

## **The complaint**

Mr W complains that Aviva Insurance Limited disposed of his car without his consent following a claim made on his commercial motor insurance policy. He wants compensation for the costs he then incurred and the damage to his professional reputation. Mr W is a policy holder on a policy where his wife is the principal policy holder.

## **What happened**

Mr W made a claim to Aviva following an incident. Aviva took his car for repairs, but it was deemed to be beyond economical repair. Mr W told Aviva that he wanted to retain the car, but the car was mistakenly sold. Aviva then provided Mr W with short-term hire. It apologised and offered him £600 compensation.

Mr W said the car had contained £700 of personal possessions. And Aviva offered to reimburse him £150 for these, which was the policy limit, and to consider evidence for any other items. But it didn't think it was responsible for Mr W being without a car as his own car, if it had been returned to him, would have been unroadworthy in any case.

Mr W remained unhappy. He said he'd lost work worth £5,000 and incurred £1,500 costs. He was also unhappy with Aviva's valuation of his car.

Our Investigator didn't recommend that the complaint should be upheld. Whilst Mr W thought his car was repairable, she thought Aviva was entitled to decide it was beyond economical repair based on the likely repair costs. She thought Aviva's settlement offer for the car's pre-loss market value was fair and reasonable.

Aviva caused three days' delay in providing a suitable hire car. But she thought it wasn't responsible for Mr W's loss of earnings as his own car, if it had been retained, was unroadworthy and Mr W wouldn't have been able to work sooner. She thought Aviva wasn't responsible for Mr W's later hire costs as he had received his settlement and it wasn't Aviva's responsibility that he was too busy to source a new car.

She thought Aviva had reasonably responded to the loss of Mr W's personal possessions. And she thought Aviva's payment of compensation was fair and reasonable as it was in keeping with our published guidance.

Mr W replied that Aviva hadn't explained how the mistake occurred. He said Aviva had initially assessed his car as repairable. He said the car was roadworthy. He said Aviva hadn't paid enough for him to replace the car. He said Aviva's delay in providing a hire car had lost him three days' work. Mr W asked for his complaint to be reviewed by an Ombudsman, so it's come to me for a final decision.

## **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 can understand that Mr W feels frustrated that his car was sold when he had made it clear to Aviva that he wanted to retain and repair it. And I can understand that he had a shock when he found out about this when he had a request for the car's V5 registration document. I

can also see that it's now more than a year since the incident. I can understand that this has been a stressful time for Mr W.

Mr W has helpfully provided detailed timelines of what happened after the incident and the subsequent claim. And I've considered these, and his subsequent submissions, alongside Aviva's file. Mr W has made the strength of his feelings clear, but unfortunately mistakes happen. And I think Aviva has reasonably tried to explain what went wrong and has apologised for this.

Aviva accepted that an error was made when it sold Mr W's car without his consent. When a business makes a mistake, as Aviva accepts it has done here, we expect it to restore the consumer's position, as far as it's able to do so. And we also consider the impact the error had on the consumer.

To restore his position, Mr W wanted his car returned. But, as Aviva explained, that wasn't possible. And so it paid him the car's pre-loss market value. It said this was £3,850 after a reduction for pre-existing damage. But Mr W said this wasn't enough to replace the car with one of the same specification.

I can understand that Mr W would want a fair settlement for the loss of his car. I can see that his policy provides for the car's market value in the case of its total loss. We don't provide valuations for cars but look to whether the insurer's offer is reasonable. Our Investigator thought Aviva's settlement was fair and reasonable. So I've checked how she came to this conclusion.

In assessing whether a reasonable offer has been made, we obtain valuations from motor-trade guides. These are used for valuing second hand vehicles. We find these guides to be particularly persuasive, largely because their valuations are based on nationwide research and likely sales figures. The guides also take into account regional variations. We also take all other available evidence into account, for example, engineer's reports.

I can see that the Investigator looked in the motor trade guides we use for cars of the same make, model, age, mileage, condition and specification as Mr W's car at the date of its loss. The average of the three closest valuations she found less the deduction for pre-existing damage was £4,021.50. This was within the range of Aviva's valuation. And so I agree that Aviva's settlement was fair and reasonable. And I don't require it to increase this.

Aviva's engineer had deemed the car to be unroadworthy. And so it said that if it hadn't been sold in error then Mr W wouldn't have been able to drive it and so it wasn't responsible for his consequent losses. Mr W has detailed these as a loss of three days' work as he was without a suitable car, the difficulty of using public transport, and the trouble of replacing the car when he was busy professionally.

I've looked at Aviva's file and I can see that it decided that the car was unroadworthy based on its engineer's statement in his assessment of the car. Further detail wasn't given. I'm not an engineer. So I don't assess damage to a vehicle as this is a matter for the experts in these situations, the insurance companies and engineers. My role in these complaints is to determine whether an insurance company has considered all the available evidence and whether it can justify its decision.

Mr W said he'd driven the car after the incident, and it was driven onto Aviva's recovery truck. But being driveable is different to being roadworthy. I've seen that the car is stated to be unroadworthy on Aviva's engineer's report. I haven't seen any expert engineering evidence to contradict this. So I have no evidence to show that it was wrong for Aviva to rely on its engineer's expert opinion.

Mr W was also unhappy that Aviva had initially assessed his car as repairable. I don't think it's unusual for insurers to rely on online tools to assess the likelihood of repairs being economic based on the consumer's description. But I also don't think it's unusual for the

outcome to change once the car has been assessed by an engineer. So I don't think Aviva did anything wrong in this.

I can see that when Mr W complained about the loss of his car and explained his situation, Aviva provided a suitable replacement car for a week and then extended the hire for a further day. Mr W wasn't entitled to this under his policy's terms and conditions as he had already received his settlement. And so I think it was reasonable for Aviva to provide short-term hire in the circumstances.

I can understand that this was a busy time in Mr W's work life, but I can't hold Aviva responsible for that or for him not replacing his car after he had received the payment. This is because Aviva had met its liability under his policy. And we expect a consumer to take reasonable actions to mitigate their losses.

Mr W didn't have the opportunity to remove his personal possessions from the car before it was sold. Aviva offered him the policy limit of £150 for these and it said it would consider evidence of further items.

I think that's a reasonable approach, but, as our Investigator has explained, I can't comment further on this because this was raised after Aviva's response to Mr W's complaint. If Mr W is unhappy with Aviva's offer he should complain to it and, if he remains unhappy, then he can bring his complaint to us.

So I think the settlement, the short-term hire and Aviva's offer to consider Mr W's loss of personal possessions reasonably restored Mr W's position in keeping with his policy's terms and conditions.

Mr W has described the impact the loss of the car had on his work, the amount of time he had to spend on calls to Aviva to try and resolve matters, and the stress and frustration this has caused.

Aviva offered him £600 compensation for this. I'm satisfied that this is in keeping with our published guidance where there has been distress, inconvenience, and a loss of reputation over several weeks. So I think it's fair and reasonable compensation and I don't require Aviva to increase this.

### **My final decision**

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mr W to accept or reject my decision before 24 July 2023.

Phillip Berechree  
**Ombudsman**