DRN-5336974

The complaint

Mr and Mrs T complain about Aviva Insurance Limited's ('Aviva') handling of their car insurance claim, including Aviva's decision to stop pursuing liability against a third party.

What happened

While on holiday in April 2023, Mr and Mrs T's car was damaged when wind caused a glamping yurt to become detached from the ground and blow into the side of the car. So, they contacted Aviva to make a claim.

Aviva decided the car was a total loss, so it paid Mr and Mrs T a cash settlement based on the pre-accident value.

Mr and Mrs T said the camp site operator was liable for the damage because they'd failed to properly secure the yurt, even though there was a weather warning two days prior to the incident. Aviva instructed solicitors to assist with liability, but the camp site operator's insurer disputed liability, which left Mr and Mrs T with unpaid uninsured losses.

Mr and Mrs T made several complaints as the claim progressed. Aviva responded to these complaints as follows:

On 27 April 2023 a final response was provided to a complaint about the length of time Mr and Mrs T waited for recovery of their car after the incident. Aviva said on the day of the incident roadside recovery was instructed, but Mr and Mrs T had to wait about eight hours for onward travel and had to chase several times for updates. Aviva upheld this complaint and offered £400 compensation.

On 6 June 2023 a final response was provided to a complaint about delays, a lack of communication and confusion around the total loss valuation. Aviva acknowledged it could have done more to progress the claim and the total loss could have been dealt with quicker. So, it upheld this complaint and offered £150 compensation.

On 4 July 2023 a final response was provided to a complaint about the liability aspect of the claim. Aviva said its solicitors hadn't abandoned the claim and were still working to prove their case and recover all losses.

In November 2023 Mr and Mrs T brought their complaint to this Service. Aviva has now stopped pursuing liability against the third party.

Our investigator thought the complaint should be upheld in part. She said:

- We couldn't consider the complaint about how long it took Aviva to recover the car because Mr and Mrs T didn't refer it to us within six months of Aviva's final response.

- Aviva hadn't acted unfairly by stopping pursuing liability because the policy terms allowed it to do this, and it acted on its solicitor's advice. But it had caused more

distress and inconvenience to Mr and Mrs T by failing to keep them reasonably updated. So, it should pay an additional £300 compensation.

- Aviva hadn't shown its total loss valuation of £20,820 was fair. So, it should increase this to £21,500 to match the highest valuation given by motor valuation guides and it should add interest to the additional payment.

- Aviva's offer to pay £718 for items Mr and Mrs T complained had gone missing from their car while it was stored with Aviva, in addition to its offer to pay £150 compensation for the distress and inconvenience this caused, was fair and reasonable.

- Personal belongings left in the yurt and the cost of staying in a hotel after the accident weren't covered by the policy. So, it wasn't unfair that Aviva hadn't agreed to pay these costs.

- It wasn't unfair for Aviva not to cover the cost of a hire car Mr and Mrs T had taken out because they didn't have hire car cover on their policy.

Because Mr and Mrs T and Aviva didn't agree, the complaint was referred to me to decide. I issued a provisional decision, and I said:

"I should start by saying while I've read and considered everything Mr and Mrs T and Aviva have provided, I won't be commenting on every point made. I'll instead concentrate on what I consider are the key points I need to think about for me to reach a fair and reasonable decision. This isn't meant as a discourtesy to either party, but instead reflects the informal nature of this Service.

Aviva's handling of liability

My role isn't to decide if the camp site operator is liable for the damage to Mr and Mrs T's car. That would be a matter only the courts could decide on were it not to be resolved informally and were litigation to be pursued. So, I won't be making any findings here on liability itself. I've instead considered if Aviva acted fairly and reasonably in how it handled the liability part of the claim.

I've began by looking at the policy terms. These say Aviva can take over the settlement or defence of any claim and have full discretion in the conduct of any proceedings or settlement of any claim. This isn't unusual, as car insurance policies typically contains terms like this which give the insurer the discretion to settle or pursue claims involving third parties.

But while the policy terms gave Aviva this discretion, it must exercise that discretion fairly and reasonably. So, I've considered if it did.

Mr and Mrs T said the camp site operator accepted liability for the damage to their car. I don't dispute this. From the email dated 31 May 2023, it's clear the camp site operator stated they were liable and indicated they had informed their insurer of this.

However, the camp site operator also said the matter was being handled by their insurer. When a party involves their insurer to manage a claim, it's typically the insurer who decides whether to accept or dispute liability on their behalf. So, while the camp site operator may have told Mr and Mrs T it accepted liability, their insurer might not have agreed they were legally liable. Which could explain why the insurer ultimately disputed liability, despite the camp site operator's earlier statements to Mr and Mrs T.

