DRN-4632028

Financial Ombudsman Service

The complaint

Mr W complains that Aviva Insurance Limited is responsible for mishandling a claim and mishandling his car in connection with a motor insurance policy.

What happened

The subject matter of the claim and the complaint is a premium-brand car with a three-litre engine. The car was first registered in 2009.

Mr W acquired the car.

According to its MOT history, the car passed a test in early December 2022, with a recorded mileage of just over 100,000.

In May 2023, Mr W had the car insured on a comprehensive policy with Aviva. Any claim for damage was subject to an excess of £550.00.

Unfortunately, Mr W reported that on about 18 May 2023, an incident with a man-hole cover had damaged the car.

Some of the complaint is about acts or omissions of Aviva's vehicle salvage company or Aviva's repairer. Insofar as I hold Aviva responsible for them, I may refer to them as acts or omissions of Aviva.

Aviva took possession of the damaged car. Aviva didn't provide a courtesy car. It said this was because Mr W's car was a total loss. Mr W borrowed his step-parent's car to get to work.

For some weeks, Mr W tried unsuccessfully to find out whether Aviva considered that the car was repairable.

On about 22 June 2023, Aviva said it was repairable. Mr W decided to withdraw his claim, so as not to incur the excess and have a fault claim against him. He got the car back intending to repair it at his own cost.

On about 26 June 2023, Mr W complained to Aviva that the vehicle salvage company had caused additional damage to the car after the incident.

In August 2023, Aviva said he had an ongoing claim.

By an email dated mid-August 2023, Aviva told Mr W of his right to bring his complaint to us, which he did without delay.

In late August 2023, Mr W and Aviva renewed the policy.

In mid-September 2023, Mr W's partner told us that:

- The vehicle salvage company had offered £230.00 which Mr W had declined.
- Aviva had decided to write the vehicle off. It had made a settlement offer of £4,945.00, less the excess of £550.00, a balance of £4,395.00.

Mr W's partner later told us that, a few weeks later, Aviva revised its settlement offer to £5,125.00 less the excess of £550.00, a balance of £4,575.00.

Mr W's partner also told us that Aviva had offered Mr W the opportunity to buy back the damaged car for about £1,500.00.

She said he had to accept the £4,575.00 so he could buy another vehicle.

Mr W changed the vehicle on the policy with effect from mid-October 2023.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. She thought that Aviva should've provided a courtesy car from the date it booked the car in for repair until the date Mr W withdrew his claim. She thought that the repairer caused damage that meant Mr W was without the use of the car after its return. She also thought that lack of updates had caused inconvenience for Mr W.

The investigator, on 23 November 2023, recommended that Aviva should pay Mr W:

1. £10.00 a day for loss of use of his own car for the periods:
   1.1 from the date of booking-in to the date Mr W withdrew his claim; and
   1.2 from the date Mr W reported the repairer's damage to the date that the settlement value for the car was agreed and the claim resolved; and
2. £100.00 compensation for the lack of meaningful updates during his complaint.

Our investigator changed her opinion in mid-December 2023. She still recommended that the complaint should be upheld in part. She recommended that Aviva should:

1. pay Mr W £10.00 a day loss of use from 26 June 2023, when he first reported the additional damage, to the date when he bought a new car or the date that the settlement figure was paid, whichever was sooner; and
2. amend their systems and all relevant databases to ensure that this claim is logged as a non-fault one; and
3. pay Mr W £250.00 for distress and inconvenience.

Our investigator changed her opinion in early January 2024. She still recommended that the complaint should be upheld in part. She said that Mr W had the use of his step-parent's car. So she no longer recommended compensation for loss of use.

But she thought that it was the actions of Aviva's repairers that caused the additional damage, and it was Aviva's actions that caused the claim to be re-opened, so it should've recorded the claim as non-fault.

The investigator recommended that Aviva should:

1. amend their systems and all relevant databases to ensure that this claim is logged as a non-fault one; and
2. pay Mr W £300.00 for distress and inconvenience.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr W and to Aviva on 9 February 2024. I summarise my findings:

> All things considered, I was minded to agree that £300.00 was fair and reasonable for distress and inconvenience.
>
> I accepted that Aviva deprived Mr W of his opportunity to withdraw his claim and try to get the car fixed at a cost to him of less than £3,500.00 including VAT. So I was minded to find it fair and reasonable to direct Aviva not to record any claim (fault or non-fault).

Subject to any further information either from Mr W or from Aviva, my provisional decision was that I upheld this complaint in part. I intended to direct Aviva Insurance Limited to:

1. pay Mr W £300.00 for distress and inconvenience; and
2. not record any claim arising from the incident in mid-May 2023 or the further damage in May or June 2023.

Aviva accepted the provisional decision.

