

The complaint

Mr F is unhappy about the settlement and handling of an equipment claim by Aviva Insurance Limited under his commercial business equipment policy.

Mr F is acting on behalf of his company "F", I will refer to Mr F throughout this decision.

What happened

Mr F contacted Aviva and made a claim for business equipment that he hired out but was never returned. Mr F said the thieves completed the hire documentation and paid a deposit.

There was some debate between Mr F and Aviva about whether policy cover applied and whether the items had been hired out or stolen from the start. Aviva said it had made a mistake when it said cover wouldn't apply and eventually it agreed to pay £7,000 for the stolen equipment under the hire section of the commercial policy. It also agreed to pay £100 compensation as an apology for declining to pay the claim prior to this. Mr F didn't accept this as his loss was for a much larger amount. He brought his complaint to this service.

Our investigator upheld the complaint. She said it wasn't fair that Aviva didn't consider the claim as a theft. She didn't think Mr F not reporting the matter to police on the same day was material to the claim. She said the thieves never had any intention of returning the items. Our investigator said Aviva should pay the claim in full with 8% interest added to the total. She felt the £100 compensation was fair.

Aviva didn't accept this and asked for the complaint to be passed to an ombudsman for a decision.

In my recent provisional decision, I said:

"Aviva said Mr F didn't carry out the full checks he should have done before hiring out and letting the equipment be taken from his premises. Aviva changed its mind about whether or not the claim was valid and if it should pay it. It accepted it was a valid under the hired section but at another point said it shouldn't be paying out at all as the policy didn't offer cover if the equipment was hired out "fraudulently". Mr F said that Aviva had also agreed to pay the claim in full at one stage.

Mr F now said the hirers never had any intention of returning the equipment so this is a theft and should be treated as such by Aviva. Mr F said this means Aviva need to pay out for the equipment in full. He said this is how the police are treating the matter and provided evidence he's found of the thieves taking similar equipment from similar businesses and not returning the items.

I can understand how Mr F would be upset by Aviva's stance in this situation as the items stolen are expensive and he's pointed out that this is his livelihood.

Mr F explained how the hire/theft took place and how and why he eventually let the equipment be taken. It's clear he was a little bit worried about the situation from the start.

Aviva said "There is no theft from the premises, you allowed the equipment to leave the premises and you have advised they have provided false representation. If the items were stolen, then the police would have been contacted right away, also you have allowed the equipment to leave your premises, therefore not stolen. I appreciate the equipment was not returned but the action carried out was under the intention to hire this out."

Aviva continued "The police were only contacted when the equipment failed to be returned. You mentioned this was a fraudulent booking, this means your sole purpose was hiring out the equipment. Obviously, you had concerns once the equipment was hired, however, when you handed over the goods, you knew nothing about the fraud/false information at that time."

It's accepted that there were some irregularities with the paperwork and the usual processes Mr F would run through with a hirer. But Mr F said it was a last minute thing and did his best to accommodate someone who seemed initially to be genuine.

Aviva made the point throughout that despite Mr F referring to how worried and anxious he was to get the hirers to leave his premises he still went ahead with the hire anyway. Aviva said if he had thought the items had been stolen from that point, he'd have contacted the police right away. I think that's fair comment. Especially when Mr F said "eventually I couldn't find enough reason to prevent them taking the gear" and he followed up by confirming he rang them around 15 minutes after they had left with the equipment to check a couple of details but they got annoyed with him and hung up the telephone.

I know there has been much debate about which sections of the policy apply and both parties have referred to different policy sections at different times throughout the claim. But I think based on the comments above the offer from Aviva to pay the limit under the hire section of the policy for £7,000 is fair and reasonable. I think it's clear from the details provided that a hire arrangement was set up for the equipment to leave the premises.

The limit for "Hired out equipment" is noted on the policy at £7,000. I can see there was also a debate about the excess charge that applies. And I can understand Mr F's frustration with this point in particular. In an email from his brokers there is reference to the policy excess being increased. The email says it is increased to £1,000. But on the policy schedule details I saw an excess figure of £500 for hired equipment. Aviva said that the policy excess increases to £1,000 for theft. But if the settlement is based on the equipment being hired out rather than stolen then I think the fair and reasonable answer here is that the lower excess of £500 for hired equipment should apply.

There's no doubt Aviva could have handled the claim better and been clearer about the policy cover from the start of this claim. So, I think Mr F makes a fair point about the claim handling and the service he received. Aviva referred to sections of the policy it later accepted didn't apply. Aviva had issues with whether or not the claim should be paid due to a "fraud and dishonesty" exclusion, the all risks section and the theft section of the policy. It took some time before any kind of reasonable settlement was put forward by Aviva. As the policy is in the name of the business rather than an individual consumer, I can't ask Aviva to pay any more than the £100 it has already offered.

Aviva should pay 8% simple interest on the settlement amount from the date of loss to the date of settlement.

As this was Mr F's livelihood, he's said about how much of an impact this had on his business. If Mr F has details of business he lost in the aftermath of the claim and the delays then I think that ought to be considered by Aviva under any relevant sections of the policy. But that's for Mr F to provide to Aviva for it to consider and a separate issue from this

complaint.”

Responses to my provisional decision

Aviva responded and accepted the main point of the decision. It also accepted that the claim hadn't been handled as well as it should have been. But it said it had dealt with that through the compensation offer. It said there was no need for the 8% interest award as it was Mr F who had challenged its offer of the £7,000 settlement. Aviva said the delay was down to Mr F.

Mr F's response was comprehensive, and I've read and reconsidered all of it. But for the purposes of the decision I'm only going to bullet point the main factors:

- The thieves objective was to steal his equipment not to hire it.
- The policy covers Mr F in full for this under his policy section for electronic equipment.
- Police details confirm the criminal gang and that they targeted Mr F to steal his equipment, and more contact should have been made with the police by Aviva and this service.
- This was theft via a well planned and rehearsed deception.
- Calling the police any earlier would have made no difference at all and is partly why Mr F didn't call them immediately. It shouldn't impact on his claim.
- The claim was fraudulent and doesn't fall under the £7,000 limit, it should be paid in full.
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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.

I don't accept what Aviva has said in response to the provisional decision. I think it did create the problems with this claim from the outset. It did decline the claim in full through different policy wordings and sections, flip flopped on settlements and amounts and lacked any clarity throughout its investigation. I totally understand why Mr F brought a complaint to this service. I don't think Mr F caused the issues here I think that is down to Aviva and it's handling and settlement of the claim. In these circumstances it's fair and reasonable for Aviva to pay interest on the settlement figure.

I do understand the points Mr F makes and I understand what he says about the impact on his business. But my decision is based on the evidence provided and that evidence shows Mr F hired out the equipment. As Aviva referred to Mr F allowed the equipment to leave the premises, he handed over the items. Mr F chose to do that. So, I've considered whether Aviva has acted fairly and reasonably when it eventually offered to pay the £7,000 under the hire section of the policy. In this case the £7,000 is a fair settlement and I think is in line with what the policy covers.

I see no reason to change my provisional decision.

Putting things right

- Pay the limit under the hire section of £7,000 less the £500 excess.
- Pay 8%* simple interest on the settlement amount from the date of loss to the date of settlement.
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My final decision

I uphold this complaint.

I require Aviva Insurance Limited to:

- Pay the limit under the hire section of £7,000 less the £500 excess.
- Pay 8%* simple interest on the settlement amount from the date of loss to the date of settlement.

*If Aviva Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 3 June 2022.

John Quinlan
Ombudsman