DRN-5131748

The complaint

Mr K complains that Aviva Insurance Limited's offer to settle a claim on his motor insurance is unfair.

What happened

Mr K had a motor insurance policy with Aviva. In March 2024, he was involved in a road accident which badly damaged his vehicle. He reported this to Aviva.

Aviva told Mr K the vehicle was a total loss. However, its engineer thought some of the damage was unrelated to Mr K's accident. It instructed an assessor to inspect the vehicle. The assessor found that some of the damage couldn't have been caused in Mr K's accident. Aviva reduced its settlement offer by £1,510 to reflect this pre-accident damage. It also deducted the £200 policy excess.

Mr K complained about these deductions and Aviva's handling of his claim. Aviva said it wouldn't increase its settlement offer but apologised for delays keeping him updated about his claim. It offered him £75 for this.

Mr K didn't accept this and complained to us. He says, in summary:

- He bought the vehicle from a reputable dealership five weeks before the accident.
- It was in "*mint condition*". There was no pre-existing damage.
- The dealership wouldn't have sold him a damaged vehicle.
- Aviva deducted the excess despite the accident not being his fault.
- He wants Aviva to refund the deductions it applied to his settlement.

Mr K is also unhappy with Aviva's handling of his claim and the courtesy car it gave him, which he says wasn't fit for purpose.

Our investigator recommended that the complaint should be upheld. She was satisfied that Aviva's assessor had shown there was pre-accident damage to Mr K's vehicle. She thought its decision to make a deduction for this was fair. However, she thought Aviva had calculated this incorrectly. She recommended it half of the deduction. She also thought Aviva should pay Mr K £150 to reflect the distress and inconvenience it caused him while dealing with his claim.

Mr K disagreed with our investigator, so the case was passed to me to make a final decision.

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.

Aviva's internal records show:

- It valued Mr K's vehicle at £19,671.

- It deducted £1,510 to reflect the pre-accident damage.
- It deducted the £200 policy excess.
- This left a settlement offer of £18,161.
- It paid the outstanding finance on the vehicle directly to Mr K's finance provider.
- It paid Mr K the balance of £1,791.91.

Aviva's liability under Mr K's policy is limited to the "*market value of your vehicle at the time of the loss*" (Section 1, page 13). Existing damage can have a detrimental effect on a vehicle's market value, so there isn't anything inherently wrong with Aviva making a deduction for this. But it must show that any deduction is reasonable.

Aviva's assessor inspected Mr K's vehicle. His report says, in summary:

- The bonnet was pushed back at both sides and rubbing both pillars.
- In his opinion, "*This could only have occurred because of a frontal impact*."
- There was evidence of previous repair work to the front of the vehicle.
- There was damage to the front bumper/front wing, likely caused by a front impact.
- However, he accepted that this could have been caused in Mr K's accident.
- He concluded: "*In my opinion, the alignment of the bonnet, the dent on the bonnet, the front grille damage and the headlight damage are not part of this incident*."

I think the photos in the assessor's report – and the photos in the engineer's report – support these findings. They show significant damage to the passenger side of the vehicle, consistent with the side impact described by Mr K. But they also show damage consistent with a front impact that pushed back the bonnet, headlight, and front grille. I can see how it would be difficult to reconcile this damage with a side impact.

I think it's worth noting that the Audatex report shows the total cost of repairs was over £13,500 (including VAT). The deduction for damage the assessor didn't think was related to Mr K's accident was £1,510. So I think this was a relatively small part of the total damage.

I've read what Mr K said very carefully. I accept his point that the "*substantial force*" of the impact would have caused significant damage. However, I'm satisfied that Aviva's assessor considered this when he inspected Mr K's vehicle. He concluded that some of the damage could only have been caused by a front impact.

I know Mr K had bought the van recently. I think it's possible there was some damage to the vehicle when he bought it. I also think it's possible the dealership missed this, rather than knowingly sold the vehicle in this condition. In the absence of anything showing the pre-accident condition of the vehicle – for example, a pre-sale report from the dealership – I think the assessor's expert opinion must hold weight.

On balance, I'm satisfied that Aviva has shown that some damage was present before the accident. I think it was reasonable for it to apply a deduction for this.

However, as our investigator explained, our general approach when estimating the cost of pre-accident damage is to divide that figure by two and to deduct that figure from the settlement. This means Aviva should only have deducted £755 from Mr K's settlement, not £1,510. So Aviva should refund the difference, plus interest.

Mr K is unhappy Aviva deducted the policy excess from his settlement. Page 15 of his policy booklet says: "*If your vehicle is lost, stolen or damaged, the excess must be paid, no matter how the loss or damage happened*." This includes 'non-fault' accidents. This term is common in motor insurance policies, and I see no reason why Aviva shouldn't apply it in this case.

Mr K says Aviva told him it would waive the excess. I agree with him. Aviva's notes show its call handler said: "*I have advised XS £200 as per Broker however we would look to waive this once liability accepted*." I think this was a mistake by the call handler and I don't think Aviva should be bound by this. However, I've considered this when I've looked at Aviva's overall handling of the claim.

Mr K also says the courtesy car Aviva provided was "*unfit for purpose*". Section 12 of Mr K's policy allows for a replacement vehicle "*as shown on your schedule*." There's no mention of a replacement vehicle in Mr K's policy schedule, so I can't find that the one offered to him was unfit for purpose.

I agree that Aviva caused Mr K some distress in how it handled his claim and should compensate him for this. For example, it failed to keep him updated and wrongly told him his excess wouldn't be charged. I think £150 is appropriate to reflect this.

My final decision

My final decision is that I uphold the complaint and order Aviva Insurance Limited to:

- Refund £755 to Mr K.
- Add interest to this amount at 8% simple per year from the date it settled his claim to the date it pays him this amount.
- Pay Mr K £150 to reflect the inconvenience its handling of the claim caused him. If it has already paid Mr K £75, it can reduce this award by £75.

If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 December 2024.

Simon Begley
Ombudsman