is likely to be an air bag fault or a leak in one of the air pipes feeding the rear suspension from the compressor. There is a junction box affair that is located behind the rear bumper that may have been affected during either the impact or the subsequent repair and this is an area I suggest you explore first.”

The damage to the rear side door which the AR says isn’t related to the incident, is extremely close to a panel which required replacing because of the impact - and from the photos of the incident immediately after it happened, I think it’s more likely than not that this damage happened at the same time.

The condition of the rear near side wheel tyre is flagged by both the dealership's visual health check as well as the engineer who carried out the diagnostic report on behalf of Mrs E. The dealership's health check reports that the tyre needs attention and would fail a MOT as it has three cuts to the cord. The engineer on Mrs E's behalf reported the following:

"Visual inspection of the accident damage repair concluded also heavily distorted n/s/r alloy wheel that the customer also states leaks over time. Due to the level of alloys distortion, we advise this is not fit for highway use and is a current safety concern."

So, along with photos of the incident and the areas of damage, I think on balance its more likely than not that the near side wheel requires repair. I'm not satisfied that the AR's wheel alignment report is enough to conclude that Aviva has properly repaired incident related damage to this wheel.

I've considered Mrs E's testimony as to the impact Aviva's handling of the repairs has had. I think Aviva has caused unnecessary distress and inconvenience in not providing adequate evidence despite her requests for a copy of a full diagnostic report from the dealership garage to support its decision not to repair her car. And I can understand her concerns about driving the car with a known suspension fault. Aviva's AR told Mrs E that she could continue to drive her car - even though she found from general guidance online that the opposite advice is given. And had Aviva properly investigated and repaired Mrs E's car sooner, she wouldn't have been in the position to have to decide whether to drive her car or not with a known suspension fault.

So from the information available to me, I think Aviva acted unreasonably. It's not for me to decide whether Aviva should write off Mrs E's car. An insurer can decide to do this where a car cannot safely be repaired, or where it isn't economical for it to do so. This depends on the costs involved in carrying out the remaining repairs I require Aviva to do as set out below."

In response to my provisional decision, Mrs E says she has no faith in Aviva's AR(s) to carry out suitable repairs. She is concerned as to the ongoing time this will take and once repairs have been completed, the only option available to her is to sell the car to a third party buying business. She says she will receive well below what she should because of Aviva's failings. Mrs E estimates her losses will come to around £6,000.

I appreciate Mrs E's concerns. But I cannot predict the future losses Mrs E may or may not incur based on speculation as to the value of the car and her decision to sell it (if Aviva decides not to settle as a total loss claim) after repairs are carried out. And as I explained in my provisional decision, I cannot require Aviva to write off the car as this is their decision to make in line with the policy. But I can ask it to ensure the remaining repairs are done and checked by an independent assessor. All insurers must carry out effective and long lasting repairs. And while I understand Mrs E doesn't want to have further dealings with Aviva, I think this is the fairest outcome I can provide. But I understand this means the matter isn't closed.

The compensation sum of £750 is in line with what this service awards for significant distress and inconvenience over a prolonged period of time. If Mrs E is unhappy with the way Aviva deals with the remaining repairs, she is entitled to raise a new complaint.

So the remedy in my final decision remains the same as my provisional decision. I think Aviva should pay compensation of £750 to Mrs E for the distress and inconvenience caused. And I think Aviva should reimburse Mrs E for the costs she paid for an independent engineer report. She has provided a copy of the invoice to this service for £90 including VAT.

My final decision

My final decision is that I uphold this complaint. I require Aviva Insurance Limited to do the following:

- Carry out remaining incident related repairs to the suspension, rear near side door and rear near side wheel.
- Arrange for an independent engineer to check the repairs when completed and confirm the car is safe and roadworthy.
- Reimburse Mrs E for the costs she paid for an independent engineer's report with interest at a rate of 8% simple interest from the date she paid to the date of reimbursement.
- Pay Mrs E £750 compensation for the distress and inconvenience caused.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs E accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

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

Geraldine Newbold
Ombudsman