

The complaint

Mr H complains that Aviva Insurance Limited (Aviva) has declined part of his claim under his home insurance policy following damage to his garage.

What happened

In February 2022 Mr H's property was damaged by a falling tree from a neighbouring garden, and he made a claim on his home insurance. Aviva accepted the claim under the terms of the policy but requested further information about machinery which was housed in Mr H's garage.

Mr H says the machinery consisted of a wood lathe and bench, metal lathe, 2 milling machines and 2 computer controllers. Aviva said that the machinery wasn't standard household contents and requested Mr H provide proof of ownership or purchase. It also requested proof of usage as it believed the machinery may be used for business or professional use and, if so, would not be covered under the policy.

Mr H said that the machinery was for hobby use only and that he used the metal lathe and mills to make things. He also said he'd extensively renovated the machinery over the years. He said the wooden bench and lathe were given to him by his father and that other items were bought on an online auction site some years ago. He said he'd paid cash and that he'd collected the items in his father's van. He said his purchase history on the site was no longer available and he wasn't able to provide any proof of purchase.

Aviva wasn't happy with Mr H's response and said that it wouldn't consider the claim for the machinery without proof of purchase/ownership and evidence that it wasn't being used for business purposes.

Mr H complained to Aviva. He said that he had provided photos of the machinery in his garage before the damage to show proof of ownership. He said he was unable to provide proof of purchase as the purchase history was no longer available and the wood lathe and bench were a gift. He said he'd already provided links to new replacements with similar specifications, and that this should be enough to value the items.

Aviva referred to its policy which said that it doesn't cover anything used for business or professional purposes and that it is the policyholder's responsibility to prove any loss. It said that Mr H hadn't provided adequate proof of purchase or evidence that the machinery was for personal use only. If he could do so, it would review his claim for the machinery.

Mr H wasn't happy with Aviva's response and brought his complaint to this service. Our investigator didn't think that Aviva had acted unreasonably as Mr H hadn't been able to provide proof of ownership as specified in the policy. Mr H didn't agree and asked for the matter to be considered by an ombudsman. He also provided some additional information, namely a letter from the seller of the wood lathe and evidence from online sites in relation to orders placed and items obtained. Aviva still didn't think these provided sufficient evidence so the matter has therefore been referred to me for a decision.

My provisional decision

I issued a provisional decision on 17 July 2023. I said:

“Aviva has already accepted and settled part of Mr H’s claim. The issue I’m considering here is whether Aviva acted fairly and reasonably when declining the remainder of Mr H’s claim for the machinery.

With all insurance policies, it’s the responsibility of the policyholder to show they have suffered a loss. For a claim to be successful, the policyholder must provide proof they owned the item that they are claiming for and its value. Most insurance policies will include a specific term which says this. Mr H’s policy says “It is your responsibility to prove any loss and we may ask you to provide receipts, valuations, photographs, instructions booklets and guarantee cards and any other relevant information, documents and assistance we may require to help with your claim”.

I don’t therefore think it unreasonable for Aviva to ask Mr H for evidence to support his claim, particularly as the machinery is of high value. However, Mr H has been unable to provide receipts for all his purchases although he has now provided some evidence which I have considered below. Aviva says that it doesn’t accept these as proof of ownership.

The first is a receipt from the seller of the wood lathe confirming he received £750 from Mr H’s father for the lathe. Mr H’s father has confirmed to Aviva that he gifted the lathe, and a wood bench, to Mr H. Aviva say that as the receipt is dated October 2022 and was produced solely for use in Mr H’s claim, it doesn’t prove that the lathe was purchased. However, this was a purchase from a friend and then a gift to Mr H, so I don’t think it unreasonable that no receipt exists from the time of purchase. I think Mr H has done enough to show that he owned a wood lathe and bench.

Mr H has also provided confirmation of successful online bids for the metal lathe and milling machine type D engraver, an invoice for the milling machine type C, and order confirmations for 2 CNC ball screws and a CNC controller. Whilst I understand that Aviva would like to see receipts for all these items, Mr H doesn’t have them. Many of the items were purchased some time ago and I don’t think it unreasonable that Mr H hasn’t kept all his receipts. I’m aware that the online bidding site Mr H used doesn’t keep order details indefinitely, so I accept that Mr H may not be able to access the full purchase details. He also says that he collected the items in person and paid cash so is not able to provide evidence of payment. I’ve thought very carefully about this and think on balance that Mr H has done enough to show that he purchased the metal lathe, milling machine type C and milling machine type D engraver.

The ball screws and CNC controller orders were placed online and Mr H has provided screenshots of the order details. These show the date the orders were placed and again on balance I think this is enough to show he purchased these items.

Mr H has also provided some photos which he says shows the machinery in his garage prior to the damage demonstrating that he owned the items. I’ve looked at these photos which show the wood lathe, the milling machine type C and D, and the metal lathe on various dates between January 2019 and February 2022. I think these photos add weight to Mr H’s argument that he owned the items as they can be seen present in his garage before the damage occurred.

