

## **The complaint**

Mr U complains about Aviva Insurance Limited (“Aviva”) and their decision to decline the claim he made on his Motorhome insurance policy.

Mr U has been represented by Ms B during the claim and complaint process. For ease of reference, I will refer to any actions taken, and comments made by Ms B as though they were made by Mr U where appropriate throughout the decision.

## **What happened**

The claim and complaint circumstances are well known to both parties, so I don’t intend to list them chronologically in detail. But to summarise, Mr U held a motorhome insurance policy, underwritten by Aviva, when he gave his motorhome to an agent, who I’ll refer to as “X”, to inspect it with the intention of selling it on his behalf.

But in the months after doing so, Mr U discovered X had sold his motorhome to another motorhome trader for less than its value before he’d entered into a broker agreement with them. And X then went into liquidation, with Mr U never receiving the proceeds from the sale. So, he contacted Aviva to make a claim, initially through the policy broker, who I’ll refer to as “C”. During the same time, X was subject to court action as it transpired other motorhome owners had experienced the same practices.

In August 2021, Aviva declined Mr U’s claim, relying on an exclusion centring around loss by deception, explaining why they thought the circumstances of the theft wasn’t covered under the policy Mr U held. Mr U was unhappy about this, so he raised a complaint about it.

Aviva responded to Mr U’s complaint and didn’t uphold it. They empathised with Mr U’s situation, but they thought they had declined the claim fairly, in line with the policy terms and conditions. So, they didn’t think they needed to do anything more. Mr U remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it in part. They thought Aviva’s decision to decline the claim was a fair one based on the policy exclusion, explaining why other insurers decisions to similar situations didn’t impact the outcome they reached. But they thought Aviva could’ve been more proactive when communicating with Mr U and assessing his claim, referring to the lack of contact with Mr U through the broker, C. So, they recommended Aviva pay Mr U £300 to recognise the distress and inconvenience this caused.

Aviva initially pushed back on this compensatory payment but then made clear they didn’t disagree with the outcome the investigator provided. But Mr U did disagree, providing several comments setting out why. These included, and are not limited to, Mr U’s belief that the circumstances of the theft should be deemed as theft by appropriation, rather than theft by deception. And because of this, Mr U set out why he continued to believe the claim was declined unfairly, again referring to other insurance claims he knew of that had been

successful.

Our investigator considered all of Mr U's comments, but their recommendation remained unchanged. Mr U continued to disagree and so, the complaint has been passed to me for a 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.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mr U. I don't in any way doubt that Mr U left his motorhome with X in good faith, on the agreement that it would be sold by X for an agreed value Mr U was happy with.

So, when Mr U discovered X had entered liquidation and that his motorhome had been sold without his knowledge, before he entered into an official agreement with X, for less than the amount he agreed to, without him receiving any of the funds, I can understand why he'd feel as though he was a victim of theft by X and contact Aviva to raise a claim. And when Aviva chose to decline his claim, which he feels was contradictory to other insurers decisions for claims made by other victims in similar circumstances, I can understand why he'd feel unfairly treated and choose to complain.

But for me to say Aviva should reverse their original claim decision, I first need to be satisfied they've done something wrong when coming to this conclusion. So, I'd need to be satisfied Aviva failed to act within the policy terms and conditions when reaching this decision. Or, if I think they did act within these, I'd need to be satisfied this decision was unfair or unreasonable in some other way. And unfortunately, in this situation I don't think that's the case. And I'll explain why.

Before I do, I think it would be useful for me to set out what I've been able to consider, and how. I want to make it clear to Mr U that while I note he feels the claim decisions other insurers have made should be considered here, that isn't something our service is able to do. In line with the rules set by the industry regulator, our service must consider each complaint on its own individual circumstances and merits. So, my decision hasn't considered, or been impacted by, Mr U's testimony regarding other insurers and whether they chose to accept similar claims. Instead, my decision focuses solely on Mr U's own situation, and the policy terms and conditions he held at the time of the theft.

I think it's also worth pointing out that, while our service can consider caselaw when making decisions, we are an alternative to the courts and so, we don't make legal determinations or findings. So, I won't be doing so. Instead, I will be focusing on the actions Aviva took, primarily the claim decision they made, to decide whether I think they acted fairly and reasonably, within the policy terms and conditions Mr U held.

From what I've seen, including the wording of Aviva's complaint response, I don't think it's disputed by either party that the circumstances that led to the loss of Mr U's motorhome, and the funds obtained by X in its sale, are being treated as a theft. So, I think Aviva acted fairly when assessing Mr U's claim against Section 1 of the policy, which provides cover for "*loss of or damage to your motorhome*".

But crucially, within the exclusions set out within this section, it states that “*your policy does not cover...loss by deception*” and this is the exclusion Aviva have relied on when declining the claim. So, I’ve thought carefully about whether I think Aviva were fair to deem the circumstances of the theft to have been caused by deception, taking into consideration all the points Mr U has raised, including, and not limited to, his belief that the loss was by appropriation, rather than deception.

Deception isn’t defined in the policy. Therefore, I think it would be fair and reasonable to apply its ordinary meaning. An everyday meaning or understanding of the term is ‘to deceive – to make someone believe something that isn’t true’.

