

The complaint

A company, which I'll refer to as L, complains that Aviva Insurance Limited (Aviva) declined its motor theft claim.

For ease of reading, I'll refer to all actions and comments of L's representative as being those of L.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

L took out a Mini fleet insurance policy. In July 2023, L made a claim on its policy following the theft of one of its vehicles.

Aviva declined L's claim because the security requirements set out in the policy had not been put in place - the vehicle didn't have an active tracker subscription at the time of the theft. Aviva said that L's policy had a requirement for vehicles valued over £75,000 to have an active tracker subscription and for it to be maintained. During the investigation of the claim, Aviva discovered that the subscription for the tracking system had expired before the policy was inceptioned. Aviva therefore concluded that L had breached the security requirement condition and as such L's claim wasn't covered.

L said it thought the tracker was active because it was able to track its vehicle using the manufacturer's smartphone app. L hadn't realised the subscription for the Secure Tracker Pro had expired. It said if it had known, it would have renewed it.

L also believes that Aviva over valued its vehicle so that they could apply the policy term for security requirements in order to decline L's claim.

Aviva explained that the smartphone app which L had access to covers the manufacturer's connected services such as assistance, emergency SOS call-out and journey information. These services are all accessed through the InControl Remote smartphone app. The InControl app is not a Thatcham Quality Assured Category S5 or 5 vehicle tracking system as per the security requirement condition under the policy. More advanced services which meet the security requirement condition such as Secure Tracker Pro, which is what L had, require a separate subscription. Aviva also believed the value they placed on L's vehicle to be correct.

Our Investigator didn't recommend the complaint be upheld. He reviewed the valuation of L's vehicle at the time of theft and was satisfied that, based on the valuation, the security requirement condition applied. He was satisfied that L's vehicle didn't have an active tracking system subscription during the relevant time which was a breach of the security requirement condition and therefore Aviva's decision to decline L's claim was fair and reasonable.

L didn't agree with our Investigator and therefore the complaint was referred to me to consider.

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 appreciate this will be disappointing for L, but I've decided not to uphold this complaint. I'll explain why.

Firstly, I'd like to start by reassuring L that I've read and considered everything it has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

The crux of this complaint centres on Aviva's decision to decline L's theft claim by relying on the security condition in the policy.

L's fleet policy contained a condition which stated the following:

"FTMF011 – SECURITY REQUIREMENT – TRACKING DEVICE

We will not pay, under Section 1 of the policy, for loss of or damage to your vehicle caused by Theft if the market value of your vehicle at the time of the loss or damage exceeds £75,000, unless at the time of the theft a Thatcham Quality Assured Category S5 or 5 Vehicle Tracking System is fitted, fully operational and any subscription to the system operator has been maintained.

Subject otherwise to the terms and conditions shown in the policy"

Aviva said the condition was breached because the subscription for the tracking device on L's car had expired. While L doesn't dispute that the subscription has expired, it argues that this was an oversight. L thought the subscription was still active, had it known it wasn't, it would have renewed it and on this basis, it feels that Aviva should meet its claim because the breach wasn't deliberate or reckless.

L also raised concerns over the value placed on its vehicle by Aviva. L feels that its vehicle may have been overvalued in order to rely on the security condition above. I will deal with each of these in turn.

Did the market value of L's vehicle exceed £75,000

The policy defines market value as:

"The cost of replacing your vehicle with one of the same make, model, specification and condition."

When incepting the policy in October 2022, L declared that the value of its vehicle was £85,000. Aviva said the value of L's vehicle at the time of the theft was £76,550. Aviva said this was confirmed as fair and reasonable by their in-house engineer, senior engineer and head of engineering. Aviva explained that the value was based on the market value at the time of the incident

L provided a copy of one trade guide which valued its vehicle at £68,370.

Our service doesn't value vehicles. Instead, we check to see that the insurer's valuation is fair and reasonable and in line with the terms and conditions of the policy. To do this we tend to use relevant trade guides. I usually find these persuasive as they're based on nationwide research of sales prices.

The Investigator asked Aviva for evidence of the guides they used to value L's vehicle, but he didn't receive anything. He therefore looked at four motor valuation guides available to him, and he got the following valuations:

1. £75,279
2. £68,370
3. £79,685
4. £66,250

L said its vehicle's value is less than £75,000. We would generally expect an insurer to value a car by using the highest valuation the guides give. So based on the above results from the guides, I can't agree that L's vehicle was worth less than £75,000. So, while I appreciate L thinks that Aviva overvalued its vehicle, I'm not persuaded that they did based on the results of our own searches of the guides.

Based on the information above, I'm satisfied that Aviva acted fairly and reasonably in saying the value of L's vehicle exceeded £75,000. It therefore follows that the security requirement would apply.

Did Aviva act fairly and reasonably in applying the security requirement to decline L's claim

L said it thought the tracker was active and hadn't realised the subscription had expired. While I have no doubt that this may have been a genuine oversight on L's part, I have to still think about whether the security condition was breached as a result of this error and, if so whether Aviva's resulting decision to decline L's claim was fair and reasonable.

The security condition clearly states that any subscription to the system operator needs to be maintained. I'm therefore satisfied that it was L's responsibility to ensure the subscription was active. L had access to the information on the subscription status and therefore it ought to have known that it didn't automatically renew and had expired. I have seen evidence that the subscription for the tracker expired prior to the date the policy was inceptioned, as such, Aviva was fair and reasonable in saying that L breached the security condition.

L has said that because breach of the policy term wasn't deliberate or reckless, and it's not a qualifying breach, Aviva should cover the claim. I agree with the investigator that the rule and regulations L refers to are not applicable in these circumstances. I'm satisfied that the relevant regulation is the Insurance Act 2015, Section 10, which essentially says that a breach discharges the insurers liability under the contract i.e., it doesn't need to meet the claim. However, Section 11 requires an insurer's position to have been prejudiced before they're able to rely on the non-compliance of a condition to decline liability. I believe in this case it has been because the breach directly relates to the increased risk of loss that occurred. I say this because, if the tracker was fully operational, it could have assisted in the recovery of the vehicle.

Taking all the above into consideration, Aviva's decision to decline L's claim was fair and reasonable. I understand this won't be the outcome L would've liked, but I can't reasonably ask Aviva to do anything further to resolve this matter.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 19 April 2024.

Ankita Patel
Ombudsman