

## **The complaint**

Mr P's complaint is about the service provided by Aviva Insurance Limited in relation to his mobile phone insurance policy.

Aviva uses agents to handle claims and complaints on its behalf. For ease, I will refer to Aviva throughout this decision.

## **What happened**

This matter has been ongoing since December 2020 and has been the subject of a previous complaint to this service. I will set out a brief summary of the background below:

### *Previous complaint*

Mr P wanted to make a claim under his policy with Aviva in 2020, as his phone was damaged. I understand the speaker was not working properly, as Mr P says he was using so much hand sanitiser during the pandemic. Mr P complained to Aviva in December 2020 and said he had tried many times to lodge the claim but was unable to get through to Aviva by telephone. Aviva said it had no record of any failed calls from Mr P and asked if he wanted to proceed with his claim. Mr P said he had a claim open with his bank and wanted to wait for the outcome of that before going ahead.

Mr P contacted Aviva again in March 2021 to say he was unhappy with its response to his complaint.

Aviva tried to call Mr P in March 2021 and left a message for him but used the wrong number twice. Mr P was very unhappy about this as he says his personal data had been misused.

Aviva said the voicemail was left on the number that was provided to it by Mr P's bank as being the primary contact number for him and the voicemail message left for him didn't disclose any personal information about Mr P and simply asked him to call back on a number given. Mr P says this happened twice more and Aviva didn't tell him until later. Aviva also said Mr P had told it in December 2020, he didn't want to proceed with his claim.

Mr P says he had made clear in several emails in 2021 that he wanted Aviva to deal with the repair of his phone.

In November 2021, another Ombudsman issued a final decision on that complaint. He concluded that Aviva had not acted incorrectly, as there was no convincing evidence Mr P had been prevented or hindered from making a claim by anything Aviva had done wrong. The Ombudsman said that although Mr P had referred many times in emails to Aviva that his phone was faulty, he never made a formal claim which he could have done at any time. The Ombudsman also noted that the Investigator told Mr P in September 2021 that he could go ahead with a claim, and if he wanted the Investigator would ask Aviva to contact Mr P to proceed with the claim on his behalf, but Mr P didn't do so. In October 2021, Mr P replaced his phone himself instead and traded in the original phone in part exchange.

The Ombudsman said the calls Aviva had made to the incorrect number were made during part of Aviva's handling of the complaint and as such were not something he could consider.

### Current complaint

Mr P called Aviva to discuss the claim three times on 20 January 2022 but he says the calls were terminated, in one call the representative put the phone down on him after discussing it with him. Mr P complained about this.

Aviva dealt with the matter itself after Mr P objected to its agents being involved. Aviva said it could find no record of any calls made to its claim line on 20 January 2022 and asked Mr P for evidence of which number and the time of the calls, so it could trace them.

Aviva said that as the phone had been traded in, it could no longer repair it, so a cash settlement in lieu of repair might be appropriate. However, it then said that Mr P received a trade in value of £230 for his phone when he replaced it, which it says was the upper end of the value of that make and model phone at the time. Aviva therefore says the repairs required can't have been significant and he is unlikely to have suffered any financial loss in not having had the repairs done. It also points out there is a claim excess of £75, so repairs under that amount wouldn't be covered. However, it said if Mr P could provide evidence he had paid for repairs to the phone himself then it would consider that further but the excess would be deductible from that cost.

Mr P is very unhappy with the response from Aviva. He has made a number of submissions in his initial complain and as the matter has progressed. I have considered all of them but have summarised the main points below:

