

The complaint

Mr J complained that Aviva Insurance Limited ("Aviva") hasn't fairly considered some of the damage caused by a fallen tree onto his property. He holds a home insurance policy.

What happened

Mr H made a claim after a tree fell on to his property damaging part of his home and some contents. Aviva accepted parts of the claim but declined a substantial part of the claim where it said, *"you had been unable to provide relevant documentation supporting your ownership and usage of these items"*.

Mr H thought this was unreasonable as he'd provided several pieces of information supporting his ownership of the machinery and he felt Aviva was making any excuses not to properly consider his claim.

Mr H believes Aviva has had plenty of opportunity to validate his claim and he thinks it's trying to unfairly avoid paying a settlement in respect to part of his claim. He wants a full settlement of over £30,000 for his machinery.

Our investigator decided to uphold the complaint. He said *"I believe there is sufficient evidence to demonstrate Aviva haven't adequately validated Mr H's claim, and their grounds for declining the claim are unfounded. As such, I don't believe Mr H has been treated fairly and reasonably by Aviva"*.

He said Aviva should *"further consider Mr H's claim on the basis that the machinery was present at the time of the damage, and there is evidence to suggest some of it was damaged by the fallen tree"*. He said, *"Aviva should also pay [an additional] £200 compensation for the continued distress and inconvenience caused by their failure to validate the claim"*. Aviva disagreed, so the case has been referred to an ombudsman.

My provisional decision

I made a provisional decision on this on 16 May 2024. I said:

"I can see Aviva provided further explanation. It said "we were asked to further consider the claim. We arranged a review the damaged machinery as previously, these items had been declined due to lack of ownership along with the mention of business use."

To validate the claim, we sent out a contents specialist who provided their report that the items do not show any physical impact damage (with other relevant evidence of the items condition). Whilst I appreciate there is a photo provided by the insured of an item within the damaged area. The item is made from a very strong iron and can withstand a high level of weight. When considering the damage, we are not disputing the lathe was within the area of damage. We cannot validate any damage caused by the impact. Can you please clarify what evidence you have viewed which shows the impact damage. We would be happy to review this with our specialist contents supplier".

Having reviewed the file the business has presented, along with photos and commentary provided by Mr H, I'm not persuaded a careful and thorough validation of the damage caused has been carried out. Instead, the file points towards Aviva attempts at finding reasons to decline parts of the claim – rather than to find a fair and reasonable outcome for the claim.

In any damage claim, I'd expect the party claiming to show evidence of damage or likely damage. Having reviewed photographs of the incident, it's very clear that the size of the tree that fell was large and the damage created when it fell was significant. The photographs show large branches lying on top of what looks like expensive equipment.

Aviva at first have seemingly asked onerous questions of Mr H to prove ownership of some of these items. There are a range of photographs and range of receipts for items. As the file is poorly put together, it's difficult to ascertain exactly what Aviva has done to validate this and cross reference the damaged parts and receipts. However, I have seen a large volume of information provided by Mr H to try and placate Aviva's requests. I think he's done his best to provide as much information as possible. I wouldn't expect every piece of kit to be proven. I'd expect an insurer to take a pragmatic and holistic assessment.

I can see Aviva have found issue with Mr H presenting a range of his equipment disassembled in another building, so Aviva has argued it may not have been working. However, Mr H has argued that due to the size of the machinery and due to the devastation caused, his only option was to disassemble some of the kit to move it to a dry locate and mitigate further damage. The photos provided show the devastation caused, so I find this a persuasive explanation. I would expect Mr H would want to tidy up his property.

So, whilst I think Mr H has done as much as he can to prove damage is likely, I haven't seen a well-argued case put by Aviva for declining the claim. So, I intend to uphold this complaint. I think the claim has been ongoing for some time now. Mr H has done a lot to support Aviva in reaching an amicable settlement for both parties, but it seems Aviva have delayed the claim by not providing a professional validation of it. It appears to have been over eager to find fault in the claim.

Therefore, I intend to award £500 in compensation. Mr H has been without some of his equipment for a long time. He's explained this is a hobby for him, so I would think the delays have had an impact on his wellbeing as he's been unable to "enjoy" using the equipment. He'll be frustrated that even with all the information he's provided, Aviva has not wanted to progress his claim.

I can see there are several items of machinery to be validated, namely a metal lathe, wood lathe, wood lathe bench, milling machines and "CNC2" controllers. Mr H has estimated the value of this equipment at around £30,000.

I can see a picture of a wood lathe in the photos provided. Part of the lathe can be seen to be bent. Therefore, I think Mr H has proven ownership and damage. So, I intend that Aviva settle this item for what Mr H has estimated at £4,095. I think to operate the machine it's likely it was sat on a lathe bench. So, I intend that Aviva settle this item at Mr H's estimate (£750). If Aviva can provide the same equipment at a lower cost to them, then it can purchase this equipment and distribute it to Mr H instead.

It's difficult for me to assess the other items, as they are more complex in nature and have multiple parts. So, I intend that Aviva re-validate these items and put together a more organised file of what it finds. As so long has now passed, I don't think Aviva can properly validate the condition of these parts. Damaged items could have been disposed of. But, as Mr H has kept several parts. I think if the validation shows Mr H has in his possession over

50% of the parts that make up these items, then Aviva should settle these items as if they were in good condition and in good working order.

