

The complaint

Company P has complained about Aviva Insurance Limited. It isn't happy about the way it dealt with a claim under its motor insurance policy and the final settlement paid.

What happened

Company P entered into a lease agreement for its new car in March 2021 for a period of 48 months. And it took out a motor insurance policy through Aviva for the car. Unfortunately, the car was involved in an accident in October 2021. Aviva looked into the claim and wrote the car off and as the car was leased Aviva paid the lease company the remaining balance on the finance.

P complained to Aviva as it thought it lost out because it had paid a large deposit or instalment up front. And it thinks Aviva should refund this to Company P in addition to what Aviva paid the lease provider. But Aviva didn't agree so P complained to this Service.

Our investigator looked into things for Company P and upheld the complaint. He thought that it was fair for Aviva to pay a proportion of the deposit P paid based on how much of the agreement was left at the time of claim, plus 8% simple interest and £100 compensation.

P accepted the position outlined but Aviva didn't agree, so the matter has been passed to me for review.

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 agree with our investigator that this complaint should be upheld. I've focussed on whether it was fair for Aviva to only pay the remaining finance on P's car in this decision. But I don't think Aviva acted fairly, I'll explain why.

I also think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

The policy limited Aviva's liability to what was still remaining on the lease agreement. So, although the market value of P's car was more than the amount remaining on the finance Aviva didn't have to pay the full market value of the car under the terms of the policy. But as Aviva is aware this Service always looks at whether insurers apply terms fairly and in the particular circumstances of this case I don't think it has.

Company P took out a market value insurance policy and although Aviva can limit its outlay here I think this could lead to an unfair outcome in this case. I say this as when Company P took out the lease agreement it paid a large sum upfront, which is common when cars are leased, and so there is the potential for P to lose out when the car was written off early in circumstances like this – as the initial payment is non-refundable. And in this case Company P paid an additional seven months of lease up front.

Company P had to pay a fixed amount for the lease hire over the lease period. So the size of the deposit has a direct impact on the amount that P had to pay in monthly payments during the lease term. Had P paid a smaller upfront payment it would've had to pay more in monthly repayments over the lease term. This would also mean that P would've paid less towards the total amount owed over the total lease when the car was stolen.

In effect, this means that Aviva has had to pay less because of the fact that Company P paid a larger upfront payment. As such, I think a strict application of the above term would be unfair in the circumstances of this particular case, especially as the loss is within the limit of what would have been paid if the full market value of the car was paid following the claim.

Given this I think a fair and reasonable outcome in this case is for Aviva to pay Company P a proportionate amount of the deposit based on how long was still remaining on the lease agreement when the car was stolen. So I'm in agreement with our investigator and I think Aviva should pay the difference between what Company P actually paid (taking into account the initial upfront payment) and the pro-rata cost of what the lease would've cost Company P up to the date of the incident.

Ultimately, for the reasons I've set out above, I think Aviva's application of the policy term was unfair in this particular case. And as our investigator outlined Company P's lease was due to run for 48 months, but had only run for seven months at the point of claim so it seems fair for Aviva to pay Company P a pro-rata refund of the initial payment so that it only pays for the portion of lease used. And £100 compensation for the inconvenience caused.

My final decision

It follows, for the reasons given above, that I uphold this complaint. And I require Aviva Insurance Limited to:

- pay Company P a pro-rata refund of the initial upfront payment so that it only pays the portion of the lease that it used (the first seven months);
- adding 8% simple interest from the date of claim until the date of settlement;
- and £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 29 July 2022.

Colin Keegan
Ombudsman