DRN-3696890

The complaint

Mr A and Mrs E complain Aviva Insurance Limited hasn't offered a fair cash in lieu payment.

What happened

I issued a provisional decision setting out what'd happened, and my thoughts on that. I've copied the relevant elements below, and they form part of this final decision.

In October 2019 Mr A and Mrs E bought a repaired Category S total loss car. The definition of a Category S is "Structurally damaged repairable (damage to structural frame or chassis, which can be repaired but the insurer has decided not to)".

On 2 February 2021 Mr A and Mrs E unfortunately had an accident, and their car was initially deemed a total loss by Aviva. Mr A and Mrs E say the car was picked up for repairs, but later on it decided to offer Mr A and Mrs E £3,627.54 as a cash in lieu (CIL) settlement – saying it couldn't repair the car to the pre-accident condition due to the poor state of the previous repairs.

Mr A and Mrs E said Aviva gave them no choice, so they took their car to a manufacturer's garage – who they say identified further accident damage and said the repairs for this accident came to £6,562.93. They then complained when Aviva wouldn't offer this figure.

Aviva said it'd asked its approved repairer to look at Mr A and Mrs E's car, and that repairer decided it was best to offer a CIL settlement. This was due to pre-existing damage, so they felt they couldn't repair the car. Aviva said when Mr A and Mrs E didn't agree with this, it instructed one of its own engineers to inspect the car – and this engineer came to the same conclusion. Aviva said the incident related damage came to £3,627.54 (this figure includes VAT) subject to Mr A and Mrs E's policy excess of £350, so the amount it'd pay was £3,277.54. Aviva said its engineer had spoken to the manufacturer's garage Mr A and Mrs E spoke to – and their estimate included damage unrelated to this incident, so it said the figure it'd offered was still fair.

Unhappy with this Mr A and Mrs E asked us to look into things – saying the manufacturer's estimate didn't include damage unrelated to the incident they were claiming for with Aviva. One of our Investigators considered the complaint, and felt the offer Aviva had made was fair. Mr A and Mrs E didn't agree with that, so the complaint was passed to me to decide.

Before deciding this case, I arranged for us to ask a number of additional questions in order to get a clearer picture about why Aviva didn't think it needed to do anything more. The relevant evidence was shared with Mr A and Mrs E.

I then issued a provisional decision, setting out the above and explaining my thoughts.

Both parties have since provided significant comments, so I've issued a second provisional decision to set out my thoughts taking into account those comments. I wanted to reassure Mr A and Mrs E I've listened to the phone calls they've had with our service, since I issued my first provisional decision.

What I've provisionally 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 think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Mr A and Mrs E's complaint in less detail than they have. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

The crux of this complaint is whether Aviva is offering a fair amount of money for the repairs following the accident.

Evidence provided by Mr A and Mrs E's garage

Mr A and Mrs E have said their garage have identified further damage and said the repairs to the car in total came to £6,562.93.

I'll consider this point first, because if I'm persuaded by this then Mr A and Mrs E's complaint is, in effect, fully upheld. But, for reasons I'll go on to explain, I'm not persuaded by their garage's report.

In my previous provisional decision, I explained I didn't think the comment "We have pleasure in presenting our estimate for the accident damage repairs on the above vehicle" *was enough to show the garage knew the car had previously been written off. I didn't say Mr A and Mrs E hadn't told them that, as they've suggested. But the reason this is important is because Aviva's garage / engineer is drawing a distinction between accident related damage, and non-accident related damage.*

I think it's helpful to reiterate Mr A and Mrs E bought a repaired Category S total loss car. The definition of a Category S as I mentioned above is "Structurally damaged repairable (damage to structural frame or chassis, which can be repaired but the insurer has decided not to)". So, I think it's fair for me to say on balance, repairs were likely carried out on this car previously. The key question then is whether Aviva is fairly saying some of the repairs quoted for by Mr A and Mrs E's garage is due to previous poor repairs.

It wouldn't be appropriate for me to require Aviva to pay for damage that wasn't sustained in the accident in February 2021. That would go against the principles of insurance, where an individual shouldn't be put in a better place than they were before the claim.

To put it more simply, in order for me to require Aviva to pay this claim, I'd need to see Mr A and Mrs E's garage clearly explain they were aware of the Category S status of the car, and only quoting for accident related damage – or at the very least provide a clear distinction between accident and non-accident related damage which allowed a comparison with Aviva's reports.

