

## **The complaint**

Mrs M complains about Aviva Insurance Limited trading as Quotemehappy.com ("AIL") and their decision to settle the claim she made on her motor insurance policy on a 50/50 split liability basis.

## **What happened**

Mrs M held a motor insurance policy, underwritten by AIL. Unfortunately, in August 2022, Mrs M was involved in a road traffic accident in a local car park. So, she contacted AIL to notify them and make a claim on her policy.

Mrs M's version of events described the third-party car reversing into her car while she was stationary, and she provided images she felt supported this. Mrs M also explained her belief the third-party driver had apologised and admitted liability at the scene. So, Mrs M made AIL aware she felt the claim should be settled on a non-fault basis, and the costs claimed back from the third-party insurer ("TPI").

AIL submitted this claim, and their request for 100% of the costs, to the TPI. But the TPI disputed Mrs M's version of events, explaining their insured had stated both parties had been reversing at the time of the collision. So, the TPI suggested settlement on a 50/50 split liability basis. As the TPI defended the claim, AIL referred the claim and relevant information to an independent arbitrator, who I'll refer to as "C", for their advice on how best to settle the claim. And C recommended settling the claim on a 50/50 basis. So, this is what AIL did. But Mrs M was unhappy with this decision, so she raised a complaint.

Mrs M didn't think AIL were fair to settle the claim on a 50/50 basis. She felt her testimony, and the evidence she provided, made it reasonably clear the third-party were at fault. So, she wanted the AIL to report the claim as non-fault. And she wanted AIL to refund the total excess of £500 she paid, consisting of the voluntary excess applied to the policy and the excess she paid for requesting AIL use a repairer of her choice.

AIL responded to the complaint and didn't agree. They thought they had acted fairly, and in line with the terms and conditions of the policy Mrs M held, when settling the claim on a 50/50 basis. So, they thought the excesses paid were applicable, and that the claim had been recorded accurately and they didn't think they needed to do anything more. Mrs M remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and didn't uphold it. They thought AIL had acted fairly when settling the claim on a 50/50 split liability basis. So, they didn't think the way the claim was recorded should be changed. And they were satisfied the excesses Mrs M paid were charged in line with the terms of the policy, so they didn't think these should be refunded.

Mrs M didn't agree. And she provided additional comments and information surrounding the technical specification of her car, and why she felt this supported her version of events that she wasn't reversing at the time of the accident. Our investigator considered this, but their view remained unchanged. Mrs M continued to disagree and so, the complaint has been

passed to me for a 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mrs M. I recognise Mrs M feels very strongly about the complaint, and the way the claim has been settled. And I've carefully considered this alongside Mrs M's testimony explaining why she feels the claim should be recorded as non-fault. As Mrs M has a clear and definitive opinion on this, I can appreciate the upset and frustration she will no doubt have felt when she was told the claim would be settled on a split liability basis. And I recognise how this upset may have been made worse due to an increase in her premium prices, even though her no claims discount was protected.

As AIL were acting on Mrs M's behalf, as her insurer, I can understand why she would expect AIL to act in her best interests. And as they have settled the claim in a way she doesn't agree with, I can understand why she feels unfairly treated and wants AIL to take action, and compensate her financially, to recognise this.

But for me to say AIL should do something more, such as change the way the claim has been recorded or refund any excesses she paid, I first need to be satisfied AIL have done something wrong. So, I'd need to be satisfied that AIL failed to act in line with the policy terms and conditions when settling the claim and charging the excesses. Or, if I think AIL did act within these, I'd need to be satisfied they acted unfairly in some other way. And in this situation, I don't think that's the case.

Before I explain why I've reached this decision, I think it would be useful to set out exactly how, and what, I've been able to consider. It's not my role, nor the role of our service, to re-underwrite the claim as we don't have the expertise to do so. So, I won't be speculating on how I feel the claim should be settled, or what happened at the time of the accident. Instead, it is my role to consider the actions AIL have taken, including the way they've settled the claim, and decide whether I think they acted fairly and reasonably considering the information available to them at the time.

