

The complaint

B and X have complained about what Aviva Insurance Limited has said it is willing to pay in settlement of a claim under their Minifleet insurance policy.

B and X are represented by a director of B. But for the sake of ease I've referred to B and B and X throughout this decision.

What happened

B leased a vehicle (vehicle J) from a company who I'll refer to as L. It was insured under a Minifleet policy in the names of B and X. The lease agreement was over 36 months. B paid an initial deposit of £3,859.08. It was then contracted to make a further 35 monthly payments of £643.18. The lease started on 17 September 2020 and was due to last 36 months. Vehicle J was stolen on 12 January 2023. B informed L and it sent them a letter giving them two settlement options. The first option was to have Aviva pay L direct for the amount of settlement it agreed with B and X. The second option was for B to pay L the 'Write Off Settlement Figure' of £35,833 and then recover any monies from Aviva when B and X negotiated the settlement figure with it. B chose option two and paid L £35,833.

B and X made a claim under their policy. Aviva asked them for the 'asset value', i.e. what B had paid L under the terms of the lease for vehicle J after it was stolen. B and X refused to provide this figure to Aviva because it thought Aviva was obliged to pay them the market value of vehicle J, irrespective of what B had paid to L. As Aviva wouldn't pay the market value, B and X complained. But Aviva issued a final response which explained it was only obliged to pay the asset value.

B and X weren't happy with Aviva's final response and asked us to consider their complaint. One of our investigators did this. In her second view on the complaint she said that B and X had purchased vehicle J from L after it had been stolen. Although, she also mentioned the terms of the lease had no option for B and X to purchase the vehicle. And she explained further that she was satisfied Aviva was only obliged to pay the asset value under the policy terms. However, she did say Aviva should pay a proportion of the deposit B and X had paid on top of this on the basis it would be fair and reasonable for it to do so.

Aviva didn't respond to the investigator's view. B and X didn't accept it. They said that they had no discussion with the lease company about purchasing vehicle J. But they couldn't understand how the investigator could say there wasn't an option to purchase the vehicle under the lease having said that B and X did purchase it. As B and X see it, L gave them an unsolicited offer to purchase vehicle J and this is what they did. And whilst there was nothing in the lease agreement that gave B and X the option to purchase the vehicle they consider the actions of L implied this was an option. In view of this B and X think that the term in the policy stating what Aviva should pay if they had an option to own vehicle J under the terms of the lease should apply.

As B and X weren't happy with the investigator's view and Aviva didn't respond to it the complaint was passed 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.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of B and X's complaint.

The terms of B and X's policy state the following:

Loss of or damage to your vehicle

'If your vehicle is lost, stolen or damaged, we will

- repair your vehicle unless you notify us that you want us to pay someone else to repair it; or*
- replace your vehicle; or*
- pay a cash amount equal to the loss or damage.*

We may decide to use suitable parts or accessories not supplied by the original manufacturer.

The same cover also applies to accessories and spare parts relating to your vehicle whilst these are in or on your vehicle but not exceeding your estimate of value shown in the schedule.

The maximum amount we will pay will be the market value of your vehicle immediately prior to the loss or damage.

Financed Vehicles

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 (my emphasis).*

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.'

B clearly leased vehicle J from L and under the terms of the lease agreement it could not be owned by B. I appreciate B and X considers B purchased the vehicle after it was stolen. But, as I see it, B chose to pay what was due under the lease to settle its liability for the vehicle directly to L once it had been stolen. And this seems to have resulted in ownership of it transferring to B. But I do not consider this changes the fact that there was nothing under the lease agreement that actually allowed B to take ownership of the vehicle.

This means under the terms of the policy the maximum amount Aviva is actually obliged to pay B and X is the asset value of vehicle J. And I consider this to be the amount B paid to L under option two, as mentioned above, i.e. £35,833, provided this was less than the market value of the vehicle at the time of the claim. £35,833 was less than the market value, but Aviva couldn't pay this amount as B and X wouldn't share what B had paid to L. However, this does not alter the fact that it is what is due under the terms of B and X's policy.

I appreciate that vehicle J had a market value on the policy schedule and that its actual market value when it was stolen was a lot more than £35,833. But this does not mean Aviva is obliged to pay B and X the market value. This is because I consider the terms of the policy are clear and I see no reason why Aviva shouldn't be entitled to rely on them.

However, our approach in this type of case, also means we consider whether the leaseholder paid an up-front deposit when they leased the vehicle. And, if they did, we consider it fair and reasonable for the insurer to pro rata this based on the number of months the lease has run for and pay this amount on top of what is due under the terms of the policy. This is because, if an insurer doesn't do this, the insured party has effectively lost the benefit of part of their deposit.

In this case B paid an up-front deposit of £3,859.08. It only had the lease for around 28 months when it was due to have it for 36 months. This means it lost the benefit of eight months of the deposit it paid. So, I consider it is fair and reasonable for Aviva to pay an additional amount equivalent to 8/36 of the deposit to B and X as part of the fair and reasonable outcome to their complaint. This means an additional amount of £857.58 is due to B and X on top of the asset value of £35,833, i.e. £36,690.58 in total is due to B and X.

I do not consider it would be fair to make Aviva pay interest on this amount, as it had no way of knowing what to pay B and X when they submitted their complaint to us, as they wouldn't provide the asset value.

Putting things right

For the reasons set out above, I consider the fair and reasonable outcome to this complaint is for Aviva to pay B and X £35,833 in settlement of their claim, plus a further amount of £857.58 to compensate them for the loss of part of the deposit B paid. This means Aviva must pay B and X £36,690.58 in total.

My final decision

I uphold B and X's complaint about Aviva Insurance Limited and order it to pay them £36,690.58.

Under the rules of the Financial Ombudsman Service, I'm required to ask B and X to accept or reject my decision before 15 February 2024.

Robert Short
Ombudsman