As well as their report, which does say they're quoting for accident damage but doesn't make any reference to the status of the car or accident / non-accident damage, there is a covering email from Mr A and Mrs E's garage. This says "Please find attached the estimate attached as requested for your perusal. This estimate is based upon what can be seen, and can be subject to change should we strip down the car and find further damage."

So, having read the garage's report and covering email carefully, I can't see anything that draws any distinction between what is and isn't accident damage. I'd add that I'd usually expect a manufacturer's garage to quote for all repairs required – whereas Aviva's garage if not doing the repairs wouldn't need to fully assess all damage.

Aviva has said more recently that its engineer spoke to Mr A and Mrs E's garage and they weren't aware of the full circumstances. By this I think Aviva mean the garage weren't aware the car had been written off previously. Mr A and Mrs E say they did tell their garage this was the case.

Ultimately, whether the garage were or weren't told the status of the car isn't necessarily relevant. The key issue when looking at Mr A and Mrs E's quote is whether it separates out accident related damage. As it doesn't, I can't say what they are and aren't quoting for – nor would I necessarily expect a garage unconnected with the insurance claim itself to do so.

But, from Aviva I do have its independent garage's report saying there is pre-accident damage – as well as its engineer's report saying there is pre-accident damage. Although I understand Mr A and Mrs E have concerns regarding these reports – which I'll address below – the reports are in my opinion consistent in saying there was pre-accident damage.

Overall, then although I do understand Mr A and Mrs E's perspective, I've no evidence to reasonably say their garage has quoted solely for accident damage sustained while insured with Aviva – but do have evidence from Aviva there was pre-accident damage. Because of that, I won't be requiring Aviva to pay this figure in full.

Mr A and Mrs E have also said I didn't factor in the £100 cost for them getting their car back. Looking back through the file I can see they've told us both that it cost them this to take their car to their garage, and that it cost this to get the car home from their garage. Ultimately, it was their choice to take it to their own garage, and I'd only be able to refund this figure if I felt Aviva had acted unfairly by not paying this garage's quote. As I don't think it has, it follows I won't be requiring Aviva to refund the £100 fee.

Evidence provided by Aviva's garage / engineer

Mr A and Mrs E have seen copies of the reports produced by Aviva / its garage.

Due to the time this claim has been ongoing, a number of pieces of information have been produced by Aviva / its garage showing what's considered to be the repairs required to the car.

1. *23/02/2021 Aviva's garage's email*
2. *15/03/2021 Aviva's email*
3. *05/05/2021 Email from Mr A and Mrs E to Aviva's garage, and their reply (which I'll address last in this section)*
4. *10/09/2021 Customer Estimate*
5. *29/12/2021 Aviva's assessment*

Mr A and Mrs E have produced a table showing what they say are inconsistencies amongst the different information given in the above contacts. They've included their garage's quote

as part of their comparisons, but I won't be factoring this in to this section for the reasons mentioned above.

Aviva's explanations for the differing information Mr A and Mrs E have pointed out say it's because the inspections were carried out for different purposes so will contain different information – it says this doesn't mean these are inconsistencies.

I can see Mr A and Mrs E have concerns that Aviva didn't report on all of the unrelated accident items initially, and then added additional ones later on. But, I think the key point here isn't what they have or haven't added to the unrelated items – it's simply what is or isn't accident related damage. I say that because, when I read the initial email from Aviva's garage on 23 February 2021 this was was the first contact to Mr A and Mrs E after the car had been assessed. This said they'd discovered pre-accident damage, so couldn't repair the car in full – and instead would offer a CIL settlement of £3,627.54. The email gives me the impression they've begun stripping the car down, found a number of faults which they've linked to previous poor repairs – so haven't continued assessing the car. I get this impression because Aviva's garage say they've "started" stripping the car down to determine the damage – but it doesn't say they've finished stripping the car down or done a full assessment of all the issues. I think that's reasonable given they've identified they won't be repairing the car at this point – so there isn't any need for them to list out all of the items needing repair. I believe this addresses the concerns Mr A and Mrs E have raised regarding the differing opinions from their garage, and Aviva's garage, about what needs to be repaired.

