

The complaint

Mr W complains that Aviva Insurance Limited (Aviva) failed to apply its uninsured driver promise and provided poor service following a claim he made under his motor insurance policy.

What happened

Mr W says his parked car was hit by an uninsured driver who drove away from the scene. He contacted Aviva to make a claim. Having assessed the damage it determined that the car was a total loss. Mr W says he had to contact Aviva to chase the progress of his claim and he experienced delays.

Mr W says he provided a description of the other driver and the van he drove. He also provided details of several witnesses and a photo, including the full licence plate of the third-party's van. Mr W says he shouldn't have to pay his policy excess in line with Aviva's uninsured driver promise.

Aviva responded to Mr W's complaint in its final response dated 29 June 2023. It says it didn't handle the claim proactively and could've done more to progress it sooner. It apologised to Mr W that he'd needed to chase progress and hadn't received an acknowledgement when he provided details of the third party. Aviva says it requested information from the police on 8 June. It was told it could take 16 weeks for a response. Because of the delays it caused Aviva offered Mr W £150 compensation.

Mr W didn't think he'd been treated fairly and referred the matter to our service. Our investigator didn't uphold his complaint. He says there have been some delays in Aviva's handling of the claim, but he felt the compensation it offered was fair. He says the policy excess is payable by Mr W. But in the event Aviva is able to successfully recover its costs from the third-party this would be refunded to him. Our investigator refers to Mr W's policy terms that require him to provide the driver's name, registration and contact details. He says as this information wasn't provided the uninsured driver promise didn't apply.

Mr W didn't accept this outcome. He says he did all he could to identify the third party. He says the detail behind the uninsured driver promise is buried in the policy booklet. He maintains that Aviva has treated him unfairly and asked for an ombudsman to consider his complaint.

It has been passed to me to decide.

I issued a provisional decision in January 2024 explaining that I was intending to not uphold Mr W's complaint. Here's what I said:

provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so my intention is not to uphold Mr W's complaint. I don't agree with everything our investigator said. So, I'll give both parties the opportunity to consider my findings and provide any further comments or information they believe is relevant before I issue my final decision.

I've read Mr W's policy booklet that sets out the terms and conditions of his policy with Aviva.

The terms say:

"Excesses

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."

And:

"Uninsured driver promise

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 not reduce your no claims discount. This only applies where the driver of your vehicle is not at fault."

Mr W explains that Aviva advertises if he's hit by an uninsured driver it will refund his excess fee. But, in assessing whether the promise applies, I need to consider the terms of his contract. I acknowledge the point Mr W is making but ultimately it's his policy terms and conditions that determine the cover he has in place.

I think the terms of the policy clearly set out that Mr W needed to provide the driver's name, contact details and vehicle registration for the uninsured driver promise to be enacted. I don't think it's unreasonable that Aviva wanted this information. This is necessary for it to be able to pursue the third party directly. I sympathise with the situation Mr W has found himself in. His car was written off forcing him to make a claim through his insurance policy. I also recognise that the third party drove off after the collision and didn't leave his details. But, ultimately, Mr W didn't provide the information he was required to under the terms of the uninsured driver promise.

I don't agree with our investigators comments that the policy excess would still apply had Mr W provided the full details for the third party. As discussed the policy says that the excess will be refunded in these circumstances. But as the conditions for the uninsured driver promise weren't met, the policy excess is payable by Mr W. The policy excess is essentially an uninsured loss, meaning it's always payable by the insured in the event of a claim, unless the promise terms are met.

In my decision I can only consider up to the date Aviva issued its final complaint response, which was in June 2023. At this time, it says it'd contacted the police and its investigations were ongoing. It may be that the business is able to identify the third party and pursue the recovery of its costs. If successful this will mean Mr W's excess payment can be refunded. But if Mr W has concerns relating to any issues after the date of Aviva's final complaint response, he must make a separate complaint to the business. If he's dissatisfied with its response, or it doesn't respond within eight weeks, he can then ask our service to consider the matter.

I've thought about Mr W's comments that Aviva provided poor service causing delays in his claim. I can see the claim was registered towards the end of April 2023. A record dated 4

May 2023 says Mr W was told his car was likely to be a total loss. The claim was subsequently settled with a payment that was provided on 16 May. I don't think this timeframe was unreasonably long.

I note Mr W's comments that he was told to request a courtesy car from Aviva's garage. It didn't have a car available. He was then told he had enhanced cover and he should've contacted the appointed car rental company instead. He says a car was eventually dropped off at his home. But the experience was stressful.

I have no reason to doubt Mr W's account of these events. I understand that he expected the process to run smoothly and acknowledge he found the lack of proactive claim handling frustrating. In the circumstances I think it was appropriate that Aviva apologised and paid compensation for the shortfalls it recognised. But I think the amount it offered was fair, so I won't ask it to pay more.

Having considered all of this I don't think Aviva treated Mr W unfairly when confirming its uninsured driver's promise terms hadn't been met. Its standard of claim handling and communication could've been better – but I'm satisfied that its apology and offer of £150 compensation was fair.

I said I was intending to not uphold Mr W's complaint.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Aviva didn't respond with any further comments or information for me to consider.

Mr W responded to say that nowhere in my provisional decision do I consider the unfair contract term. He says he believes the uninsured driver term is unfair. And that it can't reasonably be expected that an uninsured driver will remain at the scene of an accident as they have committed a criminal offence for not having insurance.

Mr W says he considers the uninsured driver contract term is unfair, and he expected this term to have been "*struck out by the ombudsman*".

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.

Having done so, I'm not persuaded to change the outcome I set out in my provisional decision. I understand Mr W will be disappointed. But I haven't seen anything in his further comments that shows Aviva treated him unfairly.

I've thought carefully about Mr W's view that the uninsured driver promise represents an unfair contract term. I understand his argument about the likelihood of an uninsured driver remaining at the scene of an accident in order to allow details to be obtained. But, as above, I'm not persuaded that Aviva has treated him unfairly.

The terms and conditions of Mr W's policy determine the cover he has in place. As I said in my provisional decision, I'm satisfied that the uninsured driver promise is transparent and clearly explained. If Mr W was unhappy with the conditions set out in his policy, he could've contacted Aviva to raise his concerns when he received his policy documents. He had the opportunity to cancel his policy, at this time, without charge.

When an insurer can't recover its costs, it's expected that its customer's no claims discount (NCD) will be reduced. No costs are recoverable when the other party involved in the claim is at fault and has no insurance. So, Aviva's uninsured driver promise offers additional protection from a NCD being reduced (and prevents payment of the policy excess) - if its policy conditions are met.

I acknowledge Mr W wasn't able to provide the details required for the uninsured driver promise to be enacted in this case. But I don't think this means Aviva included an unfair term in its policy. So, for the reasons I've explained above, and in my provisional decision, I don't uphold Mr W's complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 March 2024.

Mike Waldron
Ombudsman