Any settlement listed above or resulting from my findings, should have interest added (to the cost price) at 8% per annum from the date of the claim to the date of settlement. As Mr H has been without this money during the duration of the claim”.

Responses to my provisional decision

Aviva said “whilst I appreciate the issues raised by the insured, I rely on the inspection report on the damage and if it falls within the insurance policy cover. As advised previously, the machinery was not identified during the inspection but notes to be scrap metal and no evidence has been provided of the use of the machinery or that they had ever been in working order. I had asked the insured to provide his comments and any evidence on what the items of machinery were used for (items made from the insured hobby etc) but the insured advised he had nothing to provide. As the professional inspection confirmed no impact from a tree, I was not able to evidence the damage was claim related”.

Aviva asked me to consider my decision further.

Mr H accepted my provisional decision. Mr H asked me to clarify the compensation award and whether any time limits applied to Aviva settling the wood lathe and bench. Mr H has also asked for any shipping costs to be included in any settlement, as this can prove expensive.

Mr H said:

“Aviva and their contents “specialists” have both visited to inspect the items on separate occasions and both photographed the damage to the items (all of which have been available). Aviva have not been able to state which components they think are missing. The photos show both impact damage (in the case of the milling machine breaking in half a very substantial iron casting) and damage caused by broken glass and other debris such as the asbestos roof of the garage (which was removed from the garage debris as much as possible by Aviva’s contractor after the items were moved).

The items also suffered damage from the elements where both electrical and precision mechanical components were subjected to heavy rain fall. It can be seen from the photos taken by Aviva and provided by myself that all the components of the machines were available to the contents “specialists” to report on.

Instead, the contents “specialists” [were] only interested in photographing a very small proportion of the components in an aim to capture photos of serial numbers. I would ask if the ombudsman would clarify in the final decision that Aviva has had all sufficient opportunity to inspect the items and should now settle based on the evidence provided rather than avoiding settlement by sending out more “specialists” to view the items causing further inconvenience to myself.

Finally, I appreciate the ombudsman recognising that I would have “enjoyed” my hobby which I most certainly did do and have been devastated to see machines that I spent so many years of my free time restoring and improving being destroyed and Aviva messing me about for years”.

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 have already responded to directly to Aviva on the comments it made. For transparency, I'll include my response here.

I said "I'm not persuaded by the damage report as I can clearly see the lathe impacted by a heavy tree. I can see part of it has bent. So, I think the learning as you ask is to provide a fairer expert report that is credible. It feels like as an insurer you're looking for reasons not to pay, rather than validating the claim fairly.

There is evidence the equipment exists, so I think [Mr H] has provided evidence of ownership and [Mr H] has explained he used the equipment for a hobby. I'm not sure what else you'd expect him to provide. I think leaving your validation to later has caused you issues. I haven't seen [Mr H's] response yet, but I will provide a final decision once I receive it and anything else you provide before the deadline.

If [Mr H] does have further problems with the later validation proposed in my decision, I will ask for this for any further complaints to be referred to the same investigator and myself if necessary to ensure there is proper closure for [Mr H] on this case, so it doesn't drag on any longer".

Aviva didn't make any further comments, so I don't feel the need to expand on the points I've made, so I will turn to address points raised by Mr H.

Mr H said Aviva offered £200 compensation from a previous (related) complaint, but he'd not received this money. If Aviva did make this offer, then it should pay Mr H. To clarify, however, it's not my role to review other complaints and / or decisions, I don't have jurisdiction to do so, so I won't consider this point any further.

However, I'd like to clarify the award I gave in my provisional decision. For the distress and inconvenience I've outlined Aviva are required to pay Mr H £500. This is not in addition to what our investigator set out. In my provisional decision, I increased the award our investigator gave from £200 to £500.

I've awarded £4,850 for Aviva to settle the wood lathe and bench. Mr H has said this doesn't include shipping costs which can be expensive. I have limited information available to me to be able to increase this award, so I'm not going to. Instead, I'll leave the award as it is, but ask Mr H to provide further information to Aviva to justify the settlement of these items (incl. shipping costs). I'd expect Aviva to consider this information. If the information Mr H provides or information Aviva has justifies a higher settlement, then I'd expect Aviva to honour a reasonable outcome.

I appreciate Mr H doesn't want any further intrusion into his life while Aviva further validate the claim. I'd like to request Aviva to be sympathetic to Mr H's request. In doing so, I'd expect Aviva to utilise the information it has to re-consider the claim. However, I do think Aviva should be given the opportunity to ask a small number of specific questions, should it need to, to reach a fair resolution of this claim. As the claim has been a long time outstanding, I'd expect Aviva to prioritise this claim and ensure it is fully re-considered and settled within 28 days of the date on which we tell it that Mr H accepts my final decision.

My final decision

My final decision is that I uphold this complaint. I require Aviva Insurance Limited:

- Pay Mr H £500* compensation – for distress and inconvenience

- Pay Mr H £4,850* for the wood lathe and bench (noting the comments I've made regarding shipping costs)
- Re-validate the other machinery that has been listed and settle based on the terms and conditions of the policy.

* Aviva Insurance Limited must pay the compensation and settlement for the wood lathe and bench within 28 days of the date on which we tell it that Mr H accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 June 2024.

Pete Averill
Ombudsman