Thinking about the discrepancy Mr A and Mrs E have pointed out between the email of 15 March 2021, and the Customer Estimate dated 10 September 2021, I think there has been some confusion caused as a result of the way reports are produced. When they're accessed they're updated with "today's" date. So, if a report was produced yesterday, but accessed today, it'd show today's date. There is a report that's dated 10 September 2021 – but actually relates to the initial inspection carried out by Aviva's garage. I don't have a copy of this report dated 23 February 2021 (because the date of the report was updated when it was accessed), to tie in to the first contact Aviva's garage made with Mr A and Mrs E. But, I'm persuaded this report was produced at the time. I say this because although the report is now dated 10 September 2021, the code on the report, beginning C021, was mentioned in an email to Mr A and Mrs E on 15 March 2021 from one of Aviva's claims handlers. This was following Aviva's engineer's inspection of Mr A and Mrs E's car.

This said the engineer had determined the car was a total loss, the CIL was calculated by Aviva's garage, and it was for £3,627.54. Aviva's claims handler said they'd spoken to Aviva's garage, and said the items that made up this CIL offer were:

- *A new bumper*
- *A left front wing*
- *A new headlight*
- *Repair and paint the edge of the bonnet*

I don't though think this was correct. From reading the emails I think what's happened here is Aviva's claims handler has called the garage to understand what's been quoted for – and given a brief run down. But, it's clear the report C021 had already been produced at this time – and the report shows the same CIL offer, but with some additional items. So, I think the email Aviva sent Mr A and Mrs E was misleading. I think this didn't include all of the items that actually made up the CIL offer. I'll have a think about whether the compensation Aviva has now offered of £125 is still fair, factoring this in.

The 29 December 2021 report was produced by Aviva following our enquiries to ensure Mr A and Mrs E were being treated fairly. From my review of this, it doesn't include any 'new' accident related items – so, I don't think it impacts on my recommendations.

Finally, turning to the emails of 5 May 2021. Mr A and Mrs E got in touch with Aviva's garage to say when the car was returned the engine top was missing. They asked for it to be sent over. Aviva's garage replied, and said the part had been broken, but it was included in the CIL offer.

Mr A and Mrs E disputed this with Aviva and our service. Having looked at this, the broken engine top wasn't ever included in the CIL offer. We put this to Aviva, who explained they'd now add this to the CIL offer – with the cost being £65, plus VAT making the total offer as £78.60. Aviva's CIL offer stands at £3,706.14. I can see at one point Mr A and Mrs E said this didn't include VAT, but it does.

Taking everything into account I think this offer is fair. As I've explained above, I don't think Aviva adding items to the unrelated sections of the reports, is proof the first assessment by their garage, and the second assessment by their engineer, was inappropriate. I think there was some poor communication which led to Mr A and Mrs E thinking the offer didn't include all of the items (bar the engine top) when it actually did. The only evidence Mr A and Mrs E have provided to dispute the figure, is their garage's assessment of the repairs needed. But, I've explained in detail in the above section why I'm not persuaded by that. So, overall, given this offer now includes the engine top which it should have previously, and has been confirmed by Aviva's garage and its engineer, I think this is a fair and reasonable way for this complaint to be resolved. I will though further consider the compensation, given Aviva / its garage said the engine top was included, when it hadn't been.

I've noted Mr A and Mrs E have concerns over the engineer's email address which looks like he works at the garage. But, he's also got an Aviva email address – so I've seen no reason to say this means he's not provided a meaningful and appropriate assessment of the accident damage.

Aviva's communication

Mr A and Mrs E have raised concerns about Aviva's communication – being told the car was a total loss, that it'd been repaired and other confusing messages.

I agree, Aviva's communication has been poor aside from what I've already mentioned above. On 3 February 2021 it told Mr A and Mrs E their car was deemed a total loss and asked a few questions around this – but then decided to try and repair the car, without telling them clearly what'd changed.

On 15 March 2021, Aviva sent an additional email to the one I've mentioned above, saying (in extremely large font) "Your vehicle is repaired". Given there was a dispute at this time over the settlement – and Aviva had already completed two reports at this stage saying it wouldn't repair the car, I think this was very unhelpful.