Mr W accepted the provisional decision in part. However, his partner said, in summary, that:

- Mr W would have been entitled to a courtesy car for the period prior to 22 June 2023.
- This would have allowed his step-parent to sell the car when intended.
- Mr W was only fortunate that he was able to borrow her car.
- Aviva should compensate Mr W for the amount of time between 22 June and the date of settlement for being without his own vehicle or even knowing what was going on. It should not have taken 4 months to get a settlement figure from Aviva, and ultimately it should not have taken a complaint to get to this stage.
- She wouldn't suggest that the email from Aviva in mid-August is deemed their final response. This was notification that there was still no decision. The expectation was that Aviva would still continue with this complaint to ensure Mr W had a speedy resolution on what was happening with his vehicle and any settlement figure.
- By an email dated mid-December 2023, Aviva agreed to loss of use compensation.
- Aviva also agreed that "*I do believe compensation is due*".
- Loss of use compensation should be as follows:

  > £310.00 - courtesy car until 22 June.
  >
  > £1,020.00 - courtesy car/compensation for time of not having his own vehicle or a settlement offer which covers from 26 June to settlement in October.

- As Aviva acted in a way that Mr W could not withdraw his claim, due to the additional damage, it should reimburse his excess of £550.00.
- If he had purchased his vehicle back, there would have been no money to repair the damage Aviva did to his vehicle.

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.

The Financial Ombudsman Service

The Financial Ombudsman Service is bound by the Financial Conduct Authority's dispute resolution rules.

We consider an eligible consumer's complaint about regulated activities of a regulated financial firm. We consider whether the firm has treated the consumer fairly and reasonably.

Complaint-handling isn't itself a regulated activity.

One of the rules is that, before we can investigate a consumer's complaint, the consumer must first have made that complaint to the firm and waited for up to eight weeks for a final response. It follows that we can investigate the complaint to which the final response responded or should've responded – but we can't usually investigate later complaints.

Also, we operate a two-stage process under which an investigator gives an opinion, and an ombudsman gives a decision.

Where we uphold a complaint about an unfair act or omission, we look at the act or omission's impact on the consumer. We can't look at its impact on the consumer's family members who didn't have the customer relationship with the firm.

We look at the actual impact on the consumer, rather than what might've happened.

Where we find an impact of financial loss, we assess compensation at a level intended to put the consumer in the financial position they should've been in.

Where we find an impact of distress and inconvenience, we assess compensation in line with our published approach.

We can't assess compensation at a level intended to punish or deter unfair acts or omissions.

Scope of this decision

Aviva's email dated mid-August 2023 didn't properly address the complaint at that time. I don't condone that. Nevertheless Mr W brought his complaint to us. So I can't comment on any later complaints.

As far as I know, Mr W's partner and his step-parent weren't named drivers on his policy. So I can't direct Aviva to pay either of them compensation. But I can keep in mind that Mr W may have felt an impact of distress at their inconvenience.

My findings

I accept that Mr W made a claim to Aviva because he feared that the car had structural damage.

The salvage company inspected Mr W's damaged car in May 2023 and did a report. It estimated the cost of repair as about £3,500.00 including VAT. That was a high proportion of the pre-incident value of the car. I don't find it unfair that Aviva regarded the car as a likely total loss.

Aviva could've paid Mr W the pre-incident market value of the car, less the excess. Mr W might've asked about keeping the damaged car, in which case Aviva would've proposed a deduction for salvage and Mr W would've chosen whether to suffer that deduction and try to get the car fixed at a cost to him of less than £3,500.00 including VAT.

Alternatively, Mr W could've withdrawn his claim and tried to get the car fixed at a cost to him of less than £3,500.00 including VAT.

For the period from about 18 May to about 22 June 2023, I hold Aviva responsible for some delay and for poor communication with Mr W.

For the period up to about 22 June 2023, I don't find it fair and reasonable to direct Aviva to compensate Mr W for the lack of a courtesy car. That is for the following reasons:

- The policy terms didn't provide a courtesy car unless the car was being repaired by an Aviva- approved repairer.
- Mr W didn't want an Aviva- approved repairer to fix his car. He withdrew the claim.
- Mr W had the use of his step-parent's vehicle.

Aviva shouldn't have damaged the car before settling with Mr W. I don't condone that.

I accept that the further damage deprived Mr W of his opportunity to withdraw his claim and try to get the car fixed at a cost to him of less than £3,500.00 including VAT.

For the period up to mid-August 2023, I don't find it fair and reasonable to direct Aviva to compensate Mr W for the lack of a courtesy car because Mr W still had the use of his step-parent's vehicle.

I've considered whether Mr W has shown a financial loss. I've found that Aviva deprived him of his opportunity to withdraw his claim and try to get the car fixed at a cost to him of less than £3,500.00 including VAT.

