

The complaint

Mrs G was involved in a minor car accident. She's unhappy with how Aviva Insurance Limited (Aviva) dealt with the third party claim against her policy. In particular she's unhappy about the impact it's had on her No Claim Discount (NCD).

What happened

In November 2019 Mrs G was involved in a minor accident whilst reversing. She called Aviva to report the accident, although there was no damage to her car. She didn't think there was any damage to the other car either.

When she called to discuss the accident, Mrs G says that Aviva told her the accident wouldn't affect her NCD. But, later on, she was told it would affect her NCD. Mrs G says that the recording of the call where she was told her NCD wouldn't be affected has been redacted to exclude that part of the conversation.

As her NCD was affected by the incident, Mrs G complained to Aviva. They didn't uphold her complaint. They said they'd reviewed the call and confirmed that they didn't state that Mrs G would retain her NCD. So Mrs G brought her complaint to this service.

Our investigator didn't uphold the complaint. He felt that Aviva hadn't misled Mrs G about the accident's impact on her NCD. And that Aviva had handled the third party claim fairly. Mrs G disagreed with the investigator and so her complaint has come to me for 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.

Having carefully considered all of the evidence I'm not upholding this complaint.

It's important to explain that my role here is to look at whether Aviva acted in a fair and reasonable manner and within the terms and conditions of the policy in their handling of the claim. It's not my role to assess liability for an accident. That's the role of the Courts.

Under the terms of the policy Aviva have the discretion to take over, defend or settle claims as they feel appropriate. So they're entitled to decide how the claim should be recorded based on the evidence they have. But I expect them to exercise that discretion in a fair and reasonable way.

Assessment of liability

The insurance policy explains that "*If we want to, we can take over and conduct...the defence or settlement of any claim*". The policy also says "*we shall have full discretion in the conduct of any proceedings or the settlement of any claim*" which is what has happened here.

I've listened to the call provided by Aviva in which they discuss the claim with Mrs G.

During the course of that conversation it was explained that due to the circumstances described by the policyholder Aviva would have to pay out on the claim.

So I'm satisfied that Aviva did explain things clearly to Mrs G at the time and that she was made aware that she would be held liable for the accident. Inevitably, this would then impact the cost of her premiums when it came time to renew her policy.

I'm satisfied that Aviva conducted a reasonable and proportionate investigation. They explained during the disputed call that *"it is something that would unfortunately go as a claim against you because unfortunately as the reversing party, we would be seen to liable..."*.

Loss of NCD

Page 22, section 10 of the policy booklet, explains how NCD is affected if a claim is made: *"If a claim is made where fault is disputed with another party and we have to make a payment, we will reduce your no claim discount unless we recover all sums we have paid from those responsible, except where the accident was not your fault, and the driver who caused it was uninsured and you have provided us with the other driver's name, their contact details (telephone number or address) and their vehicle registration."*

Aviva decided to accept the third party's claim and record a fault claim against Mrs G. It's usual for a motor insurer to record a fault claim against its policyholder unless it recovers its outlay in full from a third party. As a result Mrs G lost her NCD.

Mrs G may strongly disagree with Aviva's interpretation of the evidence and decision to settle the claim in favour of the third party. She says that she doesn't understand why Aviva didn't inspect the third party vehicle and didn't question the length of the car hire claimed for by the third party. She says there was no visible damage on either car. So she finds the claim suspicious and feels that Aviva shouldn't have authorised it without validating it.

But I've seen the claim notes and can see that Aviva felt they had no grounds on which to defend the claim from the third party. So I don't think they failed to comply with their policy terms or exercised their discretion unfairly or unreasonably when they decided to settle the claim in favour of the third party.

I know Mrs G feels that Aviva have only shared part of the recording of the call she had with them just after the accident. I've listened to the 13-minute call, which Mrs G says was actually 17 minutes long. She says that Aviva told her that her NCD wouldn't be affected at the end of that call and feels that the relevant part is missing from the 13-minute recording.

Having taken on board Mrs G's evidence about the length of time the call took, I don't have enough evidence to consider it likely that Aviva told Mrs G her NCD would be unaffected by the accident. Unfortunately I can only base my decision on the evidence available.

So I think Aviva acted fairly and reasonably when they settled the case in the way that they did. As they haven't done anything wrong, I can't ask them to do any more

My final decision

For the reasons I have given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 10 May 2021.

Jo Occleshaw
Ombudsman

