complaint

Mrs Q complains that Aviva Insurance Limited has handled a claim she made under her motor insurance policy poorly; in particular, that it:

- was slow in refunding a £150 excess in accordance with the terms of her policy;
- recorded her claim on the Claims Underwriting Exchange (CUE) database as *"fault"* when she was in no way at fault;
- sent her a demand for £2,865.74 in respect of its outlay under the claim which should have been sent to the third party;
- wrongly recorded her car on the Motor Insurance Anti-Fraud and Theft Register (MIAFTR) database as an insurance write off, so reducing its value; and
- ignored her requests for an apology for the way it handled her claim.

background

I set out the circumstances leading to this complaint, and my provisional findings, in the provisional decision which I issued to Mrs Q and to Aviva on 25 February 2014. A copy of this provisional decision is attached below.

Mrs Q responded to say that she accepted my decision. Aviva said that it had no further information to add.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As neither Mrs Q not Aviva has provided any fresh information or evidence in response to my provisional decision, I find no basis to depart from my earlier conclusions.

my final decision

My final decision is that I uphold this complaint. I order Aviva Insurance Limited to:

1. change the designation of the accident on the CUE database to *"non-fault",* and supply Mrs Q with a letter confirming it has done so, to enable her to obtain a refund from her new insurer of the premiums she has overpaid;

2. pay Mrs Q £600 for her loss on selling the car, plus interest on this amount at an annual rate of 8% simple from the date she sold the car until settlement; and

3. pay Mrs Q a total of £450 compensation for the distress and inconvenience it has caused her.

If Aviva considers it has to deduct tax from the interest element of my award, it should send Mrs Q a tax deduction certificate when making payment, which she can use to reclaim the tax, if she is entitled to do so.

Lennox Towers
ombudsman

PROVISIONAL DECISION

complaint

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- ignored her requests for an apology for the way it handled her claim.

our initial conclusions

In December 2011, Mrs Q was stationary in her car at a red traffic light when another car hit her from behind, and shunted her into the car in front. She claimed on her Aviva policy. A passing police officer attended, and quickly established that the third party was uninsured.

Aviva arranged for Mrs Q's car to be repaired, having originally proposed it be written off, but she complained about poor handling of her claim, as set out above.

Our adjudicator recommended that this complaint should be upheld in part. He agreed that Aviva's service had been poor. However, it had offered an apology, and compensation of £150 for the inconvenience she had experienced, which he considered reasonable. He also agreed that by recording her car as an insurance write off, it had caused her a loss on trade in of the car of £500, which it should reimburse, with interest.

Mrs Q responded to say, in summary, that:

- Aviva's apology was only partial, and further delays had occurred since it was made;
- the £150 offered as compensation was derisory;
- the wording of her policy meant that the £150 excess should have been repaid much earlier than it was;
- she did not agree that Aviva should be able to show the claim as *"fault"* on the CUE database until such time, if ever, as it had recovered all the money it had paid out; and
- the loss she had suffered on trading in the car was £600, not £500, because the dealer offered her £1,200 in part exchange before it searched the MIAFTR database, and then reduced its offer to £600 once it appeared the car was an insurance write off.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Delay in repaying the £150 excess

Mrs Q's policy contained the following provision:

Uninsured Driver Promise
If the driver of your car is involved in an accident caused by an uninsured motorist, we will refund the cost of any excess you have had to pay. You must provide:

- *the vehicle registration and the make/model of the car; and*
- *the driver's details*

This promise only applies where the driver of your car was not at fault for the accident.

Mrs Q had to pay £150 to the car repairer, being the excess on her policy. In January 2012, she asked Aviva to refund this to her in line with the above provision. She considered that as Aviva had the details it required, and the circumstances of the accident showed clearly she was not at fault, there was nothing to hold up the refund.

Aviva was slow in considering her request. In May it said it would have to be dealt with by its legal department. In June, its external solicitors confirmed that Aviva was raising a cheque to pay this. Mrs Q continued to press Aviva and the solicitors to pay this, and Aviva continued to prevaricate. Finally, in September, she received a cheque for £150.

In its response to this service, Aviva acknowledged that it soon became clear that the driver in front, who was insured, was not at fault, and neither was Mrs Q, and the driver at the rear was uninsured. It has not explained why it was so slow in refunding the excess.

Mrs Q had to spend a lot of time in writing to and phoning Aviva and its external solicitors before, nine months after she first asked for it, the refund was paid. This caused her distress and inconvenience for which she should be compensated. The amounts which this service awards for distress and inconvenience are generally modest; they are not intended to fine or punish a business. I consider that the appropriate compensation for this aspect of Mrs Q's claim is £150.

