

## **The complaint**

Mr K has complained that Aviva Insurance Limited turned down his claim under his motor insurance policy after his van was stolen.

## **What happened**

Mr K bought a van to use in connection with his business. He bought it privately via an online marketplace in cash. He's explained how he'd been concerned about the V5, as it wouldn't scan when he took it to the Post Office. So, he took it to the police and asked them to check whether the van had been stolen. They'd told him it hadn't been, but was uninsured. Mr K already had a motor insurance policy with Aviva and contacted them to change the vehicle insured under it to his new van. He parked the van at 4pm on the day he bought it in parking spaces outside his flat. When he looked for it the next morning he realised it had been stolen, as another vehicle was parked in the space where he'd parked it. He later checked with the person whose vehicle was parked in the space and he told him he'd parked his vehicle there in the early hours of the morning. Mr K has also explained that he was provided with two keys for the van and that he'd left one, along with the receipt for the van, in the glove compartment when he parked it. He's also explained that he's sure he locked the van when he left it, as he tried the door to make sure he couldn't open it.

Mr K has also explained that there was no sign of anyone having broken into his van, such as broken glass on the ground next to where it was parked, and that he didn't hear the alarm on it go off.

Mr K called Aviva to make a claim under his policy. Aviva's claim handler took all the details and asked Mr K to send certain information. And said when he'd sent this he'd arrange for the claim to be considered. Mr K sent the information and, having considered the claim, Aviva turned it down. They explained this was because – under the terms of Mr K's policy - theft of his van was excluded if he'd left a key in it.

Mr K complained to us and one of our investigators considered his complaint. She said it wasn't fair and reasonable for Aviva to rely on the policy exclusion, as it was clear from the circumstances surrounding the theft that the key Mr K had left in the glove compartment had not been used to steal the van. And that Mr K's van would still have been stolen even if he hadn't left the key in it. This was because she thought it was most likely Mr K had been the

victim of a scam and the person who sold it to him or their associates still had a key for the van and used this to steal it.

Aviva didn't agree with our investigator's assessment and therefore Mr K's complaint was passed to me for a decision. They referred to Section 11 of the Insurance Act 2015 and explained that they accepted there was an onus on them to show that the exclusion they'd relied on was material to the loss being claimed for. And they said their stance was that on the balance of probabilities Mr K's van was stolen using the spare key left in the glove compartment. So they felt they'd shown the exclusion was material to the theft.

I issued a provisional decision on the 1 August 2022 and I set out what I'd provisionally decided and why as follows:

*Mr K's policy covers loss as a result of theft. But Aviva have relied on the following exclusion to turn down his claim.*

*Loss or damage arising from **theft** while:*

- **your** vehicle's ignition keys (including any device or code used to secure, gain access to, or to enable **your vehicle** to be driven) have been left in or on **your vehicle**.*

*Aviva are correct to say that the onus is on them to show that this exclusion is material to the loss Mr K has claimed for. The Insurance Act 2015 actually refers to the need for the insured (in this case Mr K) to show their failure to comply with a policy term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred. But, I think, when declining a claim, Aviva should consider the materiality of any exclusion they wish to rely on as part of their duty to treat their customers fairly. Especially, in respect of the abovementioned exclusion, as this is effectively a term placing a duty on the consumer not to do something, ie leave a key in their vehicle. So, whether Mr K's failure to remove the spare key from his van increased the risk of it being stolen in the circumstances in which this occurred is the main consideration for me in determining whether the fair and reasonable outcome to this complaint would be to allow Aviva to rely on the abovementioned exclusion to decline Mr K's claim.*

*Aviva has said it thinks it has shown on the balance of probabilities that the spare key Mr K left in the glove compartment was used to steal his van. The problem is Aviva have not at any point really explained why they think this is the case.*

