

The complaint

Mr W, a director of C, a limited company, has complained about C's motor insurer Aviva Insurance Limited. Aviva has refused to pay a claim made in respect of an accident which involved one of C's vehicles.

What happened

There was an accident in 2017 which Mr W believed had been caused by the driver of the other car. As he didn't think the driver of C's vehicle was at fault he decided to use a claim management company to deal with matters rather than claiming under C's policy with Aviva. However, it transpired that the other driver had suffered an unexpected, medical emergency whilst driving their car and so their insurer wouldn't accept they were 'at fault'.

With no further recourse available through the claim management company, C made a claim to Aviva. By this time repairs had been done and hire costs had accrued – neither of which the other insurer would pay for. C accepted that the Aviva policy wouldn't cover it for the hire costs, but felt it should cover the repair costs, which (net of VAT) totalled £6,525.54. And which the claim management company now expected C to pay. Aviva said it wouldn't cover the claim. It said C had breached its policy by not telling it until 2020 of the claim and, in so doing, had prejudiced its position. C complained to us.

Our Investigator upheld the complaint. He felt that Aviva had not shown that its position had been prejudiced by C's breach of the policy terms. So he said it should settle the repair claim subject to the remaining policy terms and conditions, plus interest*.

Aviva said it didn't agree with the findings. It said it had not been asked to evidence how it had been prejudiced and that as C had not paid for the repairs, it shouldn't have to pay interest. Our Investigator gave Aviva a chance to provide anything further it wished to, but nothing was received.

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 understand that Aviva is concerned about this claim. With it only being made to it in 2020 it did come some three years after the event. And time can sometimes be an issue for claims. However, it would be unfair and unreasonable to assume that just because a claim has been made late, that late notification has prejudiced the insurer's position. Rather if an insurer wants to rely on a breach of a policy term, such as that relating to notification of a claim, to decline a claim, it has to show it has been materially, negatively affected by the breach.

Here Aviva hasn't demonstrated that it has been affected in this way (prejudiced). I know Aviva has referred to the cost of repairs. Whilst I haven't seen what it would have cost Aviva to do the work, I take on board the explanation it has given about labour costs. In brief because of the agreement with the claim management company an extra cost is factored into the labour rates which applied to the repairs. I accept that this isn't a charge Aviva would

usually be subject to. But that doesn't mean Aviva has been prejudiced by these costs as they don't determine what C is entitled to receive, or Aviva is obliged to pay, under the terms of the policy in question.

I also don't think the late notification of the claim makes it necessarily impossible for Aviva to have investigated and validated the loss. In some circumstances, validation after so long might be an issue. And if Aviva had investigated and found some issue existed in that respect – something it could have done then but can't do now for example – then that might have been evidence of prejudice. But Aviva didn't seek to do that, rather it automatically refused liability. I think the only fair thing now is for Aviva to settle the claim in line with the remaining terms and conditions of the policy.

It is often the case that this service will apply interest to awards. And we do this even in situations where a policyholder is not physically out of pocket for a sum. C has known it has had a debt to the claim management company for the repair sum and Aviva, since 2020, has had a claim for its reasonable liability for C's damaged but repaired vehicle. A claim which I have now found it unfairly and unreasonably refused. I'm satisfied that it is fair and reasonable for me to award interest* on any settlement sum Aviva pays to C.

Putting things right

I require Aviva to settle C's claim for vehicle damage, subject to the remaining terms and conditions of the policy. To any settlement made, interest* should be applied from the date of the claim until the settlement is made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Aviva to take off tax from this interest. If asked, it must give C a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Aviva Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 21 October 2022.

Fiona Robinson

Ombudsman