complaint

Mr H complains that Aviva Insurance Limited settled a claim made against him under his car insurance policy, without telling him, on the basis that he was responsible for damage caused to the other driver's car.

background

The other driver alleged that Mr H had run into the back of his vehicle when they were in a slow moving line of traffic, with a lane merging from the right. Mr H remembered the day in question, but denied he had collided with the car in front. In September 2015 Aviva told him it had closed the file so he assumed the matter had been settled in his favour. But in November Aviva accepted Mr H was liable for damage to the back of the other vehicle and settled the claim. It wasn't until July 2016 that Mr H found out what had happened.

The adjudicator who looked at My H's complaint thought Aviva was entitled to settle the claim, taking into account the evidence that was available. She said that, under the terms of the policy, Aviva was entitled to settle the claim even if Mr H disagreed. But she did ask Aviva to pay Mr H £150 for the trouble and upset caused by its failure to tell him the claim had been settled.

Mr H doesn't think this is a fair outcome for his complaint. He's asked for an ombudsman to review the case. He says what, whatever the terms of the policy, Aviva:

- didn't give him the chance to have a discussion about the case before it went ahead and settled the claim;
- didn't follow due process, either by following its own complaints procedure or its moral obligation to him as its customer;
- abused the trust he had that it would act to protect his interests;
- was dishonest in the sense it acted in bad faith towards him;
- didn't tell him it had agreed to pay £2,000 for repairs to the other car;

Mr H asks what's the point of having insurance if the insurer doesn't act in the best interests of its policy holders?

my findings

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

Mr H's policy does allow Aviva to settle a claim. We would only intervene if we thought Aviva had acted unfairly, for example if hadn't taken into account an important piece of evidence or hadn't investigated properly. In this instance there were statements from both the driver of the car who alleged Mr H had run into his vehicle and another driver, who was joining the queue of traffic from the right hand lane. This second driver said Mr H accelerated forward to prevent him from joining the left hand lane, scraping his vehicle in the process and colliding with the back of the car in front. The driver of that car says that, despite the efforts he made to attract Mr H's attention, Mr H didn't stop and, after following him for a short distance, he simply made a note of Mr H's registration number. The police were evidently called as they contacted Mr H about the incident but took no further action after he denied there had been a collision.

There are no other witnesses to the accident. Although the driver of the second vehicle says Mr H's car scraped his, he hasn't made a claim. I don't think Aviva acted unreasonably when

it decided to settle the claim. There is no evidence to suggest that the two other drivers know each other. The account they each give is consistent with the other's. The second driver would almost certainly be considered to be an independent witness if the case were to go to court.

The fact that there was no damage to Mr H's car isn't conclusive evidence that there was no accident. It certainly suggests that any damage to the other car would be minor. Unfortunately even minor damage can be expensive to repair. I don't consider the amount claimed to be excessive. The car in question was examined by an engineer and is consistent with the other drivers' description of the accident.

I appreciate that it may seem unfair for a decision on liability to be made without the evidence being tested. In exercising its right to settle a claim, Aviva can take a commercial view, weighing up the risk of losing the case against the additional, very significant, costs that going to court would incur. In this case the odds of a successful outcome were stacked firmly against Mr H, so I don't consider Aviva did anything wrong in deciding to pay the claim.

Mr H has had the benefit of the insurance policy in the sense that Aviva has paid the claim on his behalf. Had it not done so and the case gone to court, I think there's a real risk that he would have ended up paying not only £2,000 for the repairs to the other car, but his and the other driver's legal costs. While we always expect an insurer to act reasonably and fairly, we also recognise that an insurance policy is primarily a commercial arrangement. Mr H has the security of knowing that Aviva will deal with any claim for damage caused while driving his car. In return Aviva expects to have the final say, drawing on its own extensive experience for dealing with road accident claims.

Having said that, I agree with the adjudicator that the customer service Aviva provided Mr H fell below an acceptable standard. Having told him that the file had been closed, it must have been a particular shock to discover that, not only had that not happened, but it had paid out the claim in full. So I think the appropriate award for trouble and upset is £200.

my final decision

I uphold the claim in part and require Aviva Insurance Limited to pay Mr H £200 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 February 2017.

Melanie McDonald
ombudsman