I've seen the terms and conditions of the policy Mrs M held. And these explain in the general conditions section, under the section *"our rights"* that AIL *"can take over and conduct in the name of the person claiming under the policy the defence or settlement of any claim"* and that AIL *"shall have full discretion in the conduct of any proceedings or the settlement of any claim"*. I think these terms and conditions make it reasonably clear that AIL were able to settle the claim as they saw fit, without the agreement of Mrs M being needed. So, I don't think I can say AIL acted outside of the policy when deciding to settle the claim on a 50/50 split liability basis.

The policy terms and conditions also explain that *"An excess will apply to most claims"* and *"a further excess will apply if you choose to have your car repaired in a garage that is not one of our approved repairers"* before explaining that *"your schedule will show the excesses you will have to pay towards any claim"*.

I've seen the policy schedule, which shows the policy had an overall excess of £250. And a non-approved repairer excess of an additional £250. In this situation, Mrs M was claiming on her policy, so I think the £250 overall policy excess was applicable. And I've seen system notes which show Mrs M directly requested for her own repairer to be used, due to her car's age and her wanting to ensure any replacement parts came directly from the manufacturer. So, as this repairer wasn't an approved repairer of AIL's, I think the non-approved repairer excess of £250 was also applicable. And because of this, I'm satisfied the full £500 excess taken by AIL was calculated in line with the policy terms.

But as I've explained above, I've also thought about whether AIL acted fairly when settling the claim in line with the policy. And when deciding this, I've thought about the way they settled the claim and thought about whether I think another insurer would most likely have taken the same action, in the same situation. And I think they would.

I recognise Mrs M feels her testimony regarding the accident circumstances, and the images she provided, supports her belief the accident was the fault of the third-party. I'm satisfied AIL put this belief directly to the TPI when they initially submitted the claim and so, I'm satisfied they acted fairly and in Mrs M's best interests.

AIL were unable to control the TPI's decision to challenge the claim and put forward the idea of settling the claim on a 50/50 basis. At this point, as AIL and the TPI were attempting to settle the claim in a different way, based on differing versions of events from both parties involved in the accident, I'd expect AIL to take time to consider how they should proceed. And when doing so, I'd expect AIL to ensure any steps they took looked to mitigate the costs of the claim, as this is what industry guidelines expect.

To ensure this was considered, I can see AIL asked C to provide their own expert opinion on how the claim should be settled. And I think this is an action most other insurers would've taken, to ensure they were reasonably considering prospects of success in taking further action.

I can see C considered all the information Mrs M provided, alongside the TPI's challenge, and recommended AIL settle the claim on a 50/50 basis, as there was no evidence to show definitively which car was, and wasn't, reversing. As AIL instructed C to give their opinion as an independent expert, I think AIL were fair to then rely on the opinion C provided. And I think another insurer would've most likely taken the same course of action, in the same circumstance. So, as C recommended settling the claim on a 50/50 basis, I think AIL were fair to do so.

And as the claim wasn't recorded as non-fault, I wouldn't expect AIL to then attempt to recover Mrs M's uninsured losses, including the excess payments she paid. So, as AIL didn't recover these costs, I wouldn't expect these to be refunded to Mrs M.

So, because of all the above, I think AIL acted fairly when settling the claim, and not refunding the excesses applicable to Mrs M's policy. And because of this, I don't think AIL need to do anything more.

I understand this isn't the outcome Mrs M was hoping for. And I want to reassure Mrs M I've considered the point she's made regarding the technical specification of her car and the features it included that she feels shows she couldn't have been reversing at the time of the collision. But I can't see that Mrs M has provided our service with any independent report that states without doubt that this technology would've prevented the accident from occurring had she been reversing. And crucially, I can't see that any such report was given to AIL when they were considering the claim. As I've already explained, it is not my role to re-underwrite the claim or speculate on the way I would've settled the claim, or what happened

on the day of the accident.

My decision focuses solely on the way AIL settled the claim, based on the information they had available to them at the time. And I don't think there was any information available to AIL that suggested the specification of Mrs M's car should be considered, or that it would've in any way changed the way they decided to settle the claim. So, this hasn't impacted the decision I've reached.

### **My final decision**

For the reasons outlined above, I don't uphold Mrs M's complaint about Aviva Insurance Limited trading as Quotemehappy.com.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 23 August 2023.

Josh Haskey  
**Ombudsman**