Because the camp site operator appointed their insurer to deal with the claim, rather than handle it themselves, and their insurer didn't accept liability, this placed Aviva in the position of having to persuade the camp site operator's insurer to accept liability, of failing that, litigate.

Aviva instructed solicitors shortly after the claim was reported for the purpose of obtaining an acceptance of liability and recovering its outlay from the camp site operator's insurer. At the time of Aviva's final response in June 2023, there seemed to be some confusion around whether the third party was still being pursued. But Aviva confirmed in this final response its solicitors were still working towards getting a settlement from the third party.

But Aviva's solicitor has now closed its file saying there was a lack of a prospect of success. So, I understand Aviva is no longer taking any action with regards to pursuing liability against the third party.

Aviva's solicitor provided these reasons why it thought it was unlikely to succeed if it pursued the matter further:

- *A lack of evidence the yurt was in disrepair.*
- *A lack of evidence showing the yurt wasn't secured properly, and the camp site operator's insurer disputing this point and providing evidence showing how the yurt was secured.*
- *The local authority didn't pursue a prosecution against the camp site operator, and there was no health and safety report showing the camp site operator failed in its obligations.*

These points caused Aviva's solicitor to conclude there wasn't enough to prove the camp site operator was negligent, and so litigation would be unlikely to succeed.

Aviva had discretion under the policy terms on whether to pursue the third party. The camp site operator appointed their insurer, who didn't accept liability. Aviva instructed solicitors, but ultimately the camp site operator's insurer wasn't persuaded to accept liability. So, litigation would have been the next step. But following its investigations, Aviva's solicitor concluded there wasn't enough to prove the third party was negligent, so it thought litigation would be unlikely to succeed.

I acknowledge Mr and Mrs T's strength of feeling the camp site operator is liable. But that would have needed to be decided by a court and Aviva weren't obligated under the policy terms to issue proceedings against the third party. And given its solicitor concluded litigation would likely be unsuccessful, and set out why, I wouldn't have expected Aviva to take matters further, nor do I think it was unfair for it not to. So, I don't think Aviva unfairly exercised its discretion to stop pursuing the third party.

Looking now at the level of service Aviva provided, I think there was a continued lack of communication from Aviva on the liability part of the claim after it provided its final response in June 2023. It took until August 2024 for Mr and Mrs T to be informed by Aviva's solicitor it would be closing its file. But prior to that it doesn't appear there were regular updates provided to Mr and Mrs T.

Aviva said any complaint about the solicitor's lack of communication and updates should be directed to the solicitor. But the solicitor was appointed by Aviva to act on its behalf, not by Mr and Mrs T to act on their behalf. Typically, where an insurer has appointed an agent to

act on its behalf, we would consider the insurer responsible for the actions of that agent. So, I'm satisfied the communication issues from the solicitor can be considered here. And although the solicitor may have been handling the matter for Aviva, this didn't prevent Aviva being able to get updates from the solicitor and pass those on to Mr and Mrs T.

I acknowledge liability disputes can take some time to reach a conclusion and there are elements which would have been outside of Aviva's direct control. But I think this claim has caused Mr and Mrs T a lot of distress and Aviva could have reduced the impact by being more proactive and updating Mr and Mrs T more frequently than it did. So, I think some additional compensation is warranted for the distress and inconvenience caused, and I think £300 is a reasonable amount considering the timescale involved and the level of impact.

The total loss valuation

Aviva said it hasn't received a complaint from Mr and Mrs T about the total loss valuation. So, it doesn't consent to us considering this part of the complaint.

However, Mr and Mrs T have provided an email dated 2 May 2023 which shows a complaint was made on their behalf about the total loss valuation to the agent Aviva appointed to handle the total loss. So, I'm satisfied a complaint about the valuation was raised and can be considered.

My role isn't to value Mr and Mrs T's car. I've instead considered whether Aviva followed a fair valuation process.

The policy terms required Aviva to pay Mr and Mrs T the market value of their car. The terms define this as the cost of replacing the car with one of the same make, model, specification, and condition determined at the time of loss.

Aviva has provided evidence showing it initially determined a pre-accident value of £19,669. In reaching this valuation, it considered motor valuation guides which gave valuations of £19,990 on two guides, and £19,669 and £19,515 on two other guides. It also used market analytics, which gave a value of £19,180.

Aviva ultimately settled on a valuation of £20,820, so it paid Mr and Mrs T £20,490 after deducting their £330 policy excess. But it hasn't shown what this increase was based on.

Our investigator obtained valuations of £20,152, £21,100, £21,249 and £21,500 from motor valuation guides. And I'm satisfied these are based on accurate details for the vehicle, and the correct date of loss.

