

The complaint

Mr and Mrs R complain that Aviva Insurance Limited (Aviva) unfairly declined their claim for their daughter's stolen items under their home insurance policy. They're also unhappy that Aviva recorded the claim as fraudulent. And that Aviva have asked them to cover the cost of the claim investigation.

What happened

Mr and Mrs R held home insurance with Aviva at the time of the claim. The policy provided cover for theft or attempted theft of contents. The policy also included student contents cover.

On 24 August 2020 Mr and Mrs R's daughter and son called Aviva to report a claim for items stolen from outside of the insured address. The student contents cover still provided cover for the student daughter, but not for the working son. Aviva said they didn't completely understand the circumstances of the claim after it was reported. So they appointed a loss adjuster to investigate and review the claim.

The loss adjuster interviewed Mr and Mrs R's daughter on 15 September 2020. She explained what had happened and listed some items that had been stolen. She said she'd had to leave the property where the theft had occurred quickly. And that she'd left lots of her things behind. But that when she returned, she found her locked room had been broken into and her things had been stolen.

Mr and Mrs R's children told Aviva that their landlord didn't tell them that the other tenant was a drug user and had mental health issues, even though he knew this to be the case. They said they had to leave the shared property quickly as they hadn't felt safe.

Aviva wrote to Mr and Mrs R's daughter the day after the interview to ask for more information. The letter included claim inventory forms for the items being claimed for. They sent a chaser on 1 October 2020 as they hadn't received a reply.

Aviva got the police crime report on 23 November 2020. At this point they noted that there were some differences between the testimonies provided. So they asked for clarification around the events that had taken place.

Mr and Mrs R replied to Aviva. But they weren't satisfied with the response. And asked for more information about the circumstances of the theft and the items stolen. Once they'd received the requested information, Aviva declined the claim. They felt that different items had been provided in the loss lists. And they didn't consider the explanations they were given supported the claim. So they repudiated the claim on 11 December 2020. Mr and Mrs R cancelled the policy on 14 December 2020. Aviva cancelled the policy from inception and applied the fraud condition on 21 December 2020.

Mr and Mrs R were unhappy with Aviva's decision. So they complained. Aviva issued their final response letter on 30 December 2020. They didn't uphold the complaint. They said they maintained their decision to repudiate the claim due to fraud.

Mr and Mrs R were still unhappy. In particular they wanted to challenge the fact that their claim had been deemed fraudulent. So they brought their complaint to this service. They told this service that when their daughter first gave Aviva the list of stolen items she couldn't remember everything that was missing. They said that the second list of items was incomplete. They said their daughter had handwritten it and had been adding to it over time as and when she remembered other items. They said that the final list they'd provided was a complete list of the stolen items. And that they'd either provided photos of those items, or receipts to prove ownership of the items listed. Mr and Mrs R didn't agree with Aviva that the three lists were considerably different from each other. And they also felt that Aviva hadn't made it clear that changes couldn't be made. They also said that they weren't told that items that they didn't have proof for could also be submitted. Mr and Mrs R were also unhappy with the customer service they'd had from Aviva. In particular Aviva's comment that their daughter had effectively brought the theft on herself. They felt it was unfair of Aviva to say this when their daughter couldn't have known that her things would be stolen. Mr and Mrs R also don't think it's fair that they've been asked to pay back the investigation costs Aviva have incurred.

Our investigator didn't think the complaint should be upheld. She felt that Aviva had acted fairly and in line with the policy's terms and conditions when they'd refused the claim on the basis that some elements of it were dishonest or exaggerated. She said this as she felt that several items noted during the first notification of loss call weren't included in the second or final list provided. She felt that by the time the final list was submitted Mr and Mrs R's daughter ought to have had enough time to recall all the stolen items. Our investigator didn't think that Aviva had acted unfairly when they'd commented that their daughter had put herself into a situation where her things might be stolen. She said it was the policyholder's responsibility to keep their possessions secure. Overall she felt that Aviva had considered the claim fairly and declined it properly on the basis of the discrepancies in the loss lists provided. So she felt it was fair that they'd also cancelled the policy. She also felt it was fair under the circumstances that Aviva had approached Mr and Mrs R to reclaim the investigation costs. She said the policy terms stated that Aviva could take legal action if they felt fraud had taken place. She also felt that Aviva had the responsibility to ensure that insurance databases were updated to reflect any fraud outcome.

