

The complaint

Mr L has complained about the amount Aviva Insurance Limited has offered in settlement of his claim under his car insurance policy. And about the way it has handled the claim.

What happened

Mr L's car was damaged in an accident, and he made a claim under his policy. His car was collected by Aviva's salvage agent, who I'll refer to as C. And Aviva's approved repairer, who I'll refer to as S, provided an estimate for repairing the damage. As a result of this, S decided the car was uneconomic to repair and should be written off. It said the market value of the car was £2,134. This reflected the fact the car was a previous category N total loss. It also said if Mr L wanted to retain the car it would deduct 30% of this value.

Mr L wasn't happy with S's valuation and complained to Aviva about this and the handling of the claim. Aviva didn't uphold Mr L's complaint. It said it was satisfied S's valuation was correct and that it should deduct 30% if he retained the car. It offered to pay the £2,134 with it retaining the car or £1,493.80 if Mr L retained it. It also said it understood the claim had caused Mr L some worry and stress and offered him £100 in compensation for this.

Mr L wasn't happy with Aviva's response to his complaint and asked us to consider it. One of our investigators did this. She said Aviva's valuation was wrong and that it should be increased to £2,796. And that Aviva should settle the claim using this figure. She also said that Aviva shouldn't have deducted 12% of the market value to reflect the fact Mr L's car was a previous total loss. Our investigator also said Aviva should pay Mr L £300 in compensation for the distress and inconvenience he had experienced as a result of its poor handling of the claim.

Aviva didn't agree with the investigator's view. It referred to adverts it had provided, which it said supported its valuation. And it referred to evidence it had provided to show its deduction of 12% from the market value to reflect the fact that Mr L's car was a previous category N total loss was fair.

Mr L didn't agree with the investigator's view either. He is sure the market value of his car is a lot higher than the investigator suggested. And he's also said he is entitled to a great deal more than this in settlement of his claim.

I issued a provisional decision on 18 March 2025 in which I set out what I'd provisionally decided and why as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr L has raised a number of concerns about Aviva's handling of his claim and made numerous points in support of his view that it should pay him a great deal more in settlement of it. I'd like to reassure Mr L that I've considered all of his points, but I've only addressed those I consider relevant to the outcome of the complaint. This isn't meant as a discourtesy, it merely reflects the informal nature of this service.

I think the two key issues I need to address are whether the market value Aviva has based its settlement on is correct. And whether it handled Mr L's claim appropriately. I appreciate Mr L is also concerned about Aviva's decision to take back the hire car it provided and how its agent went about doing this. But this will need to be considered as part of a new complaint, as it hadn't happened at the point Aviva issued its second final response on this complaint.

The market value of Mr L's car.

Mr L's policy states that the maximum amount Aviva will pay in settlement of a claim for damage to his car is the 'market value'.

This is defined as follows:

"The cost of replacing your car with one of the same make, model, specification and condition. The market value, determined at the time of loss or damage, may also be affected by other factors such as mileage, MOT status (if one is required), how you purchased your car and whether it has been previously declared a total loss."

Mr L has provided a great deal of evidence in support of his view that the market value that Aviva should use to settle his claim is more than our investigator has suggested. And Aviva has provided a great deal of evidence in support of its view that it is less than this. My view is that the guides used by the insurance and motor industries for valuing used cars are the best starting point. And I think the safest way to ensure the market value an insurer uses is high enough is to take the highest retail value provided by the guides, irrespective of the market the policyholder bought the car in. This is because the policyholder has the most choice if they replace their car in the retail market. And the guide values are based on adverts for similar cars. However, when a car has a much higher than average mileage, as I understand it, the guides use an element of judgement based on research to determine how much impact a higher mileage will have. This is because there is likely to be very few cars advertised for sale with a much higher than average mileage. And, in the absence of compelling evidence to suggest the market value should be higher or lower than the highest guide value, I would expect an insurer to use this value to settle the claim.

I do of course appreciate that Mr L thinks the fact his vehicle was in excellent condition; and that he'd had a number of important parts replaced, would impact the market value. But I do not agree. I have looked at the items Mr L has mentioned, and, in my opinion, they would not make any difference to the likely selling price of a vehicle like his. This is because they are all items which are likely to have been replaced on cars like Mr L's or items (like tyres) which don't generally tend to have any impact on the selling price.

