

The complaint

Mr N complains about how Aviva Insurance Limited handled a claim made on his motor insurance policy. He wants a refund of his policy excess and compensation for the increase in his premium.

What happened

Mr N said a delivery driver reversed into his parked car and he made a claim on his policy. He caught the other car on CCTV and provided photographs of the driver, but not the car's registration number. Aviva investigated the claim but couldn't identify the driver. It said the claim would be recorded as a fault and Mr N must pay his policy excess. It also said the uninsured driver promise didn't apply as the driver hadn't been identified. Mr N was unhappy with the progress of the claim and Aviva's lack of updates.

Our Investigator didn't recommend that the complaint should be upheld. He thought Aviva had reasonably investigated the claim and relied on legal advice that there was no reasonable prospect of success in defending it. He thought the claim was correctly recorded as fault as Aviva hadn't recovered its outlay and the uninsured driver promise didn't apply. He thought the policy's terms and conditions required the policy excess to be paid. And he couldn't say whether the fault claim had caused another insurer to increase Mr N's premium.

Mr N replied that he thought Aviva should have done more to identify the delivery driver. He also said that if he had been told the claim would be recorded as fault he wouldn't have proceeded with it. Mr N asked for his complaint to be reviewed by an ombudsman, so it's 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.

I can see that this has been a stressful experience for Mr N. I can understand that Mr N feels frustrated that a fault claim was recorded against him when his car had been hit by a delivery car and the driver had driven off. But a "fault claim" doesn't mean that Mr N was to blame for the collision, just that Aviva was unable to recover its outlay for the claim.

Mr N said that he was sure that when he notified Aviva of the claim he was told it would be recorded as non-fault. But I can see that he's now been provided with a recording of this call. And I think the agent clearly explained that the claim would be fault because Aviva would be paying the claim, but it had no certainty of recovering the loss.

The agent then went on to say that if the registration number of the delivery car could be discovered and if the other insurer agreed to pay the claim, the basis would be changed to non-fault. So I can't say that Aviva misled Mr N about how the claim would be recorded.

Mr N was unhappy that Aviva didn't do enough to identify the other driver. Mr N provided CCTV footage obtained from a neighbour and photographs of the driver. The footage was taken at night and the car's registration can't be seen. Aviva instructed solicitors to act on its behalf. I can see that Mr N contacted the driver's employer to try and identify him, but this was unsuccessful. Mr N said the employer told him the driver had only been with it for a

short time. The employer said it didn't insure its drivers. Mr N reported the matter to the police and the solicitors said it would contact the police. But I can't see that the police made any further enquiries.

It's not for Aviva to carry out criminal investigations. And it couldn't compel the employer to release information about the employee. So Aviva had no identification for the driver and so it couldn't identify his insurer. This meant it had no prospect of recovering its losses.

In that case, I think the claim was correctly recorded as a fault on Mr N's record. The policy excess is always the first part of a claim to be paid. So I think Aviva correctly required Mr N to pay his policy excess. And, as the other driver wasn't identified, Mr N can't recover this as an uninsured loss.

Mr N had protected NCD and so this one claim wouldn't affect his NCD with Aviva. But Mr N would still have to report the fault to the insurer for another of his vehicles. I can't comment on the premium this insurer then charged as the protected NCD was with Aviva and they are separate businesses.

Mr N thought the uninsured driver promise should apply. But, as our Investigator and Aviva have explained, the policy terms and conditions state that this only applies where the uninsured driver is identified and can be contacted. So I'm satisfied that Aviva correctly said this didn't apply to Mr N's claim.

Mr N was concerned that it took so long to resolve the claim. But I don't think this is unusual where there are complex claims and solicitors are involved. I wouldn't expect Aviva to keep Mr N updated unless it had anything to report. So I can't say that it should have communicated with him more frequently.

I can see that Mr N was unhappy with the solicitors' involvement in the claim. But, as our Investigator has already explained, we are unable to consider this as solicitors don't fall within our jurisdiction. So Mr N should complain to the solicitors directly if he remains unhappy.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 18 May 2022.

Phillip Berechree
Ombudsman