

## The complaint

K has complained about the delay to the settlement of its claim under its Mini-Fleet Single Business Policy with Aviva Insurance Limited.

## What happened

K's van, which it has on a lease hire arrangement, was damaged in an accident on 28 February 2022 and K reported this to Aviva on the same day. It seems the van went to one of Aviva's approved repairers so they could do an estimate for repairs. The repairs were eventually authorised by Aviva on 24 March 2022. Unfortunately, one of the parts needed wasn't available and it was not clear how long it would take to get this. K mentioned in the complaint form it submitted to us in October 2022 that the part wouldn't be available until February/March 2023. However, recent reports suggest it could be available this coming May, but even this seems uncertain.

Aviva were obliged to provide a replacement vehicle under the terms of K's policy, but the type of vehicle concerned was too small to be of any use to K. Although, the policy does provide the option for K to pay the extra to upgrade to a suitable replacement.

K complained to Aviva about the delay with the repair in October 2022 and said it was severely impacting its furniture removal business, as it was having to continue paying the lease and insurance on the damaged van, as well as hiring vans on an ad hoc basis to complete jobs. And it also mentioned it was incurring storage charges for the damaged van. Aviva rejected K's complaint. They said there was nothing they could do, as the part was on back-order and they couldn't write K's van off, as the repair cost was too low to justify this.

K submitted a complaint to us. When it did so, it mentioned Aviva had offered it the option to upgrade the replacement vehicle in October 2022 to a suitable van at a cost of around £420 per month. It added that it was not able to commit to this sort of regular financial outlay.

One of our investigators considered K's complaint. He said it should be upheld and Aviva should write off K's van and settle its claim on this basis. He also said Aviva should cover the cost to K of hiring vans on an ad hoc basis and pay £500 for the inconvenience K had experienced as a result of being without a van for so long.

Aviva didn't respond to the investigator's view on the complaint other than to ask for an extension to do so in full. K has responded. It's asked for the amounts it's had to continue paying to lease the damaged van and insure it to be reimbursed, as it considers these to be unnecessary costs to the business.

As Aviva didn't respond to the investigator's view, he put the case forward for an ombudsman's decision. It was passed to me and I reviewed the evidence. Having done so, I spoke to one of the directors at K, who I'll refer to as Mrs V.

I asked Mrs V why K had spent so much hiring replacement vans when it had the option under its policy to have a suitable one at a cost of around £450 per month. She explained to

me that K could not commit to paying £450 per month without knowing what jobs would come in, due to financial constraints. So, instead of this, it hired vans on an ad hoc basis when a job that warranted it came in. This way Mrs V knew K would be able to cover the cost of the hire van.

Mrs V also explained that K had to turn some smaller jobs down, as it didn't have the damaged van and couldn't justify hiring a van due to the size of the job. She went on to explain, she couldn't now quantify the loss this inability to take on smaller jobs had caused to K, as she'd not kept a log. And she explained K had not laid off any of its drivers as a result of having one of its vans off the road.

I issued a provisional decision on 5 April 2023 in which I set out what I'd provisionally decided as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*As far as I can tell, it should have been clear to Aviva around a month after K's van went in for repair that it was going to be a considerable time, and even as long as 12 months, before the part that was on back order, which was needed to complete the repair to K's van, became available. In view of this, I cannot understand why Aviva didn't come up with an alternative way of settling K's claim or offer to provide a like for like replacement van free of charge. I say this because the fact the part needed wasn't available meant Aviva could not carry out a lasting and effective repair of K's van in a reasonable time in accordance with their obligations under the policy and to handle claims fairly. I can see the possibility of treating the damaged van as a total loss was discussed internally at Aviva, but this option was dismissed due to the cost of repair being much less than the market value of the van. And they said they were unwilling to do anything else to help K.*

*In my opinion, Aviva's approach was completely unreasonable, bearing in mind their obligations and the fact K was trying to run a business and had an insurance policy to give it the protection it needed if one of their major assets was damaged. I think Aviva should either have treated the damaged van as a total loss and settled the claim on this basis. They then could have taken ownership of the van and had it repaired and sold it once the part needed became available. Or they should have offered to provide K with a like for like replacement van free of charge until its van had been repaired and returned to them.*

*In view of this, I consider the fair and reasonable outcome to K's complaint is to put it back as closely as possible in the position they would have been in if Aviva had adopted a reasonable approach to its claim. This would have been either with a replacement van as a result of having paid up the lease on the damaged van and leased another one or as result of Aviva funding a temporary like for like replacement.*

*This means there are now two options I consider Aviva can take with regards to K's claim moving forwards. They can either treat the damaged van as a total loss and settle K's claim on this basis as soon as possible. Or they can provide K with a like for like replacement for their damaged van as soon as possible and continue doing this until K's van is satisfactorily repaired and back with it.*

*I understand Aviva have recently mentioned to K the possibility of repairing its van using a reconditioned part. But I do not consider this would be reasonable, as the van is leased and the lease company is likely to require any repair to be carried out using new manufacturer approved parts.*

*I also consider Aviva should cover any losses to K flowing from their failure to deal with their*

*claim in a reasonable manner. And I accept Mrs V's explanation that K could not commit to a regular payment for the hire of a replacement van because of the financial pressure placed on its business as a result of having one of its vans off the road, but still having to pay to lease and insure it. This means Aviva will need to cover the costs incurred by K in hiring vans on an ad hoc basis for the period from April 2022 to when Aviva either provides a temporary like for like replacement van or two weeks after they settle K's claim on a total loss basis if this is what they decide to do. The reason I think the period should start in April 2022 is because I consider this is when Aviva should have realised the need to take a different approach with K's claim.*