- He didn't have the phone repaired. He had no choice but to replace it in October 2021, as he needed a fully functioning phone and Aviva had repeatedly failed to deal with his claim. It is also unfair to use the trade in value to justify failing to meet his claim.
- He was encouraged to make the claim by the previous Ombudsman, who knew he had already traded his insured phone in. This has led to further stress.
- Why would Aviva offer a cash settlement if he had no valid claim, then not do this because he refused to provide his phone bills that do not exist because of a ruling by the regulator?
- Despite having access to dates, times, telephone numbers and screen shot of his phone records, Aviva wanted access to more of his personal data, namely an itemised bill to prove he had called it to try and progress his claim. This is unnecessary to effectively manage his claim and Aviva is simply trying to make the process more difficult.
- He is in fear of Aviva and its agents accessing his data any further and, in any case, the insurance policy does not say anywhere that this is needed to allow them to do their investigation?
- Despite demanding itemised bills from him, Aviva failed to record all calls and doesn't tell customers this. What was the point of asking for his proof of calling, when it wouldn't have a recording of the call anyway?
- His network provider has said it cannot see the calls on his itemised bill and he has found out that as the claim number is an 0800 number it would not be recorded.
- He provided extracts from five emails he sent Aviva in 2021 asking for his claim to be progressed. Aviva denied receiving them when responding to this complaint, even though its agents responded to them. The agents have therefore been dishonest and this has not been addressed.

- The Investigator said these emails were sent to the complaints team and did not state that he wanted to make a claim but there was no need to set up a new claim as the original claim was simply put on hold until the complaint was dealt with. It was therefore reasonable for him to ask the department dealing with the claim/complaint to follow up on the issues related to his phone.
- The Investigator said these emails had been available to the previous Ombudsman and he had concluded Aviva had not hindered his claim but we admitted the investigation of his first complaint was not acceptable, so the decision can't be relied on.
- Not enough has been done by the ombudsman to get access to the call details for the calls he made in January 2022, as there is evidence that Aviva is "*not playing by the book*". This needs to be looked at thoroughly.
- Aviva has also said his phone wasn't registered under the policy, when this was done in December 2018. This is a new excuse to not meet his claim, which we need to investigate.
- Aviva has been dishonest and has not dealt with this complaint fairly, including that Aviva said it had left a message for him in March 2022 among other things.
- The Investigator has focused on his financial loss and not recognised the impact Aviva's behaviour has had on him.

Mr P asked for a cash settlement in the value of the replacement phone he purchased and a written apology acknowledging the "*failures and terrible customer service*" he has received.

One of our Investigator's looked into the matter. He didn't think Aviva had done anything wrong and its response to the complaint was fair and reasonable. There was no available evidence to show that any calls Mr P tried to make in January 2022 were terminated by Aviva and it had offered to consider any repair costs Mr P had incurred (subject to the policy excess) which he thought was fair.

Mr P does not accept the Investigator's assessment.

### Preliminary matters

I'm unable to consider any points that have been considered and decided on by my Ombudsman colleague in November 2021. And as the previous Ombudsman explained, complaint-handling is not a regulated activity and so falls outside our jurisdiction.

Mr P has asked for me to contact him by phone to discuss the case before issuing my final decision. Deciding ombudsmen don't routinely talk to either party to the complaint, as fairness would usually require that both parties be involved in any discussion at the same time. As the investigator already explained, we may decide it is necessary to do so, if there is information that is unclear or a dispute about the facts of the case that we consider can only be clarified by discussing it with the parties. Mr P has made his case clearly both in writing and verbally to the Investigator, including how stressful and upsetting the situation has been for him, and I have been provided with all the correspondence and communications between Mr P and Aviva. The evidence and positions of both parties is sufficiently clear and so I don't consider it is necessary to discuss this case with the parties in order to fairly determine the matter.

### **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.

### January 2022 phone calls

There's no record on Aviva's file of the calls Mr P made in January 2022. However, I am satisfied that calls were made as Mr P has provided a screenshot of his recent calls screen on his mobile phone, which shows three calls to the policy claim number. The first says it was cancelled, there's then one lasting four minutes and then a third lasting one minute.

Mr P says the phone was put down on him and Aviva failed to proceed with his claim as a result of these calls. Even if he did call and was cut off mid call, I do not consider any award is appropriate as I do not have enough evidence to say that Aviva did anything wrong here. The termination of the call could have been an accident or a technical problem and I think this is more likely on balance than Aviva's representative deliberately hanging up on Mr P.