*When I consider what happened, it seems fairly obvious to me that Mr K has been the victim of some sort of scam. I say this because he bought a van via an online marketplace in cash for less than someone would normally have to pay for it, the V5 didn't scan properly when he took it to the Post Office and the person he bought it from or an accomplice could easily have followed Mr K to find out his address. And the very same night Mr K parked the van at his home address it was stolen. When this happened the alarm didn't go off and there was no evidence left of anyone having broken into the van. I think this all shows it is more likely than not that the person who sold Mr K the van, or people associated with them, had a spare key and simply came back and used this to steal the van.*

*So, I'm surprised that Aviva have suggested it is more likely than not that the key Mr K left in the glove compartment was used to steal it. I say this because if the thieves already had a key they would not have needed to use the key Mr K left in it. And, I doubt very much the thieves even bothered to check the glove compartment to see whether there*

*key in it, as they had no real reason to. Therefore, in my opinion, the fact there was a key in the glove compartment could not have increased the risk of the loss which actually occurred, that is Mr K's van being stolen by the person who sold it to him or people associated with them. Therefore, I don't think it would be fair and reasonable for me to allow Aviva to rely on the abovementioned exclusion to turn down Mr K's claim.*

*This all means I think the fair and reasonable outcome to Mr K's complaint is for me to require Aviva to deal with his claim for his van in accordance with the remaining terms and*

*conditions of his policy, that is – they are not entitled to rely on the abovementioned exclusion, but any other terms and conditions in the policy will apply, such as the excess. Mr K has mentioned that he had materials in his van when it was stolen. His policy doesn't cover materials, but it does cover business tools up to £500. So – if by materials Mr K means tools, then Aviva will need to consider the loss of these as part of his claim.*

*I've also considered the impact of Aviva's decision to decline Mr K's claim on him. He's explained to us that he wasn't able to afford a replacement van and that this combined with the fact materials he used for his business were in the van when it was stolen meant he couldn't continue his business. Instead, he borrowed the money to buy a family car and did something different to raise the money he needed to support him and his family. He has also explained how stressful this all was for him.*

*In view of what Mr K has said, it is difficult for me to assess the financial impact Aviva's incorrect decision to turn down his claim had on him, as I'm not sure whether by materials he is referring to tools or the raw materials he used for his business as a stonemason. Plus, it was Mr K's choice to stop his business and do something different. In view of this, I think it is more appropriate for me to make Aviva compensate him for the distress and inconvenience he experienced as a result of their decision to turn down his claim. And I've provisionally decided – based on the significant impact the decision must have had on Mr K - to award £500.*

I gave both parties until 15 August to provide further comments and evidence. Mr K hasn't provided any further comments or evidence. Aviva responded to say that they didn't agree with my provisional decision and that they were referring the matter to their technical team and would be in touch. But, they've not provided any further comments and evidence.

### **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 appreciate Aviva doesn't agree with my provisional decision, but it hasn't said why this is the case. And it still hasn't explained why it thinks it is more likely than not that the key Mr K left in his van was used to steal it. As Aviva have not explained why they don't agree with my provisional decision or provided any further comments and evidence; and because Mr K hasn't provided any further comments and evidence either, I see no reason to change what I decided the fair and reasonable outcome to this complaint was in my provisional decision.

### **Putting things right**

It therefore follows that I think the fair and reasonable outcome to Mr K's complaint is for me to require Aviva to deal with his claim for his van in accordance with the remaining terms and conditions of his policy, that is – they are not entitled to rely on the abovementioned exclusion, but any other terms and conditions in the policy will apply, such as the excess.

Mr K has mentioned that he had materials in his van when it was stolen. His policy doesn't cover materials, but it does cover business tools up to £500. So – if by materials Mr K means tools, then Aviva will need to consider the loss of these as part of his claim.

And I also think based on the significant impact the decision to turn down his claim must have had on Mr K Aviva should pay him £500 in compensation for distress and inconvenience

### **My final decision**

For the reasons set out above, I uphold Mr K's complaint and order Aviva Insurance Limited to deal with his claim, including any claim for business tools that were in his van, without relying on the abovementioned exclusion and in accordance with the remaining terms and conditions of his policy.

I also award Mr K £500 in compensation for distress and inconvenience.

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

Robert Short  
**Ombudsman**