*K has provided hire invoices which look reasonable to me, which total around £8,500 for the period from April 2022 to date. I also consider Aviva should pay interest on these amounts from the date each hire invoice was settled to the date Aviva makes the payment due to K. Our investigator will provide copies of all of the invoices to Aviva.*

*In addition to this I consider Aviva should pay K a considerable amount in compensation for the inconvenience it experienced because it did not have a van to carry out smaller jobs. For a removal business like K, this must have been a major inconvenience over a long period of time. And I think £1,000 would be an appropriate amount to reflect this level of inconvenience.*

*I also consider Aviva should have moved the damaged van to a place of free storage as soon as they knew the repair would be delayed. I appreciate Aviva may argue they were not aware K was paying to store the van. But I think they should have checked and then they'd have been aware they needed to move it. K has provided evidence to show this has cost it £750 so far. And I think Aviva should reimburse this cost, subject to K providing evidence for all the payments it has made.*

*I do not think K should get anything to reflect the fact it was still paying to lease the damaged van and insure it, as these are costs it would have incurred even if Aviva had dealt with its claim reasonably. The difference would have been it would have either had a suitable temporary or permanent replacement. And I've already set out what I think is appropriate compensation for the fact it did not.*

I gave both parties until 19 April 2023 to provide further comments and evidence in response to my provisional decision.

Mrs V responded on behalf of K. She suggested that K's van should be treated as a total loss. She explained that K would prefer this because its claim had been such an unnecessarily stressful and long drawn out process and it would like to see closure of the situation after 14 months. She also said she would prefer not to have to deal with Aviva any further in view of the fact they have not been responding to K.

Having received this response, I emailed Aviva and advised them that I'd provisionally decided it would be appropriate for them to treat K's vehicle as a total loss, as opposed to providing a replacement van and continuing to try and source the part needed to get K's van repaired.

Aviva then responded to say that it had agreed with the company K leased the van from that it could be repaired using a reconditioned part. And that they had established this part was available. They added that their senior engineer was 'picking this up and making the relevant arrangements'.

I asked our investigator to let Mrs V know this and ask for her comments. Mrs V explained that she does not think having K's van repaired with a reconditioned part is in K's best

interests, especially as it has already suffered 'catastrophic financial and emotional repercussions'. K's major concern is that its van has been stood stationary for 14 months, no doubt causing parts to seize and rust and this could lead to further costs to K. Mrs V has also explained how she – as a director of K – is mentally exhausted and doesn't feel she can continue to deal with the situation or Aviva any longer. She's pointed out Aviva have had numerous opportunities to source a reconditioned part and contact the lease company, but waited until just before I was about to issue my final decision to do so.

Having received Mrs V's email, I forwarded it to Aviva and explained I thought her points were valid and I did not consider repairing K's van with a reconditioned part was now appropriate. And I said that I still intended to make Aviva treat the van as a total loss.

### **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've noted Aviva's proposal, at what is a very late stage, to arrange for K's vehicle to be repaired using a reconditioned part. But I agree with Mrs V's view for all the reasons she has stated that this would not be fair and reasonable after well over a year of the van being left standing unrepaired. And with no real effort on Aviva's part to find a suitable solution or show any awareness of the significant financial and practical impact not having the van was having on K.

If the van has been standing for well over a year I am concerned there could be other issues with it, which might not materialise until after it has been repaired and is back in use. And I do not consider it is appropriate for K to be left with this concern or the inconvenience of having to deal further with Aviva on the matter.

This means as part of the fair and reasonable outcome to K's complaint I consider Aviva should treat K's van as a total loss and settle its claim on this basis. According to K's policy this means Aviva will have to pay the asset value of the van to the leasing company up to a maximum of its market value, as defined by the policy. The market value is the cost of replacing the van with one of the same make, model, specification and condition.

Aviva haven't commented on my view that they should cover the cost to K of hiring a replacement van based on the invoices its provided, and continues to provide up to the point two weeks after Aviva makes the total loss payment for K's van. So, I see no reason to alter my view on this.

And Aviva has not commented on my view that they should also pay K £1,000 in compensation for inconvenience and cover the storage charges for the damaged van up to the point they settle K's claim. Therefore, I see no reason to alter my view on these issues either.

### **Putting things right**

For the reasons set out above and in my provisional decision, I consider the fair and reasonable outcome to K's complaint is for me to uphold it and make Aviva do the following:

- Settle K's claim for its van on the basis the van is a total loss.
- Reimburse K what it has paid to hire a replacement van from 1 April 2022 to two weeks after they make the payment to settle K's claim on a total loss basis or when K buys or leases a replacement van, whichever is sooner. This payment should be based on the

invoices provided by K to date to us and Aviva and on further invoices provided direct to Aviva. Aviva must also pay interest on the amounts K has paid at 8% per annum simple from the date they made each payment to the date Aviva reimburses the total amount due to it.

- Pay K £1,000 in compensation for inconvenience.
- Reimburse any storage charges K has paid or pays to store the damaged van up to a point two weeks after they have settled K's claim, plus interest at 8% per annum simple from the date K made the payments for this to the date Aviva reimburses them.

### **My final decision**

My final decision is that I uphold K's complaint and order Aviva Insurance Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 18 May 2023.

Robert Short  
**Ombudsman**