Aviva asked for more information about which number Mr P called and which number he called from, by way of an itemised bill. Mr P says calls to 0800 numbers are not itemised on customer's bills and Aviva would have known this was not possible. This was therefore an unreasonable request, intended to cause him further trouble. And as Aviva didn't record all phone calls would have been pointless anyway.

Aviva was trying to establish if Mr P had called a different number and then been put through to the claims team, or called from a different number in order to try and locate a record of the calls and possibly a recording of it. I do not agree that its request for further evidence of the calls was unreasonable or was deliberately done to cause Mr P trouble. There's no requirement for businesses to record phone calls and they only have to tell customers that they are recording, not that they are not. I think Aviva was trying to establish what had happened and do not agree it was being unreasonable.

Mr P says the lack of record of his calls should be thoroughly investigated. We are an informal dispute resolution service. We do not punish businesses for anything they may have done wrong and we do not normally investigate exactly why things went wrong. Instead we consider what happened, and if there has been wrongdoing try and rectify that as far as possible. Where there is uncertainty we consider what is most likely to have happened, and how this affected an individual complainant.

Sometimes things go wrong, which can be annoying and frustrating, but it doesn't mean compensation is always warranted. On some occasions we may consider that some additional compensation may be warranted, but this is not a punishment or fine for the businesses, as this isn't our role. It would be to reflect any additional harm caused.

Even if the calls were terminated by the representative exactly as Mr P says (which has not been proven) Aviva went on to consider the claim further and it did not affect the outcome of that claim. Overall, I do not think there is enough evidence to find that Aviva did anything wrong and so I do not consider it needs to do anything further in relation to this.

### Claim

Mr P wants his claim settled. However, the insured phone has already been part-exchanged, so the damage cannot be assessed. Mr P is also unhappy as he says Aviva told him the phone was not registered on the policy to cause further problems in him progressing his claim. The issue regarding the registration of the phone was resolved quickly and I am not convinced that this was anything other than an error. While annoying, I do not think it caused any detriment and do not think any further action is warranted about this.

Mr P confirms he didn't have the phone repaired and apparently got a trade in value of £230 for his phone when he replaced it. Aviva says this is the upper end of the value of that make and model phone at the time, so it says this indicates the damage to the phone was not significant. It also points out there is a claim excess of £75, so repairs under that amount wouldn't be covered.

Mr P says it is unfair to use the trade-in value as a reason to not make a settlement payment, as he had no choice but to replace the phone, as he needed to purchase a phone that worked. Mr P says he had been pursuing the claim repeatedly in 2021.

However, the previous Ombudsman already concluded that Aviva did not hinder or prevent Mr P from making a claim in 2021. Mr P says the investigation into his previous complaint was flawed and as this has been acknowledged by us, this decision shouldn't be relied on. This is not the case. Mr P made a complaint about the service provided by us but the merits of the decision were not considered as part of that complaint. I am unable to reconsider any of the evidence already considered in that decision. I also note Mr P had a further opportunity in September 2021 to pursue the claim before exchanging the phone but didn't do so.

I have not seen any independent evidence of what was wrong with the phone, or that it would have cost more than the excess to repair it. The trade-in value does suggest it was not significantly damaged. I do not therefore think Aviva's response is unreasonable having considered everything.

### Service and data breaches

Aviva handled the claim directly because of Mr P's concerns about agents he had previously complained about being involved in the claim going forward. I think this was reasonable.

The Ombudsman that issued the decision in November 2021, referred to Mr P's contacts with Aviva in 2021 about the phone still being faulty and did not think they amounted to a formal claim. As stated, I cannot reconsider this. Mr P has also complained however, as Aviva said it had not received these emails, even though its agents had responded to them; and said it had called him in March 2022.

Mr P has also raised his concerns about his data being breached by Aviva leaving messages for him on a telephone number that does not belong to him.

As far as I am aware, these issues arose during Aviva's handling of the complaint, which as mentioned above is not something I can consider.

### **My final decision**

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 December 2022.

Harriet McCarthy

**Ombudsman**