But he accepted £5,125.00 for the pre-incident value of the car, less the excess of £550.00. So I don't find that Aviva had left him with a financial loss compared to the position he was in before Aviva caused the further damage.

I've also considered the level and duration of the distress and inconvenience Aviva caused Mr W. I accept that he was upset that someone had used and abused his car, causing the further damage.

And up to mid-August 2023, Aviva didn't deal or communicate well about what it proposed to do.

<u>Response to the provisional decision</u>

Mr W's partner says that he would have been entitled to a courtesy car for the period prior to 22 June 2023. She also says that a courtesy car would have allowed his step-parent to sell the car when intended. She also says that Mr W was only fortunate that he was able to borrow a car.

However, at that time, Aviva regarded the car as a total loss, which is why it didn't provide a courtesy car. Also, the fact is that Mr W did have the use of his step-parent's car. In any event, I don't agree that Mr W could've had a courtesy car and then withdrawn his claim. So

I don't find it fair and reasonable to direct Aviva to pay compensation for loss of use of a vehicle during that period.

Mr W's partner says that Aviva should compensate him for the period of delay between 22 June and the settlement in October for being without his own vehicle or even knowing what was going on.

However, Mr W still had the use of his step-parent's car. So I don't find it fair and reasonable to direct Aviva to pay compensation for loss of use of a vehicle during that period. That said, I don't condone Aviva's delay and I've included its impact in my assessment of compensation for distress and inconvenience.

Mr W's partner says that, following Aviva's communication in mid-August 2023, it should've continued to deal with the complaint.

However, Mr W brought the complaint to us, so Aviva communicated partly through us.

Mr W's partner says that Aviva said it believed compensation was due.

However, Aviva's email to us dated late November 2023 was in response to the investigator's first opinion. In full, the email was as follows:

> "*I am sorry I disagree with this, under policy cover he would not have been entitled to a hire vehicle or a courtesy car in the event of a vehicle being deemed a total loss, therefore I cannot agree on this occasion. However I do believe compensation is due*."

In context, Aviva was disagreeing with the recommendation of compensation for loss of use but agreeing the recommendation of £100.00 compensation for distress and inconvenience.

Mr W's partner says that by an email dated mid-December 2023, Aviva agreed to loss of use compensation.

However, that email was in further response to the investigator's opinion at that time. In full, the email was as follows:

> "*Looking over the loss of use payments I can see*
> *31 days from the 22/05/2023 to the 22/06/2023 £310*
> *102 days from the 26th of June to the date of settlement on the 06 October 2023 £1020*
> *Makes a total amount of £1330*
> *Please advise if you would like this payment raised*"

So - in context - Aviva was trying to clarify the investigator's recommendation by putting some figures on it. I don't consider that Aviva agreed to pay these figures for loss of use.

In any event, Mr W didn't accept the investigator's recommendation. And I haven't agreed with compensation for loss of use – or with the figures of £310.00 and £1,020.00.

Mr W's partner says that, as Aviva acted in a way that Mr W could not withdraw his claim, due to the additional damage, it should reimburse his excess of £550.00.

However, the incident had seriously damaged Mr W's car and Aviva would've deducted the excess from any claim for that. So whilst I've accepted that Aviva was responsible for further damage, I don't consider that it treated Mr W unfairly by deducting the excess from its

payment of the pre-incident value. I don’t find it fair and reasonable to direct Aviva to reimburse that £550.00.

Mr W’s partner says that if he had purchased his vehicle back, there would have been no money to repair the damage Aviva did to his vehicle.

However, I don’t consider that as a relevant consideration. Mr W decided not to buy back his damaged vehicle so as to repair it. Aviva paid its pre-incident value less the excess. I don’t find it fair and reasonable to direct it to pay any more, save for distress and inconvenience.

Putting things right

All this came at an already difficult time for Mr W at about the same time as bereavements for Mr W and for his partner. That was about three months when Mr W must’ve felt that Aviva had caused things to go from bad to worse. All things considered, I agree that £300.00 is fair and reasonable for such distress and inconvenience.

I’ve also considered what to direct Aviva to do about recording the claim. I’ve accepted that Aviva deprived Mr W of his opportunity to withdraw his claim and try to get the car fixed at a cost to him of less than £3,500.00 including VAT. So I find it fair and reasonable to direct Aviva not to record any claim (fault or non-fault).

My final decision

For the reasons I’ve explained, my final decision is that I uphold this complaint in part. I direct Aviva Insurance Limited to:

1. pay Mr W £300.00 for distress and inconvenience; and
2. not record any claim arising from the incident in mid-May 2023 or the further damage in May or June 2023.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 19 March 2024.
Christopher Gilbert
Ombudsman