

## **The complaint**

Mr K complains that Aviva Insurance Limited accused him of fraud and avoided his home insurance policy after he attempted to make a claim.

## **What happened**

In early 2023, Mr K submitted a claim for accidental damage to a tablet under his home insurance policy with Aviva. A representative from Aviva called Mr K to discuss the claim. She asked Mr K about a claim made to Mr K's previous insurer that was showing on an external database. Mr K confirmed the claim was for the same tablet, but he said he had decided to withdraw it.

Shortly after, Aviva told Mr K it was avoiding his policy and declining his claim on the grounds of fraud. It told him his details might be loaded on to fraud databases and it might share details of the matter with fraud prevention agencies.

Mr K raised a complaint, but Aviva maintained its position. So, Mr K asked our service to consider the matter.

Our investigator thought Mr K's complaint should be upheld. She didn't think Aviva should have to pay the claim because the damage had occurred prior to Mr K taking out the policy. But she wasn't satisfied that Aviva had provided enough information to show Mr K had made a misrepresentation or had attempted to make a fraudulent claim. She recommended Aviva reinstate Mr K's policy and remove information showing the avoidance of the claim and fraud markers from any databases. She also recommended Aviva pay Mr K £350 for distress and inconvenience.

Aviva didn't respond to our investigator's outcome. So, the complaint has been passed to me to decide.

## **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.

Having done so, I've decided to uphold Mr K's complaint. I'll explain why.

In declining Mr K's claim, Aviva has referred to the following policy condition:

*"If your claim is at all dishonest or exaggerated, we will not pay you anything under this policy or return any money you have paid. We may also cancel your policy immediately and backdate the cancellation to the date of the fraudulent claim. We may also take legal action against you."*

It's important to explain that it isn't for me to decide whether Mr K acted fraudulently. Instead, I've needed to consider if Aviva's decision to invoke the fraud condition in this case was reasonable.

In order for an insurer to fairly invoke the fraud condition in an insurance policy, the insurer needs to show it is more likely than not that the condition was breached.

Mr K says the tablet was damaged in early November 2022 when his wife stepped on it. He made a claim under his policy with his previous insurer but decided not to pursue it after he was informed of the policy excess.

Aviva says Mr K gave the date of loss as 15 December 2022, when he made a claim under the Aviva policy (which had started ten days before). Mr K says this was because the condition of the screen had got worse, and his wife had informed it was no longer usable on this date. He says that although the initial damage occurred before he'd taken the policy out, he thought he could claim under the Aviva policy because the further damage which made it unusable was inside the policy dates.

I think it's fair for Aviva to decline Mr K's claim, given that the initial damage to the tablet happened before he took the policy out. However, Aviva has done more than decline Mr K's claim. It has avoided his policy and has suggested it might upload his details on to fraud databases and share the matter with fraud prevention agencies.

Aviva told Mr K it made this decision because it was satisfied he had deliberately changed the details of the incident to suit the cover on his policy to gain financial benefit to which he was not entitled.

Aviva seems to have reached the conclusion that Mr K was being dishonest because of what was said in a phone call with one of its representatives on 20 January 2023. However, it hasn't provided us with a recording of this call despite us requesting it. And it hasn't given any reason to explain why it might not have been able to provide the recording. So, I've no way of knowing exactly what was said.

Aviva has provided notes of the call with Mr K. But I can't be confident of the accuracy of these as they appear to be the representative's interpretation of the conversation, rather than being verbatim.

Aviva has noted that Mr K said there were no previous claims or attempted claims before the representative asked him about the claim showing on the external database. She's noted that he got a bit "tongue tied" before confirming it was the same tablet he was claiming for.

Mr K says the representative asked him what information he'd entered online without asking him why he'd said "yes" or "no" to questions on the website. He says he had limited experience of the insurance industry and the claims process. He'd judged the answer to the question about previous attempted claims to be "no" because he had decided not to continue the claim with his previous insurer. He says there was a twenty second period in the call where the sound dropped, and the representative was explaining something that he may have done wrong. This left him at a loss as to what to respond with.

Aviva is aware that Mr K decided not to pursue his claim with his previous insurer. It's also acknowledged that Mr K had little to gain financially by making the claim under his Aviva policy instead.

I think it's likely Mr K would have asked his previous insurer to re-open his claim if he'd realised he wasn't entitled to claim for the damaged tablet under his policy with Aviva. So, I think it's likely that Mr K attempted to claim on the Aviva policy because of a

misunderstanding about how the insurance worked, rather than as a deliberate attempt to gain money that he wasn't entitled to.

Having considered the evidence available to me, I'm not persuaded that Aviva has shown that Mr K acted dishonestly when he made his claim. So, I don't think it was fair for it to invoke the fraud condition.

Aviva says Mr K advised he hadn't suffered any losses when he took out the policy. But it hasn't provided anything to show what questions he was asked when he took out the policy. Nor has it provided evidence to show that it wouldn't have provided him with a policy if he had informed Aviva about the damaged tablet when he took the policy out. So, I don't think it was fair for Aviva to avoid Mr K's policy.

Mr K says his main concern was not to have an insurance cancellation or any reference to fraud on his record. He was worried about how this might increase his insurance premiums in the future. He says he's been put through an intense amount of stress by being accused of acting fraudulently. He has been living without insurance which has made him feel insecure. He wants the insurance to be reinstated.

I understand that the policy was due to end in December 2023. I think it would be fair for Aviva to retrospectively reinstate the policy for the period Mr K should have had the insurance. It should also remove records of fraud and the policy avoidance from any databases.

I think Aviva's allegation that Mr K acted fraudulently and its decision to avoid his policy has caused him unnecessary distress and inconvenience. So, I also think it would be fair for Aviva to pay the £350 our investigator recommended to put things right.

### **Putting things right**

Aviva should:

- Reinstatement the policy for the period of cover.
- Remove any records of the policy avoidance or fraud markers from any internal and external databases.
- Pay Mr K £350 for distress and inconvenience.

### **My final decision**

For the reasons I've explained, I uphold Mr K's complaint and direct Aviva Insurance Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 14 February 2024.

Anne Muscroft  
**Ombudsman**