Mr and Mrs R didn't agree with our investigator. In particular, they were unhappy that they'd been accused of fraud. They said they had only listed the items that they had either proof of purchase or evidence of ownership. They said that their daughter couldn't have been expected to remember all the things she'd left in the property where the theft had taken place, as she had left the property so quickly. They also said that their daughter had been in the property for such a short time, she hadn't even unpacked all her belongings. They also acknowledged that their daughter had left high-value items in the property. They said she hadn't been able to take them with her when she left as there was limited space in their cousin's car. And limited time for her to gather her belongings. They said she only took her everyday items. This was because she'd only intended to stay away from the property for a few days while she was looking for another place to move into. And that she'd needed to move due to the conflict with the other tenant. Mr and Mrs R also said this was the first time they'd claimed on their insurance. And that they didn't know how the claims process worked. Therefore they didn't know that they weren't supposed to amend the list of items being claimed. They said they didn't include the electrical equipment they'd first told Aviva about in the final list as it was so old they didn't feel it should be replaced. They felt Aviva hadn't told them what they should or shouldn't do. And that they'd been misled during the investigation.

As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 12 April 2022. It said:

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 intend to uphold it. I don't agree with our investigator that Aviva acted fairly when they rejected the claim because some elements of it were dishonest or exaggerated. Therefore I don't agree that the claim was fairly declined. Nor do I agree that Mr and Mrs R should be expected to pay Aviva back for their investigation costs, or have their claim recorded on the fraud database.

When this service looks at fraud cases, we weigh up the evidence and question anything that doesn't feel right, as we would do normally. But we also need to remember that fraud is a serious matter, so if that's what the business thinks happened then we might need more evidence than usual. There's no need for Aviva to prove their case 'beyond reasonable doubt'. But they do need to show that it's more likely than not the consumer's claim is fraudulent.

In this case, Aviva consider that there have been a series of inconsistencies that, when put together, persuaded them that fraud had been committed. But, having looked at all the evidence, I don't agree that this is a fair or reasonable conclusion to have drawn. I'll explain why.

Aviva consider that Mr and Mrs R's claim was exaggerated. From what I've seen, they feel this way because Mr and Mrs R's daughter provided three different lists of items stolen.

Mr and Mrs R and their have said that this was the first time they'd claimed on their insurance. So they didn't know how the claims process worked. And they didn't know that they shouldn't change the list of items they were claiming for as and when their daughter remembered other items that were missing. They said Aviva hadn't told them what they should or shouldn't do. And felt that they'd been misled during the investigation.

From what I've seen, there was a fairly complicated set of circumstances leading to the claim. So I can understand why, after Mr and Mrs R's children made the first notification of loss (FNOL) call, Aviva wanted more information from them about the theft. But I consider that Aviva made errors in their understanding of the circumstances surrounding the claim. And I'm satisfied that this misunderstanding incorrectly influenced Aviva's decision to decline. I say this because four different people (the policyholders' daughter, son, cousin and his son) all had their items taken from the shared house in the incident. They all returned to the policyholders' house, many miles away from the shared house on 7 March 2020. The police report wasn't filed by the policyholders' son or daughter, but by their cousin's son. And the items referenced in that report presumably belonged to him. But Aviva declined the claim at least in part because those items differed from the ones being claimed for.

Aviva also said that the policyholders' daughter had told them that she visited the property in March 2020, after she'd left. But that she then said she hadn't. But from what I've seen, she didn't ever say she'd been back in March 2020. Her mum's cousin went back. So I'm not satisfied that Aviva drew correct conclusions about the claim as they don't appear to have fully understood the circumstances.

I asked Aviva to comment on what I felt was their misunderstanding of the circumstances surrounding the theft. They said that three different loss lists were submitted. And that not all the items on the final list had been substantiated, despite the policyholders' assertion that they'd only listed the items that they had either proof of purchase or evidence of ownership. They also said that there was a lack of clarity about who was at the property where the theft had taken place when the theft was reported. They said: "On the FNOL call Mrs R's son advised he went to the property on 15th March but was unable to gain access. He advises

“we” but it is not clear who else was there”. Aviva said that they saw no reason to change their decision on the repudiation of the claim: “due to the circumstances and the lack of corroborative information on the items stolen”.

Aviva’s position is that the claim was repudiated for both “the circumstances” – which I believe they didn’t fully understand. And the “lack of corroborative information” – that is, the loss lists differed.

Mr and Mrs R said that their daughter hadn’t been able to remember all the things she’d left behind, as she had left the property so quickly. And that some of her belongings hadn’t even been unpacked because she’d lived there for such a short time. They also explained that she’d had to leave high-value items in the property, because there was limited space in her cousin’s car. They said she hadn’t planned to leave the items in the property for more than a few days.