We generally say to avoid the risk of detriment to a customer, insurers should use the highest amount the motor valuation guides provide, unless it's shown it would be unfair to do so.

Aviva said it's now willing to make an additional payment to bring the total loss settlement in line with the highest amount of £21,500 from the motor valuation guides. I think this is reasonable since I don't think enough has been provided to show Mr and Mrs T could have bought a similar car at the time of loss for a lower amount. And while I acknowledge Mr and Mrs T have provided advertisements of similar cars to theirs, I don't think it's clear when these are from, so I can't say they're representative of the cost of similar cars at the time of the incident.

Aviva says because a complaint hadn't been made, it doesn't think it would be fair to also include interest on the additional amount. But, as I set out earlier, I am satisfied a complaint

was raised about the valuation. So, I don't think it would be fair to exclude interest from the award.

So, to avoid the risk of detriment to Mr and Mrs T of not receiving a fair market value, unless this additional amount has already been covered by their GAP insurance policy, Aviva should make an additional payment to bring the total loss settlement up to the highest valuation of £21,500 from the motor valuation guides and it should add 8% simple interest per year to this payment calculated from the date the total loss was paid, to the date of settlement.

Roadside recovery delays

Mr and Mrs T complained about the length of time it took Aviva to arrange a recovery after their car was damaged. Aviva provided a final response on 27 April 2023 which dealt with this.

Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules, known as the Dispute Resolution Rules ("DISP") written by the Financial Conduct Authority ("FCA") and contained within the FCA Handbook.

Under the DISP rules, this Service can't consider a complaint which is brought to us more than six months after a final response unless either a business consents to us considering the complaint, or there are exceptional circumstances why the complaint was brought late.

Mr and Mrs T brought their complaint to us on 7 November 2023. So, they were outside of the six-month time limit for the issues Aviva addressed in its final response of 27 April 2023, and Aviva said in this final response it did not consent to us considering the complaint if it wasn't referred in time.

I also haven't seen anything from Mr and Mrs T showing there were exceptional circumstances as to why the complaint was brought late.

So, I find the complaint about the delays in arranging recovery of Mr and Mrs T's car to be time barred, and I won't be considering the merits of it.

Hire car costs and other expenses

Mr and Mrs T said, due to the damage to their car, they took out a hire car on 14 April 2023. They said they don't dispute their policy doesn't include hire car cover, but they expected to be repaid the cost of a hire car because of the camp site operator's admission of liability.

I should say here since the camp site operator is a third party, I can't consider or make any findings about their actions. So, I'll only be considering if Aviva treated Mr and Mrs T unfairly with respect to the hire car costs.

Because Mr and Mrs T didn't have hire car cover, and they'd only have been entitled to a courtesy car under the policy terms if their car had been repairable, Aviva weren't required to provide any replacement vehicle. Mr and Mrs T's hire car costs were therefore an uninsured loss.

However, Mr and Mrs T were without the use of their car and were relying on Aviva to settle the claim without delay so they had funds to buy a replacement car. If there were any unreasonable delays caused by Aviva in paying the claim, that could have caused Mr and Mrs T to have needed a hire car for longer than was necessary.

In circumstances such as these, we'll usually consider compensation for loss of use if there have been unreasonable delays by an insurer in the settlement of a claim. So, I've considered if Aviva should pay anything towards Mr and Mrs T's hire car costs.

Mr and Mrs T contacted Aviva on 5 May 2023 to say they were unhappy with various aspects of their claim including that they hadn't yet received a total loss payment – and they mentioned were paying £400 a week for their hire car. After this, Aviva paid the total loss settlement on 15 May 2023.

Aviva didn't dispute there was a delay in paying the total loss settlement. It accepted this in its final response of 6 June 2023, and it offered Mr and Mrs T £150 compensation for the distress and inconvenience caused saying it agreed the valuation process was drawn out and could have been dealt with sooner.

It may be helpful if I say here that we look at loss of use separately to compensation for distress and inconvenience. This is because we treat loss of use as a financial loss – which takes account of additional costs a customer had to pay to travel due to being without the use of their own car.

So, while I think the £150 compensation Aviva offered was reasonable for the distress and inconvenience Mr and Mrs T were caused by the delay in paying their claim, their hire car costs are a separate financial loss to that which I've considered as loss of use.

I don't think it was unreasonable for Mr and Mrs T to hire a car since their own car wasn't usable, and the £400 per week they paid for a hire car doesn't seems disproportionate to what it likely would have cost to hire a similar car to their own. So, I don't think it's likely Mr and Mrs T didn't mitigate their loss. And since Aviva hasn't disputed it took too long to pay the total loss settlement, I think some compensation is warranted for Mr and Mrs T's loss of use.