I arranged for us to point this out to Aviva and ask if it was prepared to offer some compensation for these errors. Aviva explained its system identified the case as a total loss when it was first reported, but it realised this was an error and sent an updated email. Aviva accepted it'd have been better to have called Mr A and Mrs E. In addition, it acknowledged it didn't handle Mr A and Mrs E's communications around 15 March 2021 in the right way.

For these issues, Aviva offered £125 compensation. I think although Mr A and Mrs E have been rightly frustrated with Aviva's communications, most of their frustration is Aviva not

paying the costs they've said their manufacturer's garage said should be paid. But, factoring in the poor emails of 3 February, 15 March (twice) and 5 May 2021 where Aviva's garage said the engine top was included in the CIL – I think this needs to be increased. I also need to factor in Mr A and Mrs E were asking for copies of the assessments carried out by Aviva / its garage on several occasions, but I can't see these were ever provided. Aviva's reply to this on 29 March 2021 was the assessment "won't be available" until the CIL settlement has been made. It's unclear to me why this would be the case – as it's the basis for the settlement, so I think Mr A and Mrs E were entitled to see this when they first asked for it.

For the overall poor communication and frustration Mr A and Mrs E have experienced, I think £300 is a fairer compensation amount.

Responses to my provisional decision

Aviva didn't reply by the deadline.

Mr A and Mrs E said they still disagreed with the outcome I reached. They listed out a number of questions – all of which I've read very carefully.

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.

Mr A and Mrs E have asked a large number of questions in response to my provisional decision.

I should explain it's not my role to provide an answer to every question asked. My role is to decide whether Aviva have acted fairly or not in providing the cash in lieu settlement they have. I set out in the provisional decision I didn't think they had – and increased it to £3,706.14 minus the £350 excess.

The first set of questions Mr A and Mrs E ask are about the reports and discrepancies in them. I re-read my comments in the provisional decision, and consider I've addressed Mr A and Mrs E's concerns as far as needed. So, I won't comment on this further.

The second set of questions relate to my provisional decision, and actions I've taken within that. The majority of Mr A and Mrs E's points are ones I consider I've addressed satisfactorily in the provisional decision. But I think there is one issue it's important I address.

Mr A and Mrs E ask why I've adopted Aviva's allegation, that the manufacturer's garage assessment contains accident and non-accident related damage – and they question why I've not put more questions to Aviva about what's happened.

I understand from their perspective the manufacturer's assessment, combined with Aviva's communication, has led them to firmly believe Aviva haven't offered a fair cash in lieu payment. But I'm required to assess and make a judgement on all the evidence. Although I've seen the questions Mr A and Mrs E have set out for me to ask, I don't think this would change anything. I say that because my own knowledge of how I expect a manufacturer's garage to quote for things, and the extent to which I'd expect Aviva to inspect the car, is how things have been done here. What I mean by that is I'd expect the manufacturer's garage to quote for all the repairs they can see might be needed. I would only expect Aviva to quote for anything related to the accident damage – and, as is the case here – where previous poor repairs show up, they'd stop their assessment. It's standard industry practice for Aviva not to pay for previous poor repairs – as I set out in the provisional decision, this would be placing

Mr A and Mrs E in a better position. So, I'd expect Aviva's garage to be aware of this also – and essentially not spend any more time assessing a car once they'd identified they wouldn't be fixing it.

I do understand Mr A and Mrs E feel very strongly Aviva aren't offering a fair cash settlement. But what I have are reports from Aviva / its engineer telling me the same thing – that there is pre-accident damage, on a car previously declared Category S write-off (which, as a reminder, is that the car can be repaired but the insurer has decided not to). And a report from a manufacturer's garage which simply doesn't say anything about what is or isn't pre-accident damage. Based on this evidence provided, and even accounting for the discrepancies in the reports, I don't feel I can fairly tell Aviva to pay any more than I already am.

With that in mind, I remain of the opinion that Aviva should carry out the actions I set out in my provisional decision, and have set out again in the next section.

Putting things right

I require Aviva to:

- Pay Mr A and Mrs E a total of £3,356.14 (which is the cash in lieu offer of £3,706.14, minus the excess of £350) in settlement of the claim
- Pay Mr A and Mrs E £300 compensation

My final decision

I partially uphold this complaint and require Aviva Insurance Limited to carry out the actions in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs E to accept or reject my decision before 10 October 2022.

Jon Pearce
Ombudsman