In this situation, considering Mr U’s own testimony, he gave his motorhome to X on the understanding it would be sold for a certain amount. And it’s not in dispute that X proceeded to sell the motorhome for less than the amount that was agreed before the broker agreement Mr U entered into was put in place.

Mr U has also confirmed that despite this, in the months after, X stated his motorhome had been sold for the full value he expected, which wasn’t the case. So, I think both of the above shows X deceiving Mr U, providing knowingly incorrect information and taking action Mr U hadn’t agreed to.

I’ve also read through publicly available information regarding X, and its director’s disqualification following an investigation from the insolvency office, which would’ve been available in 2021 at the time of Aviva’s initial claim decline.

From what I’ve read, I think it’s reasonable for me to assume X and its director’s intention was most likely to sell the motorhome for less than what was agreed with Mr U. I can see the insolvency office’s investigation found X, under the guidance of its director, had done this in 18 out of 32 agreements entered into around that time. And X did so within days of receiving Mr U’s motorhome, which I think suggests that the sale was pre-planned.

And I can see that following their investigation, since 2017 X and its director had been using customers funds to settle liabilities from previous agreements. In a quote provided by the insolvency service, again which can be found publicly online, they state that the director of X “*knowingly put her customers at risk by using funds from new agreements to settle agreements with longstanding customers*”. This also falls in line with the fact that only five months later, X went into liquidation. I think it’s reasonable to assume X would’ve been aware of its financial situation around the time Mr U left his motorhome with them, considering the short time period between his agreement and the liquidation, as well as the evidence I’ve referred to above.

So, because of all the above, I think Aviva acted fairly, and within the terms and conditions of the policy, when relying on the loss by deception exclusion, as I do think the evidence and testimony provided leads me to believe, on the balance of probability, that X did purposefully deceive Mr U. And that this deception led Mr U to leave his motorhome with them, when I don’t think I can be persuaded he would’ve done, had all of the information I’ve referred to above been available to him. So, I don’t think Aviva need to do anything more regarding this aspect of the complaint.

But I do think Aviva could’ve done more to explain their reasoning to Mr U. And from the claim notes I’ve seen, considered alongside Mr U’s testimony, I don’t think Aviva did as much as they could’ve done to progress Mr U’s claim as I would expect. So, I don’t think they acted fairly from a service perspective and because of this, I’ve then turned to what I think Aviva should do to put things right.

## Putting things right

When thinking about what Aviva should do to put things right, any award or direction I make is intended to place Mr U back in the position he would've been in, had Aviva acted fairly in the first place.

Had Aviva acted fairly, I think Mr U would always have been left in a situation where his claim had been declined. But crucially, I think he would've likely received this outcome sooner. I can see in 2019 Aviva were initially made aware of the claim by the broker of the insurance policy. At this point, I would've expected Aviva to contact Mr U to obtain a greater understanding of his claim, but they didn't instead referring back to the broker directly. I think this resulted in a delay in Mr U making a full claim and receiving an outcome, which he received in 2021, that he was then able to process and consider his next steps. So, I think he should be compensated for the above.

And I think it's clear that Mr U was unhappy with Aviva's application of the exclusion. And having considered Aviva's reasoning, I do think more could've been done to talk Mr U through exactly why they were applying this exclusion, and why they felt it was fair. By not doing so, I think it's clear Mr U felt the need to return to Aviva and I think there were times when Aviva could've responded in a more reasonable time frame to handle his concerns. While our service doesn't consider complaint handling as an issue on its own, I do think the handling of Mr U's concerns were ancillary to the claim and his unhappiness with the claim decision and why this was decided and so, this is something I've thought about in part when thinking about what Aviva should do to put things right.

Our investigator recommended Aviva pay Mr U £300 to recognise the above. And while I note Aviva initially pushed back at this recommendation, in their last written correspondence with our service they set out clearly that they didn't disagree with the recommendation our investigator put forward. So, I think it's reasonable for me to assume that, as Aviva didn't disagree with the recommendation, they were accepting the compensatory offer that was recommended.

But even if they hadn't, having considered this recommendation I think it's one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think it's significant enough to recognise the distress and inconvenience caused to Mr U by Aviva's failure to act more proactively and provide a reasonable explanation for the claim decline, considering the seriousness of the situation Mr U found himself and the financial implications of the decline to him, as well as the upset he would've no doubt felt due to the theft.

But I think it also fairly reflects the fact that Mr U could've done more to chase the progression of the claim himself. I think it's clear from what I've seen that Mr U was engaging with the criminal case brought against X and its director alongside his insurance claim and I must take Mr U's lack of engagement at times through the process when thinking about what Aviva should do.

So, because of all the above, I'm directing Aviva to pay Mr U £300 to recognise the distress and inconvenience he's been caused by Aviva's service failures during the claim process from 2019 onwards.

I understand this isn't the outcome Mr U was hoping for. And I want to make it clear I don't

intend this decision to in any way take away from his lived experience or the clear financial and emotional impact having his motorhome stolen will have caused. But for all the reasons I've outlined above, I don't think I can say Aviva had done anything wrong, or acted unfairly, regarding the claim decision they've made on this occasion.

### **My final decision**

For the reasons outlined above, I uphold Mr U's complaint about Aviva Insurance Limited and I direct them to take the following action:

- Pay Mr U £300 to recognise the distress and inconvenience Mr U has been caused during the claim process.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 18 September 2024.

Josh Haskey  
**Ombudsman**