From what I’ve seen, the policyholders’ daughter provided Aviva with evidence that she had intended to move back to a new property near the one she’d so quickly left. But, due to lockdown, she’d decided to change her plans. She provided evidence of viewing appointments for new properties, and an email from her place of study showing that it had been her intention to only be away for a week or two. Therefore I’m persuaded that she had never intended to leave her belongings for more than a week or two. And that she was able to prove this to Aviva.

The evidence shows that the items were left in a locked room. Mr and Mrs R’s daughter expected to be returning in a few days’ time. But, due to covid-19 lockdowns, she didn’t return until August 2020, over five months later. Under these circumstances, I’m not persuaded that it was fair for Aviva to say Mr and Mrs R’s daughter had put herself in a position where a theft might occur. Five months had passed between Mr and Mrs R’s daughter leaving the property in a hurry and returning and noticing the theft. Therefore it’s not surprising that she couldn’t immediately remember what had been stolen. I acknowledge that Aviva’s position is that Mr and Mrs R’s daughter then had time to put together a correct final list. But note that Mr and Mrs R said this was the first time they’d claimed on their insurance. And that they didn’t know how the claims process worked. Therefore they didn’t know that they weren’t supposed to amend the list of items being claimed.

The first loss list was given on the FNOL call. From listening to the call, I’m not persuaded Aviva made it clear how important it was that the policyholders’ daughter recall everything that had been stolen at this. Clearly the policyholders’ daughter wasn’t in a position to remember everything that was missing at that time as she’d not had access to the missing items for over five months. The second loss list provided to Aviva was a handwritten list that the policyholders’ daughter said she was adding to over time as she remembered new items which were missing. And the third loss list was put together following Aviva’s request for substantiated items. The policyholders felt this list required either proof of ownership through photos or receipts.

Our investigator said she wasn’t persuaded by the policyholders’ reasoning about the third list because they’d included items on that list that they didn’t substantiate. She was also unsure about why items they’d noted on the two previous lists, especially the electrical items initially reported during the claim notification, weren’t also included here. As noted above, Mr and Mrs R said they didn’t include the electrical equipment they’d first told Aviva about in the final list as it was so old they didn’t feel it should be replaced. I think this is a reasonable stance to take. And while I acknowledge that the third list did contain items that weren’t substantiated, I’m satisfied that Mr and Mrs R and their daughter took reasonable steps to try to provide a final list that included all of the lost items. They hadn’t made a claim before. And they didn’t feel that Aviva helped to guide them through the claims process. They didn’t know

they couldn't amend the loss lists. I consider that it was reasonable that they didn't initially know exactly what had been stolen given the amount of time that had passed since they last had the stolen items in their possession. So I consider that in the circumstances of this theft it wasn't surprising that it was difficult to bring everything that had been stolen to mind. And I don't agree with our investigator that by the time of the third list, the policyholders would've had time to be certain about what was lost, given the circumstances of the loss and the time that had passed.

Aviva have confirmed that Mr and Mrs R's daughter would've been covered for a maximum of £1,000 for personal belongings and £1,000 for gadget cover. They acknowledged that this was not advised on the FNOL call. I've listened to that call. Mr and Mrs R's daughter was unsure about whether she could make a claim at all. Her brother's potential claim was dismissed during the call, due to him no longer being covered under his parents' policy.

I asked Aviva to confirm their normal process for a claim under personal items cover where the claim exceeds the limit of cover. They confirmed that they expect customers to prove their loss. And noted that the policy booklet states (on page 8), what the claimant's duties are when making a claim. This states:

*To help **us** settle your claim*

*It is **your** responsibility to prove any loss and therefore **we** may ask **you** to provide receipts, valuations, photographs, instruction booklets and guarantee cards and any other relevant information, documents and assistance **we** may require to help with your claim.*

I also asked Aviva to comment on the fact that it appeared likely that the policyholders' daughter could easily evidence £1,000 of personal belongings losses and £1,000 of gadget losses to their satisfaction, so she had nothing to gain by exaggerating her claim. Because any potential exaggeration would've had no impact on her claim. I'd also seen no evidence that Aviva had confirmed to Mr and Mrs R's daughter the maximum amount she was covered for under her parents' policy during the FNOL. As such, I said I was struggling to understand why an investigation costing £1,690 had been warranted. I wanted to understand why Aviva considered that it was fair and reasonable to embark on a costly investigation when I felt that clear communication of the actual cover could've avoided the need for that investigation. Aviva said that they take all potentially fraudulent claims very seriously and it is a business decision to investigate these thoroughly regardless of the cost of the claim.

