

The complaint

Mr P complains that Aviva Insurance Limited unfairly declined a claim he made on his motor insurance policy.

What happened

I issued my provisional decision on this case on 24 June 2021. I planned to uphold the complaint, and I thought that Aviva should pay more compensation to Mr P. Because I came to a different outcome to our investigator, I wanted to give both parties the opportunity to respond with any additional information they'd like me to consider. Both parties have now responded and so I'm in a position to issue my final decision on this case.

I have copied my provisional decision below – it also forms part of this final decision.

“What happened

In July 2020, Mr P got in touch with Aviva to make a claim on the policy. He said that his car had been damaged by rodents.

Aviva arranged for Mr P's car to be collected by one of its approved repairers. The engineer said they couldn't find any evidence of rodent damage and so they arranged for the car to be taken to a manufacturer's dealership to assess the problem. The dealership said they too couldn't find any evidence of rodent damage and thought the faults with the car were as a result of poor repair work that had previously been carried out. Aviva declined Mr P's claim on this basis.

Mr P says he received poor customer service throughout the claims process – he says he was without a car for around eight weeks, while the damage was being assessed. Mr P's says he's been left out of pocket as a result of Aviva taking so long, he said he had to pay to use a different car during this time. He also says he got in touch with Aviva on a number of occasions and they often weren't able to tell him where his car was, or what was happening with his claim.

Aviva responded to Mr P's complaint to say it had fairly declined the claim. But it agreed it shouldn't have taken eight weeks to assess the claim and offered Mr P £150 to say sorry. Mr P wasn't happy with Aviva's response and so he brought his complaint to this service.

Our investigator also looked into things. They thought that Aviva had fairly declined the claim and that £150 was enough to compensate Mr P for the customer service issues he'd had. Mr P didn't agree with our investigator, and in response to his view provided an invoice for the repair work he had done and reiterated that he had to contact Aviva nearly every day to try and find out what was happening with his car.

Because Mr P didn't agree, the complaint has been passed to me to make a decision on the matter.

What I've provisionally 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 considered everything I've seen, I intend to uphold Mr P's complaint in part. I have explained my reasons for this below.

*Aviva has declined Mr P's claim on the below exclusion found in the policy booklet:
"What we won't pay for:*

Loss of use, wear and tear, loss or damage which happens gradually, loss of value following repair. Depreciation, failure of electronics, mechanical breakdown or breakage, or tyre damage caused by braking, punctures, cuts or bursts".

Generally, this service takes the view that its okay for an insurer to decline a claim as long as its in line with the terms and conditions of the policy – and that it treated its customer fairly.

This complaint essentially stems from a disagreement about how the damage to Mr P's vehicle was caused. Aviva says the damage is down to poor workmanship when it was repaired previously. And Mr P says it is down to damage caused by rodents. So it's for me to decide if Aviva did enough to investigate the possible cause of damage given the conflicting information provided by both parties. And if it was fair of it to decline the claim on that basis. I've seen a copy of the initial engineer's report from Aviva's approved repairer. I have copied some extracts from the report below.

"..there is no damage or any sign of rodents, rodent damage inside the vehicle or the boot, underneath the bonnet the only evidence that could be considered rodent damage is some slight damage to the r/h inner wing sound pad and a small piece of foam insulation where it appears may of been chewed at some time (could have been months, years ago)....

....On removing the engine cover the foam has got some foam areas where the surface has broken up but this does not look like rodent damage and I believe is just the degrading of the foam over time which is not unusual, again the surprising thing is that there is no debris from this which would be typical if it had been chewed by rodents and looking around the engine, and engine bay there is no sign of anything being chewed."

Based on this report, it's clear the engineer doesn't think the majority of, if any, of the damage has been caused by rodents. The report then goes on to say that the car has had some poor repair work previously.

"there are clearly very poor repairs that have been completed to the r/h side of the vehicle there is poor paint work along the r/h side panel work there is still unrepaired ,crudely partially repaired damage to the body side frame and r/h inner wing area the wiring connector on the r/h A'post is covered in Duct tape what the state of the connecting plug is like is unknown as at this point did not want to try and remove the tape, clearly a very poor repair has been attempted to the side of the vehicle."

The engineer concluded with the below:

"This case seem very unusual the reported damage paints a picture of the vehicle in a considerable state due to alleged rodent damage however this is not the case and if anything this is the least rodent damaged vehicle case I have ever seen with only a very minor area that appears may have been chewed but with no debris at all and no other evidence of chewing of vehicle wiring or pipework that would cause system fault warnings to

be displayed.”

Aviva then instructed the vehicle to be checked out by the manufacturers dealership to see if they could diagnose the faults with the car. The manufacturer confirmed that there were no obvious signs of rodent damage and that the car had previous poor workmanship.

Aviva had requested an engineer and the manufacturer to provide their opinion on the cause of the damage. Both have come back to say they don't think it likely the damage was caused by rodents and that poor work had been carried out previously, which was more likely to be the cause. I think Aviva has done enough to assess the damage of the car. And I don't think it was unfair of Aviva to rely on the reports and opinions of the professionals when making its decision to decline Mr P's claim. So, it follows, I don't think it was unfair of Aviva to decline the claim.

