

The complaint

Mrs M complains that Aviva Insurance Limited handled her motor insurance claim unfairly.

What happened

Mrs M had a motor insurance policy with Aviva. She said her car was hit by a stray golf ball while she was driving close to a golf club. There was damage to her car as a result.

Mrs M says she asked the golf club for details and then submitted a claim to her insurer. She said the golf club accepted responsibility as did the person who'd hit the ball. This meant the claim excess may not have been payable.

Aviva looked into matters but decided it would be treated as a fault claim, because they didn't think recovery was possible. Eventually, Mrs M withdrew the claim because she felt Aviva had been unfair and that she'd lose out by non-recovery of the excess.

An investigator here looked into the matter. They didn't think Aviva were responsible for any loss Mrs M may incur. But Mrs M didn't agree, so the case was passed to me to decide.

I issued a provisional decision earlier this month explaining what I thought was a fair outcome in this case, I've copied it below.

"I think Aviva ought to have done more to investigate Mrs M's claim, and that had they done so it is likely they'd have been able to recover her excess. I'll explain why.

Mrs M has provided evidence of communication she had with the golf club and, based on that, she says the golf club had details of the person responsible for the damage and that they'd accepted liability on account of signage at the ground, which set out the responsibility of the players.

Mrs M has an email from the Managing Director of the golf club which refers to her insurance claim. He doesn't explicitly accept the club or its patrons are responsible, but he pointedly provided his details to her, which says to me they felt they had some responsibility and information that would be useful for the claim. If they felt they weren't responsible, or had no information, then I'd have expected them to say as such.

Aviva say that when they contacted the golf club, they were told that there was no evidence of them or their patrons being responsible. But Aviva didn't contact the golf club until over four months after the incident occurred, so I don't think it's surprising that records won't have been available then. I think it's likely they'd have been available if Aviva had asked for them promptly.

Mrs M says the estimate for repairs was originally £300, which would've been below her excess (although it has since increased). This could be seen as a suggestion, albeit not from her, that the loss would always have been for her to bear. But the policy Aviva provided to Mrs M included legal services cover which said:

*“As part of your claim **we** will pay to recover **your** financial losses (such as **your excess** and travel expenses) and also obtain compensation if, as a result of travelling in, getting into or out of **your car**, **you** die or sustain personal injury.”*

To me, it's clear the part about the excess is relevant here. If there was an admission of liability at the time, along with contact details available for the responsible party, I think it's more likely than not that Aviva would have been able to recover Mrs M's excess. And that the reason it wasn't was because of their delay.

Aviva has been asked for further comment in relation to matters concerned but hasn't responded within the period required.

Overall, I think Mrs M had a reasonable expectation that Aviva would make a prompt attempt to deal with her claim and recover her excess. And I think it's more likely than not that they would have been successful.

I understand that the damage to Mrs M's car has yet to be repaired, although it has been said to be relatively minor and had not led to the car being unroadworthy. Mrs M has had quotes for the repairs to be done and can provide those to Aviva for approval. Alternatively, Aviva can arrange for one of their authorised repairers to rectify the damage.

And while not necessarily part of the original complaint, it seems reasonable to say that Aviva ought to reclassify the claim as non-fault, and if any refund is due on the policy renewal cost, that should be paid to Mrs M.”

Aviva didn't reply to my provisional decision. Mrs M replied saying thank you.

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.

Bearing in mind Aviva didn't have anything to add, and that Mrs M seemed satisfied with my provisional decision, I see no reason to depart from it.

My final decision

It is my final decision that I uphold this complaint. I require Aviva to put things right as set out above.

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

Will Weston
Ombudsman