

## **complaint**

Mr Z was involved in a road traffic accident (RTA). He's unhappy that Aviva Insurance Limited (Aviva) decided to record this as a 'fault' claim and his No Claim Discount (NCD) will be affected.

## **background**

Mr Z has an annual, comprehensive car insurance policy which started in March 2017. He received a three year NCD at the time which wasn't protected.

Mr Z was involved in a 'hit and run' car accident on 22 January 2018. The accident was caused by a bus and Mr Z says he has clear evidence that the bus was at fault.

Mr Z provided a witness statement. The witness states that he saw - from the window of his office - a bus parked opposite Mr Z's car and what looked like the bus driver inspecting the damage with Mr Z. The witness went back to work and later went down to the car and saw damage to the left rear side of the panel. The witness left his contact details on the windscreen.

The police were contacted but they were unable to trace the third party vehicle or the registration number. Mr Z was unhappy that Aviva decided to record the accident as a 'fault' claim and, as a result, his NCD was going to be affected.

Aviva issued its final response on 24 March 2018. It confirmed that where it wasn't able to trace the third party, it had to record the claim as a fault claim. Mr Z hadn't been able to provide the vehicle registration number, the third party driver's details or the make/model of the bus either so there wasn't any way of finding out whether the driver was insured or not. Aviva said though that, at the same time, it would have been highly unlikely that the bus was uninsured. So it confirmed that Mr Z couldn't be covered under the 'uninsured driver promise' because the terms don't extend to cover a 'hit and run' situation.

As Mr Z would have had to pay the policy excess for the vehicle to be repaired by Aviva, he decided to fix the repairs himself.

Our investigator looked into the complaint and didn't uphold it. He said he didn't think Aviva had acted unfairly in recording the accident as a 'fault' claim.

As Mr Z didn't agree with the investigator's assessment, the case has been passed to me to make a decision.

## **my findings**

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

Firstly, I'd like to explain what this service can and can't do when looking at these types of complaints.

Our service doesn't decide who's at fault for an accident, as that's the role of the courts. But we do check to see if an insurer has looked into things fairly and made a reasonable claims decision. Like all such policies, the terms and conditions of the insurance contract give Aviva sole discretion to decide whether to settle or defend a claim; and we would only interfere if

we thought Aviva had exercised this discretion in an arbitrary, irrational or unfair way. I don't regard that sort of term as inherently unreasonable — because insurers usually have greater experience of how a court is likely to determine legal liability; and they also have a legal duty under the Road Traffic Act 1988 to meet any third-party judgment against their insured. So it's not unreasonable for them to try to mitigate costs.

My role on this case is to therefore decide whether Aviva was fair in the way it applied the 'fault' claim and whether as a result, it should have reduced the NCD. So I've looked at what the terms of the policy say:

Section 8 on page 22 – No claim discount states:

*"Where a claim has been made, **we** may reduce your no claim discount in line with the scale **we** apply at the time. If a claim is made which is not your fault and **we** have to make a payment, **we** will reduce your no claim discount unless **we** can recover all sums **we** have paid from those responsible except where:*

- *the accident was not your fault and the driver who caused it was uninsured and **you** have provided **us** with:*
  - o *The vehicle registration and the make/model of the other vehicle, and*
  - o *The other vehicle's driver's details, or*
- ***you** have protected your no claim discount as shown in your **schedule**."*

Under the general conditions on page 38, it says the following:

*"A 'fault' claim is recorded when where Aviva pays for the loss or damage to your vehicle but they can't recover their costs back. It's not about whether or not a driver is responsible for the accident. This is common when the third party driver's details could not be established."*

I appreciate and have sympathy for Mr Z's situation. I also acknowledge his version of events and I do not doubt what happened. But as I explained above, our role isn't to decide who's at fault and ultimately, with the very limited information that Aviva has, it's difficult for it to reasonably record this claim against the third party. As such the NCD will also be affected on Mr Z's policy.

Overall, I don't think Aviva has acted unfairly in recording the accident as a 'fault' claim. And because Mr Z's NCD wasn't protected, Aviva is also able to reduce this. I don't uphold Mr Z's complaint and I don't think Aviva needs to do anything further.

### **my final decision**

For the reasons given above, I'm not upholding Mr Z's complaint against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 19 December 2018.

Nimisha Radia  
**ombudsman**