Mr P has sent this service photos to show that there is evidence of hair and chewed foam on his car. He's also sent a video of what he says is a rodent in the car. I've thought about these things carefully, but they still don't change my opinion. I don't think its in dispute that rodents have been near Mr P's car. I agree that some of the photos and the video Mr P has sent could suggest that a rodent has been in/on the car. But the evidence he's sent doesn't confirm that the damage to his car was caused by rodents.

Mr P has also sent this service a copy of the invoice from the repair work he had carried out on the car. There's a section at the bottom of the invoice for the mechanics notes. These say, "we found ABS and engine bay wiring running into the ECU had been chewed up and shorted out". This does suggest that its possible the damage could have been caused by rodents. But the comments on the invoice were just comments. The invoice isn't a professional engineers report. It follows that I think it was fair of Aviva to rely on the opinions provided in the report it got from its approved repairers engineer and the opinion of the manufacturer when making its decision.

Based on everything I've read, I think Aviva has fairly declined Mr P's claim. However, Aviva said it would consider an engineer's report provided by Mr P, if he wanted to get his own independent report done. I think this is fair in the circumstances.

I've also considered the delays in Mr P getting an answer on his claim. Aviva has agreed that it took too long, and that it should have taken four weeks as opposed to the eight it actually took. Clearly this has inconvenienced Mr P as he's not been able to use his car for longer than necessary. I've thought about this point carefully. And I've decided that Aviva needs to do more to put things right for Mr P. Mr P's car wasn't roadworthy, and so I've also considered that Mr P would need to get it repaired before he could use it. So, I think Mr P was probably without the use of his car for around three weeks as a result of the unnecessary delays caused by Aviva.

Mr P said he'd had to pay to borrow a different car while his was in for repairs, and he's said this cost him £20 a day. I asked Mr P for more information about this, and he's said he borrowed the car from his daughters' friend. The £20 a day was for fuel and the agreement to lend. I won't be asking Aviva to compensate Mr P for fuel costs – he would have incurred these regardless. But I do think Aviva should compensate Mr P for three weeks' worth of 'loss of use' of his car.

Generally, this service would offer £10 a day for loss of use of a vehicle, this is based on what the courts would usually award. So, I think that feels fair in the circumstances of this complaint. Because Mr P had been without his car for an unnecessary period of around three weeks, I think Aviva should increase its offer of compensation from £150 to £210.”

Both parties responded to say that it didn't agree with the level of compensation I thought Aviva should pay to settle the complaint.

Aviva said that because Mr P didn't have courtesy car cover on his policy, he isn't entitled to claim for loss of use of his car. It said it offered £150 for the trouble and upset in the delays, which it thought was a reasonable amount.

Mr P responded to say that he didn't feel that £210 was enough to settle things. He said around a week after he collected his car from the dealership, the exhaust and muffler came loose and hung off the car – these things alone cost £230 to repair. He says he had to pay for a tow truck to collect the car and take it to a garage for repairs. Mr P added that there were also other problems with the car when he collected it, for example it was very dirty and scratched. Mr P also tells us that he had to go and collect the car which he wasn't expecting. Mr P says the situation caused him distress and inconvenience and an increase in compensation of £60 doesn't reflect this, or the thousands of pounds he has had to spend on the car.

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 looked at everything again, it is still my decision to uphold this complaint, and that Aviva should pay Mr P an extra £60.

Aviva has said because Mr P didn't have courtesy car cover with his policy, he wouldn't be entitled to claim for the loss of use of his car. But my direction for Aviva to pay a total of £210 to Mr P didn't have any relation to courtesy car cover, and I wasn't suggesting that this was a claim for the loss of use of car. Aviva should pay Mr P a total of £210 to compensate him for not being able to use his car during the period of time where Aviva caused unnecessary delays. Mr P ought to have been able to use his car much sooner than he was, and it was only because Aviva delayed assessing the cause of damage that he wasn't able to – and so Mr P should be compensated for this. I have explained in my provisional decision how I have come to a total of £210, and I still think this is a fair amount for the reasons I've already explained.

Mr P has told us about damage that he says was caused to his car after he picked it up from the dealership. But based on what I've seen, and what Mr P has said, I don't think he has mentioned this to Aviva or this service before. It wouldn't be fair of me to make a decision on something that Aviva hasn't investigated itself first, and so I won't be making a finding on this point. If Mr P wants to pursue this matter further, then he'll first need to speak to Aviva directly about this.

In addition, I understand that Mr P had to travel to collect the car once it had been assessed by Aviva. I appreciate this might have been inconvenient for Mr P, but I don't find that it was unreasonable of Aviva to ask Mr P to come and collect his car. Aviva didn't find that the damage caused to the car was an insured risk, so it wouldn't have covered for the cost of returning the car to him, and I don't think it would be fair to ask Aviva to pay for this. So I won't be asking Aviva to compensate Mr P for this.

While I have considered the additional comments provided by both parties, these don't change the findings or outcome from my provisional decision. I appreciate that this decision will come as a disappointment to both parties, but I'm satisfied that the outcome I have reached is a fair one in the circumstances.

Putting things right

Aviva should put things right for Mr P by paying him a total of £210. If Aviva has already paid the £150 it initially offered Mr P, it can deduct this from the total amount.

My final decision

For the reasons set out above, it is my decision to uphold Mr P's complaint. Aviva Insurance Limited should put things right for Mr P by doing that I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 August 2021.

Sophie Wilkinson
Ombudsman