I don't think it would be reasonable for Aviva to reimburse Mr and Mrs T for the entire duration they had a hire car. Even if there hadn't been any delays, it still would have taken some time for Aviva to assess the claim and pay it. And once Aviva had paid the claim, Mr and Mrs T ought then to have been able to replace their car and should no longer have needed a hire car.

In total, it took 34 days from the date of loss to the date of settlement. But I think looking at the claim notes, a more reasonable timeframe would have been half that.

So, I think subject to Mr and Mrs T providing an invoice or receipt for their hire car if requested, Aviva should pay them half of the total hire car costs they incurred between 14 April 2023 – when they took out the hire car – and 15 May 2023 - when Aviva paid the total loss settlement. To reflect Mr and Mrs T have been without those funds, Aviva should add 8% simple interest per year to this payment calculated from the date Mr and Mrs T paid the hire car bill to the date of settlement.

Mr and Mrs T complained Aviva didn't cover the cost for them to stay in a hotel on the date of the accident and hasn't paid the cost of personal effects which were inside the yurt. But looking at the terms of their policy, I don't think these costs were covered. So, I don't think it was unfair for Aviva not to meet these costs.

Mr and Mrs T also said there were personal effects in their car when it was taken to Aviva's agents, and these items went missing. Aviva offered to pay £718 for the missing items and provided a breakdown of what this included. It also offered to pay £150 compensation.

I acknowledge Mr and Mrs T said £718 wasn't enough to replace the items. But I haven't seen anything more to show that. I think it caused upset to Mr and Mrs T the items went missing, and I think they were inconvenienced by having to chase Aviva several times for this to be dealt with. But I think the £150 compensation Aviva offered for this was reasonable."

Mr and Mrs T replied to say they had nothing more to add. Aviva replied disagreeing with the provisional decision, and in summary, it said it didn't think it should be required to pay compensation for the service its solicitor provided since the solicitor was acting under delegated authority to manage the claim on its behalf.

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've considered Aviva's response to my provisional decision, but I've reached the same overall conclusion for the same reasons.

I don't dispute that the solicitor was acting under delegated authority from Aviva. I set out in my provisional decision that the solicitor had been instructed by Aviva to work on its behalf.

But I don't think it's fair for Aviva not to take responsibility for the solicitor's actions and to direct Mr and Mrs T to make a separate complaint directly against the solicitor. Mr and Mrs T didn't have a contractual relationship with Aviva's solicitor. Mr and Mrs T were Aviva's customers, and the contractual relationship they held was with Aviva through their insurance policy.

While I don't dispute the solicitor was handling the liability aspect of the claim for Aviva, Mr and Mrs T should still have been reasonably kept up to date on the claim – whether that was from the solicitor, or from Aviva. And I haven't seen anything more to show that they were.

Ultimately, Mr and Mrs T were Aviva's customers and were pursuing a claim through Aviva. While Aviva were entitled to instruct a solicitor to assist it with the liability aspect of the claim, I don't think that makes it reasonable for Aviva to pass responsibility on to the solicitor – who was acting on Aviva's behalf and who Mr and Mrs T were not customers of – for any communication issues which arose. So, I still think a further compensation payment of £300 is fair and reasonable for the distress and inconvenience caused to Mr and Mrs T by the communication issues on their claim.

Putting things right

I uphold this complaint in part, and I require Aviva to do the following:

- Unless this additional amount has already been covered by their GAP insurance policy, make a further payment to Mr and Mrs T to bring their total loss settlement for this claim up to the highest valuation of £21,500 from the motor valuation guides and pay 8% simple interest per year on this payment calculated from the date the total loss was originally paid, to the date of settlement.

- Pay Mr and Mrs T £300 compensation for the distress and inconvenience caused by the continued lack of communication on the claim. And if it has not already done so, pay Mr and Mrs T £150 compensation for the distress and inconvenience caused by the delay in settling the claim.

- Subject to Mr and Mrs T providing a receipt or invoice if requested, pay half of the total hire car costs Mr and Mrs T paid between 14 April 2023 and 15 May 2023 and pay 8% simple interest per year on this amount calculated from the date Mr and Mrs T paid the hire car charges, to the date of settlement.

- If it has not already done so, Pay Mr and Mrs T £718 for the personal effects which went missing from their car, and pay £150 compensation for the distress and inconvenience this caused.

If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs T how much it's taken off. It should also give Mr and Mrs T a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint in part and I require Aviva Insurance Limited to carry out the steps I've set out in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 17 March 2025.

Daniel Tinkler
Ombudsman