

## **The complaint**

Mr C has complained about the handling of his claim by Aviva Insurance Limited under a motor insurance policy.

## **What happened**

In May 2021, Mr C was involved in a car accident. He has stated that he was forced to veer off the road in an attempt to avoid a car travelling in the opposite direction to him, but on his side of the road. There was a collision between the two cars.

On the day of the accident, Mr C contacted Aviva to make a claim. The next day he forwarded it an email from another driver who had witnessed the accident. Although Mr C did not have an entitlement to a courtesy car under his policy, Aviva agreed to arrange one for him. Aviva states that Mr C received the hire car two days after the accident.

Mr C was unhappy that Aviva requested that he pay the excess of £250 that was due under the policy because he considered he was not liable for the accident. He also paid around £80 for extra insurance protection for the hire car. Whilst dealing with the claim, Aviva changed its decision about whether the car was repairable, concluding that it was not. It paid Mr C a settlement amount based on the car being beyond economical repair, with the £250 excess being deducted from this.

Mr C complained to Aviva about its handling of his claim. It accepted that there had been issues with the service it had provided: it mentioned delays in providing the hire car, a lack of communication, the fact that it had changed its decision about repairing the car, and a lack of progress with the witness statement. Aviva offered Mr C £150 compensation.

Dissatisfied with Aviva's ongoing handling of the claim, Mr C brought a complaint to this service. He highlighted the time he had spent without a hire car following the accident, and said that he had been given four different messages from Aviva about whether his car would be repaired or declared a total loss. Mr C was also unhappy with Aviva's handling of the discussions relating to liability for the accident.

Mr C questioned why the £250 policy excess had been deducted from Aviva's settlement payment when he said the accident was the fault of the third party, and he remained unhappy about the £80 he had spent on excess protection cover for the hire car. Mr C also highlighted that the cost of renewing his motor insurance with Aviva had risen from £150 to £243. He said he had been caused stress and anxiety chasing Aviva for updates on his claim, and had received late responses from it.

Our investigator upheld this complaint. His view was that Aviva should pay Mr C a further £100 to reflect distress and inconvenience caused to him as a result of the way that the claim had been handled, in addition to the £150 already offered.

In terms of the excess, the investigator noted that Aviva was entitled under the policy terms to charge this, regardless of liability for the accident. But he asked Aviva to consider this position once the claim was closed. Regarding the increase in the policy's renewal price, in

the event that the claim is closed in the future on the basis that Mr C was not at fault for the accident, the investigator asked that Aviva consider refunding any increase in the premium that was the result of the claim record being open.

Aviva disagreed with the investigator's findings. It noted that while there was a delay in the hire car being provided, Mr C did not have this cover under his policy, and so it was under no obligation to arrange this. Aviva's opinion was that the compensation of £150 that it had offered fairly reflected the difficulties its handling of the claim had caused Mr C.

In terms of the claim against the third party, Aviva stated that it was actively pursuing the third party insurer for recovery of its costs. On the basis that the third party insurer accepts liability, Aviva said that Mr C will then be able to approach the third party insurer directly for recovery of his uninsured losses, such as the policy excess and hire car excess protection cover. Aviva also confirmed that if the claim closes with Mr C being recorded not at fault for the accident, it will be able to review the premium it has charged whilst the claim has been open.

In response to the investigator's assessment, Mr C commented that he understood Aviva had initially been corresponding with the wrong third party insurer, and that the correct third party insurer was not disputing liability. He said this had delayed him receiving back his policy excess and hire car excess protection cost, and he explained that he was now dealing directly with the third party insurer to reclaim these.

### **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.

It is clear that the car accident Mr C was involved in, and led to his claim being made, caused him significant and understandable distress. He has provided a detailed account of the circumstances relating to the accident. As our investigator noted, Aviva's policy allows it to take over and conduct the defence or settlement of the claim that resulted from this accident.

Mr C has explained very clearly why he considers the third party driver caused the accident. I should explain that this service does not decide who was responsible for causing a road traffic accident, as this is what the courts do. However, based on what Mr C has told us, it seems that the third party insurer does not dispute its driver's liability for the accident. What I need to determine is whether Aviva's handling of the claim has caused Mr C unnecessary distress over and above that which would likely be caused by the accident itself.

I acknowledge Aviva's comments that it had no obligation to provide Mr C with a courtesy car, because he did not have this cover under his policy. However, notwithstanding that Aviva agreed there were delays in the provision of the hire car, its response to Mr C's complaint noted that there had been a lack of communication from it, it had changed its stance about whether the car would be repaired, and it had not progressed matters relating to the witness statement.

Mr C forwarded to Aviva the email from the witness the day after the accident. Aviva's notes record that around four weeks after this, it asked Mr C to resend the witness' email because it couldn't find it on its file. About three weeks later, Aviva concluded that the witness statement would need to be in a different format to that provided.

Aviva's file also records its changing decision about whether Mr C's car was repairable, or whether it would need to settle the claim via the payment of the car's market value. This led

to uncertainty for Mr C about whether he would ultimately receive his car back in a repaired state, and it seems that Aviva's communications with him around this were not clear.

I have thought carefully about Aviva's comments that the sum of £150 it has offered Mr C represents fair compensation for the difficulties he encountered with the claim. But overall, taking into account Mr C's description of the levels of stress he says he was caused by Aviva's handling of his claim, my view is that it is reasonable that Aviva pay a further £100 to reflect distress and inconvenience caused to him.

As our investigator pointed out, Aviva was entitled under the terms of the policy to require that Mr C pay the £250 excess following the claim, and I note that this was deducted from the final settlement paid to him. Because this is an uninsured loss, it is for Mr C to reclaim this from the third party insurer in circumstances where it accepts liability. Mr C has confirmed that he has contacted the third party insurer to claim the policy excess back, along with the hire car excess protection cost.

I appreciate that Mr C is concerned that having an open claim on his insurance record led to a significant rise in his premium when his policy renewed. It is standard practice that insurers will record open claims as being 'fault' claims. However, Aviva has confirmed that if the claim closes as non-fault, it will be able to review the premium it has charged Mr C. My view is that Aviva is acting fairly in this regard.

### **My final decision**

My final decision is that I uphold this complaint, and I require Aviva Insurance Limited to pay Mr C £100 in respect of distress and inconvenience caused to him, which is in addition to the £150 compensation it has already offered.

I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 March 2022.

John Swain

**Ombudsman**