Recording Mrs Q's claim on the CUE database as "fault"

Mrs Q only became aware that her claim had been recorded as *"fault"* when she took out a new motor insurance policy with another insurer in May 2012, and the new insurer pointed out that this was how Aviva was showing the claim on the database. In June, Mrs Q phoned Aviva's external solicitors, who confirmed that the accident was not her fault and said they would query the CUE entry with Aviva.

Nothing further seemed to happen on this until Aviva issued its final response to Mrs Q's complaint in November 2012. It said that the registration as a *"fault"* claim was correct. Once its solicitors had confirmed the outcome of their investigations, it would be able to close the claim and reallow her bonus; the claim would then be noted as a *"non-fault"* claim. This ignored the fact that her no claims discount had been restored some months previously, and the solicitors had already acknowledged that Mrs Q was not at fault for the accident, and had written to her to confirm that the status of her claim had been changed to *"non-fault"*.

In response to further letters from Mrs Q in November and December 2012, the solicitors twice told her Aviva had confirmed to them that the status was now shown as *"non-fault"*, but

this does not appear to have happened.

Our adjudicator explained to Mrs Q that in the insurance industry, a database designation of *"fault"* did not imply blame on the part of the policyholder. It simply meant that the insurer had paid out on a claim and had not yet been able to recover its payment from another insurer or third party.

While this reflects the normal position in the industry, it does not explain, or excuse, Aviva giving wrong information through its solicitors to Mrs Q on several occasions. In addition, in its response to this service, Aviva said:

All accidents would be initially recorded as "fault" until such time as a conclusion was reached, however in the case of an uninsured third party, this should be recorded as "non-fault" as soon as we become aware of the fact there is no insurance."

Aviva was aware from an early stage that the accident was not Mrs Q's fault, and that the third party who was at fault was uninsured. However, it has failed to follow its own stated procedure in such cases in spite of many requests by Mrs Q for it to do so. This has caused Mrs Q embarrassment with her new insurer, and resulted in her paying higher premiums to it than were appropriate.

I conclude that Aviva should now change the designation of the accident on the CUE database to *"non-fault",* and supply Mrs Q with a letter confirming it has done so, to enable her to obtain a refund from her new insurer of the premiums she has overpaid. It should also pay her a further £200 to compensate her for the distress and inconvenience its actions in respect of the database have caused her.

Aviva's demand for £2,865.74

In May 2012, Aviva sent Mrs Q a letter asking her to reimburse its expenditure of £2,865.74 within 14 days, failing which legal proceedings would be issued. This letter was sent to her in error; it should have been sent to the third party. When Mrs Q contacted Aviva, it immediately confirmed this letter was sent in error. Subject to what I say below about apologies, I do not consider that Aviva need take any further action in respect of this letter.

Recording Mrs Q's car as an insurance write off on the MIAFTR database

Aviva acknowledged that it wrongly registered Mrs Q's car as a write off on this database.

The adjudicator said that when Mrs Q came to trade in the car she only received £600 for the car because of the registration. He had seen evidence that without the registration, a car like Mrs Q's would have been worth £1,100, So he recommended that Aviva pay her the difference of £500, which it agreed to do.

Mrs Q said this ignored the fact that she had said from the outset that she had actually been offered £1,200 for the car by the dealer before he was aware of the registration. I accept Mrs Q's evidence on this point, and conclude that Aviva should pay Mrs Q £600 plus interest from the date she sold the car until settlement. It should also pay her a further £100 compensation for the distress and inconvenience this aspect has caused her.

Apologies

As our adjudicator has said, this service does not usually order a business to apologise to a consumer, as we cannot ensure that such an apology is sincerely given. For that reason, I do not propose to make such an order in this case. Having read the correspondence in this case I conclude that Aviva's handling of Mrs Q's claim has in a number of respects, and over a significant period, fallen well short of the standard she was entitled to expect. I express the hope that when this decision is read by Aviva, it will conclude that an apology, sincerely given, should be made to Mrs Q by a senior manager for its poor handling of her claim.

my provisional decision

For the reasons I have explained, but subject to any further comments or evidence I receive from either Mrs Q or from Aviva by 25 March 2014, my provisional decision is that I am minded to uphold this complaint. I intend to order Aviva Insurance Limited to:

1. change the designation of the accident on the CUE database to *"non-fault",* and supply Mrs Q with a letter confirming it has done so, to enable her to obtain a refund from her new insurer of the premiums she has overpaid;

2. pay Mrs Q £600 for her loss on selling the car, plus interest on this amount at an annual rate of 8% simple from the date she sold the car until settlement; and

3. pay Mrs Q a total of £450 compensation for the distress and inconvenience it has caused her.

If Aviva considers it has to deduct tax from the interest element of my award, it should send Mrs Q a tax deduction certificate when making payment, which she can use to reclaim the tax, if she is entitled to do so.

Lennox Towers
ombudsman