I acknowledge that the policy terms and conditions state the following:

If your claim is in any way dishonest or exaggerated we will not pay any benefit under this policy or return any premium to you and we may cancel your policy immediately and backdate the cancellation to the date of the fraudulent claim. We may also take legal action against you.

Our investigator felt that this term allowed Aviva to refuse this claim. But I don't agree that's the case here.

From what I've seen, due to the complicated circumstances surrounding the theft, and the three different loss lists, Aviva concluded that there had been an exaggerated or dishonest claim. But I disagree for a number of reasons. First, as I noted above, I'm not satisfied that Aviva fully understood the circumstances of the complaint. Second, I'm not persuaded that the losses were exaggerated or dishonest. I consider that it's more likely that the policyholders' daughter simply didn't fully understand the process she was expected to follow. While the policy booklet does include some information, I don't consider that it fully explains what a policyholder has to provide. From what I've seen, she amended the loss list

as and when she realised she'd no longer got something she'd used to own. I consider that it's only to be expected that someone wouldn't necessarily immediately remember everything they'd taken to a new house over five months ago. And that they'd only realise exactly what had been stolen over time. I acknowledge that Aviva require a consistent loss list to be provided. But I'm not persuaded that this was ever properly explained to Mr and Mrs R's daughter. I think that if it had been, she would've done what was required of her.

I also note that the Supreme Court has already outlined an important difference between a fraudulently exaggerated claim and a justified claim that's supported by lies that won't make a real difference. It said that where a claim has been fraudulently exaggerated, the insured is trying to get something to which he isn't entitled. This means that an insurer can refuse the entire claim, even if other parts of the claim were genuine and not exaggerated, because the law doesn't separate those genuine parts from the dishonest part. But I'm satisfied that this claim was a justified claim. Aviva weren't satisfied that it was a genuine claim due to the inconsistencies in the loss lists. But I'm satisfied that given more than five months had passed since the items had been in the policyholders' daughter's possession, it would've been extremely difficult to remember everything perfectly. And I'm not persuaded that the failure to remember everything perfectly should've made a real difference to the fair outcome of the claim. I say this given the number of items stolen and the level of cover available to Mr and Mrs R's daughter. From the evidence presented, I'm not satisfied that Mr and Mrs R's daughter fraudulently exaggerated her claim. But even if she had, I'm not satisfied that any possible exaggerations would've made her claim more likely to be paid. And I'm not satisfied that any possible exaggerations would've resulted in the claim being higher than it would've otherwise been. Therefore I don't consider that Aviva's conclusion that this was a fraudulent claim was fair or reasonable. I'm satisfied that if Aviva had taken more time to understand the circumstances, and to explain how the loss list should be put together, they wouldn't have concluded that this was a fraudulent claim. And therefore they wouldn't have incurred the investigation costs or cancelled the policy due to fraud.

Putting things right

I intend to require Aviva Insurance Limited to take the following actions to put things right:

- *Reconsider the claim for theft under the remaining terms of the policy. As the policy was cancelled under the fraud condition, they may need to reinstate it to allow the claim to be reconsidered.*

Simple interest at 8% per year should be added to any payment due (less tax if properly deductible) from the date of loss until the date of settlement.

- *Remove any records added to internal or external databases relating to a fraudulent claim having been made*
- *Cover the cost of the fraud investigation themselves.*
- *Pay Mr and Mrs R £500 for the significant stress and inconvenience they've caused. I consider this is fair compensation given Aviva blamed Mr and Mrs R's daughter for having her things stolen. And given the actions they took against them after they unfairly determined their claim was fraudulent.*

Response to my provisional decision

Aviva didn't reply to my provisional decision.

Mr and Mrs R had nothing further to add.

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.

No new evidence has come to light, so I remain of the view I set out in my provisional decision.

Putting things right

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Simple interest at 8% per year should be added to any payment due (less tax if properly deductible) from the date of loss until the date of settlement.

- Remove any records added to internal or external databases relating to a fraudulent claim having been made
- Cover the cost of the fraud investigation themselves.
- Pay Mr and Mrs R £500 for the significant stress and inconvenience they've caused. I consider this is fair compensation given Aviva blamed Mr and Mrs R's daughter for having her things stolen. And given the actions they took against them after they unfairly determined their claim was fraudulent.

My final decision

For the reasons given above, I uphold this complaint. Aviva must take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 13 June 2022.

Jo Occleshaw
Ombudsman