Aviva say that its surveyor attended Mr H’s property on two occasions but couldn’t see any items of damaged machinery. The surveyor didn’t produce a report from either visit, but I have seen some photos. I’m not sure when these photos were taken but the surveyor wasn’t

instructed until the end of March 2022 so the photos must be after this date. I can also see from Aviva's file that a certain amount of clearing up had already taken place by the time the surveyor attended. I don't therefore think it reasonable to rely on these photos to show that the machinery wasn't present in the aftermath of the damage.

Mr H has provided some photos taken shortly after the damage in February 2022. These show the fallen tree, rubble from the garage, and items of machinery including the metal and wooden lathe. I can't identify all the machinery, but I'm satisfied that items of machinery can be seen in the rubble. Mr H also says that the machinery is still in his possession so could be inspected by Aviva if it wished.

On balance I think that Mr H has done enough to show that he owned the items of machinery.

Mr H's policy defines "Contents" and specifically excludes anything used or stored for business or professional purposes. Aviva says that Mr H hasn't satisfied it that the machinery wasn't being used for business purposes. However, it is for an insurer to show that a policy exclusion applies – and I don't think Aviva has done this.

I haven't seen any evidence that Mr H was running a business or using the machinery as part of a business. Neither have I seen any evidence that Mr H was selling any items made using the machinery. Aviva say that Mr H has been inconsistent about his employment status and that he told it he was a student. Mr H says that he was employed at the time he bought the machinery and at the time of the damage, but that he also carried out studies as part of his employment. In any event, even if Mr H had been a student at some point, this doesn't demonstrate that the machinery was being used for business purposes or that Mr H hadn't purchased it.

Mr H has provided photos from 2020/21 of items he says he made using his machinery. Two show a fishing lure mould and two show the engraving of a block of wood. Mr H says that this shows he used the machinery for hobby use. Aviva says that the items were made using someone else's machinery, not his own. I haven't seen any evidence of this, but even if Mr H had used someone else's machinery to make these items, it doesn't follow that Mr H was using his own machinery for business purposes.

I don't therefore think it fair or reasonable for Aviva to decline the claim on the basis that the machinery was being used or stored for business or professional purposes.

As I don't think Aviva acted fairly, I've also considered compensation for distress and inconvenience and think an award of £200 is fair. I think the refusal to pay part of Mr H's claim has caused Mr H additional stress – on top of what must have been a difficult situation for him. As some of Mr H's additional evidence regarding the purchase of the machinery was only provided more recently, I've taken this into account when considering the level of compensation.

I therefore intend to uphold this complaint. I would like to make it clear that I'm not saying that Aviva should pay Mr H's claim – only that the claim should now be considered under the remaining terms and conditions of the policy."

Response to my provisional decision

Mr H accepted my decision but asked that I instruct Aviva to pay for his loss rather than to consider the claim.

Aviva didn't accept my provisional decision. It said it would expect to see some transactional

agreement for the wood lathe and bench even if it was purchased from a friend. It also commented that it was not unreasonable for it to seek proof of purchase for the machinery and that it was Mr H's responsibility to supply this.

Aviva also referred to page 30 of its terms and conditions which say "*What you mustn't do: get rid of damaged property or organise repairs without our agreement*". It said the damaged items should be available to inspect.

Finally, Aviva say that Mr H hasn't provided any documentation to show that the items were for personal use and that it wouldn't expect to see commercial grade machinery in a private property unless it was being used commercially.

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 considered carefully what both parties have said – but haven't seen anything new that makes me change my mind.

Mr H wants me to instruct Aviva to pay his claim. However, I don't think this would be fair as Aviva hasn't considered his claim under the remaining terms of his policy. This is what it should do now.

I detailed in my provisional decision the evidence I'd seen which satisfied me that Mr H owned the machinery, including the items purchased from his father's friend. Aviva hasn't provided any new information, so I see no reason to change my decision on this.

In relation to disposal of the items, I've looked at page 30 of the terms and conditions. However, as I referred to above, Mr H says the machinery is still in his possession and can be inspected by Aviva if it wishes.

Aviva hasn't provided any evidence showing a business enterprise or that Mr H was using the machinery commercially. It simply says that having commercial machinery means that Mr H must be using it commercially – but I don't think this follows. Mr H has provided some evidence of hobby use as I detailed in my provision decision, and so I don't think it fair to conclude that the machinery is being used commercially without evidence.

Taking into account all the above, my final decision and reasoning remains the same as in my provisional decision.

My final decision

My final decision is that I uphold this complaint and require Aviva Insurance Limited to consider Mr H's claim under the remaining terms of his policy and pay Mr H £200 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 September 2023.

Elizabeth Middleton
Ombudsman