

The complaint

Mr S complains about the settlement Aviva Insurance Limited paid when he made a claim on his motor insurance policy following the theft of his leased car. He's also unhappy with the delay in the claim which led to him incurring hire costs and further lease costs.

What happened

Mr S's leased car was stolen, and he made a claim to Aviva. A courtesy car was provided, but Mr S said he was charged for hire after the first 14 days. Aviva sought information from the lease provider about the car's purchase price. This caused delay in the claim and Mr S had to hire a car as he couldn't get another lease whilst his current lease wasn't settled, and he had to pay two monthly lease charges. Aviva then settled the claim. It paid the lease company the car's purchase price, not its market value. So Mr S had to settle the difference. Mr S was unhappy with this and the hire costs he incurred.

Aviva agreed its level of service could have been better and it offered to reimburse Mr S one month's lease charge and to pay him £200 compensation for the trouble and upset caused by its level of service. But Mr S remained unhappy.

Our Investigator recommended that the complaint should be upheld. She thought Aviva had unfairly settled the claim and had incorrectly based the settlement on the purchase price of the car to the lease provider, rather than consideration of the terms and conditions of the policy and the terms of the lease agreement. She thought Aviva should have paid the car's market value to the lease provider.

She thought Aviva should pay Mr S £6,922.67, which was the difference between what it paid the lease provider and the car's market value, less the policy excess. Mr S had settled the lease for £1,000 less than this. But she thought this was fair and reasonable as Aviva was also required to refund a proportion of the deposit Mr S had paid.

She thought Aviva had caused delays in the claim and so she thought it should pay interest on the amount Mr S had paid to settle the lease agreement. And she thought it should refund the two monthly lease payments Mr S had made. She thought Mr S had had to hire replacement cars, but Aviva should refund only half of these costs as Mr S should have mitigated his losses by hiring cheaper cars. And she agreed Aviva should pay Mr S £200 compensation for the trouble and upset it had caused.

Mr S agreed with this view. But Aviva replied asking for an Ombudsman's review. It said its settlement was paid to the owner of the car, the lease provider. Aviva said the lease provider had delayed providing information about the calculated settlement figure for early termination of the lease. It had wanted the car's market value, less VAT. Aviva said the lease provider had bought the car for a discount, and so it had applied this figure to the settlement. It thought it was being penalised for the lease provider's failings.

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.

Our Investigator has explained that our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably. And this means taking into account the terms of the lease agreement. Aviva thought I should consider the actions of the lease provider. But I can't do that here as it's a separate business to Aviva.

Mr S's policy with Aviva states the following terms and conditions on page 8 of the policy booklet:

"What if my vehicle is on finance?"

If we know that your vehicle is still being paid for under a finance agreement, we will pay any claim to the owner described under that agreement.

- Where your vehicle is on finance and the agreement allows you to own or purchase the vehicle, any difference between what we pay the finance company and the market value will be paid to you.*

- Where your vehicle is not or cannot be owned by you under the agreement (contract hire and some leasing arrangements) we will pay its asset value to the true owner.*

If the outstanding amount of your finance exceeds any payment made under this policy you will still be responsible for paying this. The most we will pay is the market value of your vehicle."

I can see that under the lease agreement Mr S is unable to purchase the car at any time. So Aviva are required to pay the owner, the lease company, its asset value.

Mr S's lease agreement sets out what he is responsible for paying upon total loss of the car. The lease agreement states:

"7.2.3 – If the vehicle is a total loss because it is lost, stolen or destroyed and in the opinion of the insurers is not worth repairing, to pay a sum equal to the sum which would otherwise be payable on termination (see clause 9) to compensate us for our loss."

"9.4 – On termination of this agreement under cause 7.3 you will immediately pay us together with VAT The higher of (i) the retail vehicle value or, (ii) net book value."

So the lease agreement requires Mr S to pay the lease company the car's full market value in the case of its total loss. And the policy states that the most Aviva will pay is the car's market value. So I'm satisfied that this is the settlement Aviva is required to make.

Aviva suggested a valuation to the lease company, and I think the parties accept this as the car's market value at its date of loss. But Aviva paid the lease company the purchase price of the car, which was less than its market value.

As Aviva didn't do what was required by the policy's terms and condition, Mr S had to make up the shortfall and pay a balance to the lease company to settle the lease agreement. This amount should have been £6,922.67, but Mr S managed to negotiate a lesser settlement.

So, to put things right for Mr S, I'm satisfied that Aviva should now reimburse him £6,922.67. This will mean that Aviva has paid the full market value of the car. And I don't think this has put Mr S in a better position as this takes into account reimbursement of a proportion of the deposit he paid for the lease cost, in keeping with our approach.

I think Aviva caused avoidable delays in the claim because it sought unnecessary information from the lease company. Mr S had to make two monthly lease payments unnecessarily in this time. Aviva offered to refund one of these. But I think it should refund both because if it had dealt with the claim fairly, then Mr S wouldn't have incurred them.

Mr S settled the lease agreement on 24 November 2021 when Aviva should have paid this. So as Mr S has been without his money for some time, I think Aviva should reasonably add interest to this amount.

Mr S was unable to take out another lease agreement whilst this one was open. So he had to hire replacement cars due to the delays caused by Aviva after his 14 day courtesy car entitlement ended. But I agree with the Investigator that Mr S didn't reasonably mitigate his losses as he hired luxury cars. So I agree that it would be fair and reasonable for Aviva to reimburse him half of this cost.

Aviva offered Mr S £200 for its service failings. It didn't respond to Mr S's calls. He had to chase it. And I think he was put to avoidable trouble and upset by Aviva's handling of his claim. I think £200 compensation for this is in keeping with our published guidance.

Putting things right

I require Aviva Insurance Limited to do the following:

1. Pay Mr S £6,922.67 to reimburse his payment to settle the lease agreement. Interest should be added to this amount at the rate of 8% simple per annum from the date of payment to the date of settlement†.
2. Pay Mr S £1,419.10 to reimburse the two monthly lease charges he had to pay unnecessarily.
3. Pay Mr S for half the car hire costs he incurred between the date the courtesy car entitlement ended and the date the lease agreement was settled.
4. Pay Mr S £200 compensation for the distress and inconvenience caused by its level of service, as it's already agreed to do.

† HM Revenue & Customs requires Aviva to take off tax from this interest. Aviva must give Mr S a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Aviva Insurance Limited to carry out the redress set out above.

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

Phillip Berechree
Ombudsman