

The complaint

Miss J says Aviva Insurance Limited (Aviva) failed to close a claim as non-fault resulting in higher premiums, under her motor insurance policy.

What happened

Miss J's car was hit by another vehicle whilst it was parked in February 2022. A third party witnessed the collision. Miss J reported the damage caused by the incident to Aviva, it instigated a claim against the third-party's insurer (TPI).

Miss J initially paid her policy excess fee for £150. Using her motor legal cover with Aviva this was paid back to her by the third-party insurer. Miss J says the third-party insurer has accepted liability for the claim.

Miss J doesn't think it's fair that the claim remains open. She says it should be closed by Aviva and the third-party should be recorded as at fault. She says her insurance premium has increased because the claim remains open. Miss J has a protected no-claims bonus and says this should mean there is no increase in her premium.

In its final complaint response Aviva says it has to recover the cost of the claim before it can be closed. It says this is irrespective of whether the third-party admits fault. It explains the third-party was disputing the level of damage caused to Miss J's car, and the repair costs Aviva had put forward. It says some claims can take time to close as it has no control over when payment will be provided or if the third-party will accept the costs presented.

Aviva says it has chased the TPI regularly and issued a 'letter before action' in March 2023. It says it has yet to recover its costs and so can't close the claim. It asks that Miss J contacts it in the event her premium increases at the next renewal, so that any necessary refund can be arranged.

Miss J didn't think this was fair and referred the matter to our service. Our investigator didn't uphold her complaint. He was satisfied that Aviva had maintained its position throughout the claim that Miss J wasn't at fault. The claim remained open as the third-party disputed the extent of the damage and the repair costs. He says it's fair that Aviva adjusts Miss J's premiums once its costs are recovered, and the claim closed. But he didn't think it had done anything wrong.

Miss J disagreed and asked for an ombudsman to consider her complaint.

It has been passed to me to decide.

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.

Having done so I'm not upholding this complaint. I'm sorry to disappoint Miss J but I will explain why I think my decision is fair.

There's no dispute that the other driver is at fault for the collision involving Miss J's vehicle. The claim records show that Aviva contacted the TPI shortly after it was informed of the collision. I can see Miss J was in contact via a webchat in mid-February 2022. She was told by Aviva's agent that the third-party was being pursued as being liable for the claim.

I can see Aviva contacted the witness in early April 2022. A questionnaire was sent for completion. The claim notes show this was uploaded to the claim file and was being used to pursue the third-party insurer as liable for the repair costs. A note dated 29 June says the TPI had admitted liability and agreed to settle the claim. However, the claim costs hadn't been paid.

Aviva confirms a letter before action was sent to the TPI in March 2023. This means it was intended on taking the matter to court. I can see it instructed its solicitors to progress the matter.

I can understand the frustration Miss J has felt that this claim has remained open for as long as it has. Particularly, as there's no dispute that the third-party was responsible for the collision. Unfortunately, in some cases, where there is a dispute over all or a part of a claim, they can take some time to conclude. In Miss J's case I can see Aviva contacted the TPI shortly after it was made aware of the incident. It held the third-party responsible and claimed the full cost of the repairs to be paid by the TPI. I'm satisfied that it acted reasonably and in a timely manner.

From the claim records I don't think Aviva treated Miss J unfairly. The third-party has disputed the extent of the damage caused and the cost of the repairs. It's this that has delayed the claim being closed.

Aviva hasn't yet been paid for the costs resulting from this claim. Until the TPI pays the costs the claim will remain open. This means that there is an open claim showing against Miss J. This can be a consideration in any risk assessment when her renewal premium is calculated. I can see Miss J's premium has increased at renewal. Again, I can understand her frustration at this. However, when the claim is concluded Miss J can ask Aviva to provide any refund that is appropriate. The same applies if she decides to move to a different insurer. However, it isn't yet known that Aviva will be able to recover its costs in full, so the claim can't yet be closed.

I've thought about what Miss J says about her protected no-claims bonus (NCB). It may be helpful if I explain that where an NCB isn't protected, an insurer will reduce the number of years, under the policy, in the event of a claim. Miss J's NCB is protected so the number of years she has under her policy wasn't reduced here. But this doesn't protect the price of the policy. It means the discount provided by the NCB doesn't change. So, a claim can still result in a premium increase, irrespective of an NCB being protected.

Having considered all of this, although I'm sorry Miss J's claim has remained open for so long, I don't think Aviva has behaved unfairly in its handling of the matter. So, I can't reasonably ask it to do anymore.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 22 November 2023.

Mike Waldron
Ombudsman