

## **complaint**

Mr J complains about the Aviva Insurance Limited's ("Aviva") decision to settle his claim as at fault.

## **background**

Mr J was involved in an incident whilst driving his motorcycle through a junction, which caused damage to both his bike and a third party car. Mr T attempted to claim against the third party for the damage caused to his bike and his own injuries. However, a claim was also put forward by the third party.

After reviewing the circumstances of the incident, Aviva wrote to Mr J advising that it intended to put forward a split of 80/20. Aviva explained that it had based its decision on a legal case with similar circumstances, which had been settled in court with 80% blame apportioned to the motorcyclist and 20% to the car driver.

In addition, Aviva made reference to an independent witness statement that had been provided, which placed blame for the incident on Mr J. Aviva advised that both it and Mr J's solicitors had attempted to contact him to ask for his comments on the witnesses statement, but he had not responded to either party.

Mr J complained to us as he was unhappy with the decision reached by Aviva. In particular, Mr J stated that he did not believe that the witness statement was reliable as the witness had described his bike as black, when in fact his bike is blue. Mr J also advised that he was taken away from the scene of the accident by an ambulance and during this time, his bike had been stolen.

Mr J believed that Aviva were responsible for ensuring that his bike should be kept safe after an accident and thought that the theft was covered under his policy.

Our adjudicator reviewed the complaint, but considered that Aviva had not acted unfairly in the way it had settled Mr J's claim. Whilst the adjudicator took note of the discrepancy regarding the colour of Mr J's vehicle, she did not consider that this made the witness statement worthless.

Our adjudicator also noted that there was no dispute that Mr J had been involved in the incident, as he had raised a counter claim. Mr J was told by our adjudicator that under the terms of his policy Aviva had the right to decide how to settle claims.

Furthermore, Aviva were able to evidence that Mr J's policy provided third party cover only. Therefore, the theft of the bike was not covered and no costs in relation to this were owed.

Mr J argued that the evidence of the witness was unreliable and that he believed that the theft of his bike should be covered as the theft occurred as a result of the accident.

As no resolution could be reached, the complaint has been passed to me for a final decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I should explain that I am not able to decide who was at fault for the incident that occurred. I can only look whether or not Aviva's decision on how to settle this matter was fair and reasonable based upon the evidence.

After reviewing the evidence, I do not consider the fact that the witness identified Mr J's bike as black (rather than blue) is reason enough to fully disregard the statement. Mr J has not put forward any statements that conclusively disprove the witness's account of events.

When assessing this claim, Aviva relied upon the witness statement, the police report and it provided opportunities, through solicitors for Mr J to provide comments on the incident. I am satisfied Aviva has reached its decision fairly.

With regards to the theft of the bike, whilst I understand Mr J's point of view, the theft of the bike occurred soon after the accident and is a separate incident. As Mr J's policy provided cover for third party only, the theft of his vehicle is not covered.

**my final decision**

My final decision is I do not uphold this complaint. I make no award against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr J to accept or reject my decision before 22 June 2015.

Christopher Tilson  
**ombudsman**