

The complaint

Mr D is complaining that Aviva Insurance Limited hasn't refunded his excess after he made a claim on his car insurance policy.

What happened

Mr D's car was damaged in an accident with a third party's vehicle. The driver of the other car and the two passengers fled the scene of the accident. Mr D contacted Aviva to claim for the damage to his car. Aviva said it would settle the claim by paying him the car's market value, less his excess. However, Mr D didn't think he should have to pay his excess because he says the car was being driven by an uninsured driver and he says Aviva's uninsured driver promise says that it will refund his excess if he's hit by an uninsured driver and he's not at fault.

Aviva said the terms of the policy required Mr D to provide the name of the driver, their contact details and the vehicle registration. It said that, as Mr D only provided the registration number, he wasn't eligible for this promise. And it said it wasn't able to recover its outlay from the third party's insurance policy.

Our investigator didn't uphold this complaint as she that Mr D hadn't provided everything he needed to provide under the terms of the uninsured drivers promise. So she didn't think Aviva had acted unfairly in not refunding the excess. She also didn't think it had acted unfairly in not recovering its outlay and the excess from the third party's insurance policy.

Mr D didn't agree with the investigator and highlighted that the Insurance Product Information Document (IPID) that Aviva sent him simply says it will not reduce his No Claims Discount (NCD) and will refund his excess if he's hit by an uninsured driver. And he says it doesn't stipulate any conditions relating to this. He also maintains the third party's insurance policy should have covered his losses.

As Mr D didn't agree with the investigator, the complaint's been passed to me to decide.

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've decided to not uphold this complaint and I'll now explain why.

Mr D is unhappy that he hasn't had his excess refunded. I think there are two issues I need to consider in this decision:

1. Should Aviva have refunded the excess under the uninsured drivers promise; and
2. Should Aviva have done more to recover the excess from the third party's insurance policy?

I shall consider each point separately.

Uninsured drivers promise

Mr D has set out that Aviva advertises that, if he's hit by an uninsured driver and he isn't at fault for the accident, it will refund his excess and he won't lose his NCD. And I don't disagree with that. But, in assessing whether the promise applies, I need to first consider what the terms of the contract says. And they say:

"If you are hit by an uninsured driver and provide us with the other driver's name, contact details and their vehicle registration number, we will refund the excess you paid. This only applies where the driver of your vehicle is not at fault."

So the terms of the policy clearly sets out that Mr D needed to provide all of the driver's name, contact details and their vehicle registration number to be eligible for the promise. And I don't think it's unreasonable that it wanted this information, as it needed it to be able to pursue the third party directly. I naturally sympathise with the situation Mr D found himself in. His car suffered significant damage and I understand he suffered a personal injury in the accident due to no fault of his own. And I also recognise he was unable to obtain the third party's details as they fled the scene. But, ultimately, Mr D didn't provide the information that he was required to provide and I can't say that Aviva has been unfair in saying it wasn't required to refund the excess under the terms of the uninsured driver's promise.

I note Mr D has also said that the IPID document doesn't say he needed to obtain this information. But that appears to be a historic document as it sets out that it was created in March 2020. Aviva has provided the IPID document that applied for Mr D's policy, which says:

"Under the Uninsured driver promise, you'll need to provide the other driver's name, contact details and vehicle registration."

So I'm satisfied that the up-to-date IPID document that Aviva has shown was relevant to Mr D's policy did set out that Mr D needed to provide this information. Mr D has said he's provided the document that he was given, but I'm not persuaded that was the case as documents are automatically electronically sent. So I don't think it's likely a document from over two years before would have been sent when the policy in question started. It may have been sent alongside a historic policy.

But, even if the IPID Mr D has provided was sent with the policy in question, it wouldn't change the outcome of this case. The IPID document explains key features of the insurance policy – i.e. doesn't constitute the terms of the contract. They are sent to help consumers understand what the policy does and doesn't provide and to enable them to make informed decisions. I would need to think whether Mr D could have done anything differently had he known of the terms of the promise. Ultimately, Mr D wasn't ever going to be able to gather the information he needed because the driver of the vehicle fled the scene. So, he couldn't have done anything differently. Even if Aviva didn't make it clear what he needed to do, Mr D hasn't lost out because the situation would still be the same.

So, taking everything into consideration, I can't say that Aviva has acted unfairly in not refunding the excess under the uninsured drivers promise.

Recovering its outlay from the third party's insurance policy

I should first explain that this service isn't able to say whether the third party is liable to settle Mr D's claim. Our role is to look at whether Aviva has carried out a fair investigation, reviewed all the evidence it has and come to a reasonable decision.

Mr D's policy, like all other car insurance policies, allowed Aviva to *"take over and conduct in the name of the person claiming under the policy the defence or settlement of any claim or take proceedings for our own benefit to recover any payment [Aviva] have made under this policy."*

[Aviva] shall have full discretion in the conduct of any proceedings or the settlement of any claim."

So Aviva was entitled to decide whether to pursue the claim through the third party's insurance policy or not. But it needed to exercise this right fairly and reasonably, taking into account everything both parties had provided.

Mr D says the third party's policy provides cover for third party losses – so he says his losses are covered. But I don't agree. Insurance policies provide cover to those insured under the policy for their individual liabilities to a third party due to loss or damage they negligently caused in an accident. So, for Aviva to successfully recover its outlay – and to be able to recover Mr D's excess – it would need to show that someone insured under the policy was liable for the loss or damage in law. Essentially this means, it would have to show that Mr D's losses were as a result of a negligent act by someone insured under the policy. Alternatively it would have to show that there was some other requirement in law – such as liabilities under the Road Traffic Act 1988 (RTA) – that would require it to settle the claim.

Aviva has said that, given the person driving the vehicle wasn't insured under the third party's policy, it isn't able to recover its outlay from the third party's insurance policy. I can't say this is unreasonable. I can also see that it's considered whether there were prospects of claiming under the RTA, but it said that it couldn't do so. And I'm satisfied it's given a fair explanation of why.

Ultimately, I'm satisfied that Aviva has considered all the circumstances in deciding whether there were prospects of success in recovering its outlay from another party, but it's decided there were. And I can't say Aviva has acted unreasonably in the way it's come to that conclusion.

Summary

I appreciate Mr D feels strongly about this case and I also recognise the impact this matter has had on him. He's lost out due to no fault of his own and, as I said, I naturally sympathise with the situation he's found himself in. But, he was contractually required to pay the excess as part of any claim. And Aviva wasn't required to refund it under the terms of the policy.

In certain circumstances, individuals can recover uninsured losses from the Motor Insurers Bureau (MIB) if they've been injured or their property has been damaged because of an uninsured or 'hit and run' driver. But Mr D will need to contact the MIB directly himself if he wishes to claim through them.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 April 2023.

Guy Mitchell
Ombudsman