

complaint

Mr G complains (through his daughter) that Aviva Insurance Limited mishandled a claim on a motor insurance policy.

background

Mr G was involved in an incident with a third party in a car park. Mr G complained after Aviva said that he was 50% responsible.

The adjudicator recommended that the complaint should be upheld. She thought that Aviva could have done more before it agreed to settle the claim 50/50. She recommended that Aviva should offer £150 for distress and inconvenience throughout the claim process.

Aviva disagrees with the adjudicator's opinion. It says, in summary, that the third party's insurers later paid Mr G's claim. But – despite this – Aviva maintains that Mr G was at fault for the accident and didn't report the facts correctly.

my findings

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

It's common practice for an insurer to record a claim against its policyholder as a "fault" claim unless and until the insurer recovers its outlay in full from a third party. There may be a number of reasons why such recovery may not be practicable. Therefore a record of a fault claim does not necessarily reflect badly on the policyholder's driving.

Like most motor insurance policies, Mr G's policy allowed his insurer to decide how to deal with and settle any claim involving a third party. It said that Aviva could take over, defend or settle any claim as it saw fit.

The Financial Ombudsman Service considers how the insurer reaches its decision under such a policy term. Provided it does so fairly we are unlikely to intervene. Unlike a court, we do not hear directly from each driver and decide the extent to which each of them is responsible for causing injury or damage.

I'm satisfied that Aviva took into account Mr G's report of the accident and his photographs immediately after the event. It also heard from the other driver about what happened.

It's common ground that the third party was reversing away from a parking space at the time of the impact. But the third party said Mr G was pulling forward out of the next space – whereas Mr G said he was reversing into the space next but one.

I'm not at all satisfied that the insurer carried out a reasonable and proportionate investigation into the accident before it agreed 50/50 liability on a without prejudice basis. In response to his complaint, Aviva told Mr G:

"before we make [a liability] decision, what we do need to do is satisfy ourselves fully that there are no unanswered questions regarding the information we have and that we've exhausted all avenues in trying to prove our claim. I don't feel that we've done this for you on this occasion"

So Aviva accepted that it hadn't investigated properly. Therefore I'm not persuaded that the insurer treated Mr G fairly or reasonably by the decision it made or by the way it recorded it on insurance databases. This was likely to cost him money in terms of his policy excess and future premiums.

Aviva later asked its engineer to look at the nature of the damage to each vehicle.

Subsequent events mark this case out as more unusual.

The third party's insurer agreed to settle Mr G's claim for uninsured losses. And Aviva said it was pursuing the recovery of its outstanding outlay – on receipt of which it would treat Mr G's claim as non-fault.

But Aviva maintained that its engineer thought the photographs showed that Mr G had been pulling forward – and therefore at fault.

From a call recording, I'm not persuaded that the engineer had understood the conflicting versions of events.

So I think that – by unreasonably casting doubt on Mr G's report of the accident - Aviva caused Mr G personal upset and put him to extra trouble in pursuing his complaint. I think Aviva made this worse by its response to the adjudicator's opinion.

Overall I think it's fair and reasonable to order Aviva to pay Mr G more than the adjudicator recommended. I think £200 is fair and reasonable.

my final decision

For the reasons I've explained, my final decision is that I uphold this complaint. I order Aviva Insurance Limited to pay Mr G £200 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 February 2016.

Christopher Gilbert
ombudsman