The highest guide retail value for a car like Mr L's (a 12-registration with a mileage of 152,316) is £2,796. But Aviva has provided two adverts that I consider strongly support its view that its valuation is fair. These are for a 12-registration car with a mileage of 120,620 at £2,995. And a 12-registration car with a mileage of 136,690 at £1,950. It has also provided an advert for a 62-registration car with a mileage of 182,777 at £2,295. And I think these do show that the market value Aviva has used as a starting point of £2,425, prior to its reduction for the fact Mr L's car was a previous total loss, is fair. I say this because these adverts suggest that, allowing for the higher mileage, Mr L would be able to replace his car for £2,425 if he were buying a replacement without a total loss marker on it.

I appreciate Mr L has provided an advert for a similar car to his – a 12-registration - with a mileage of around 28,000 less than his car, at £6,499. I note Mr L has suggested this car was advertised at £7,499, but the link he has provided shows it advertised at £6,499.

However, this is one example, which seems very out of line with the majority of the other examples I've seen. And it does not alter the fact that the adverts Aviva has provided support its view that if

Mr L's car was not a previous total loss, Mr L could replace it for the market value it has used. So, I'm satisfied that the market value Aviva has used of £2,425 as a starting point before the deduction it has made because Mr L's vehicle was a previous total loss is fair. As I have already mentioned, Mr L's car was a category N previous total loss. And, while I accept this was due to bumper damage and that it was properly repaired, I think a total loss marker does reduce the likely selling price of a car. I say this because I think most people faced with a choice between the same car with the same mileage with or without a total loss marker would prefer the one without the marker and pay more for it. And I am persuaded by the evidence Aviva has provided which shows that similar cars with total loss markers are advertised for sale at considerably less than those without one. And it does seem the difference can be as much as 30%. This having been said, it is not an exact science. Even so, I'm satisfied a deduction of 12% is reasonable in the circumstances and haven't seen any evidence to persuade me otherwise from Mr L. So, I am satisfied that this should be deducted from the market value of £2,425 to reach a fair market value for Mr L's car. This means I think the market value Aviva used to settle Mr L's claim of £2,134 is fair.

But Aviva has also made a deduction because Mr L has decided to keep his car. It is entitled to do this. I say this because it is a general principle of insurance law that when an insurer settles a claim on a total loss basis the insured item becomes its property. And if this had happened with Mr L's car, Aviva would have received what C sold it for. This means that because Mr L has kept his car, I consider it fair for Aviva to deduct what it would have got for the car from C. Otherwise, Aviva would lose out as a result of forgoing its entitlement to take possession of it.

Aviva deducted 30% from the market value of £2,134. This was on the basis it would have got this amount if it had taken possession of Mr L's car. But it has explained that it does not know exactly what it would have got, as it would only have found this out when C had sold the car. C has estimated it would have sold the car for 24.5% of its market value. But it has also said it could have got as little as 21%. In view of this, and as it would not be fair for Mr L to lose out, I'm satisfied a deduction of 21% is appropriate to avoid any possible detriment to Mr L. Of course, it is not possible to know exactly what Aviva would have got from C, but I think it is highly unlikely that it would have got less than 21%. This is because I am satisfied that the evidence provided by Aviva around the amount it would have got is based on C's previous experience of selling similar cars. And I think it is highly unlikely C would have received less than its predicted minimum. This means I think the settlement amount Aviva should pay Mr L in respect of his claim is £1,686. Aviva has told me that it has already paid Mr L £1,493.80. So, it will need to pay him a further £192.20.

Did Aviva handle Mr L's claim appropriately?

I can see that Mr L sent a great deal of correspondence to Aviva, as he wasn't happy about the way it handled his claim. And it is clear the deduction Aviva made because Mr L retained his car was slightly higher than it should have been. But, aside from this, and taking a little longer than I'd expect to make its total loss offer, I don't think Aviva did anything wrong. It provided a settlement offer based on what I consider to be the correct market value for Mr L's car and clearly explained to Mr L what his options were. So, I'm satisfied the £100 Aviva has already paid Mr L in compensation for any distress and inconvenience he has experienced is appropriate. And I do not consider Aviva needs to pay Mr L any more compensation than this.

My provisional decision

For the reasons I've set out above, I've provisionally decided to uphold Mr L's complaint and require Aviva Insurance Company Limited to pay him a further £192.20 in settlement of his claim.

I gave both parties until 1 April 2025 to provide further comments and evidence in response to my provisional decision.

Aviva has responded to say that it accepts my provisional decision.

Mr L has responded with comments that make it clear he does not agree with my provisional decision. And he has said he is happy for me to issue my final decision immediately provided all his submissions are taken into account. In view of this, I am issuing this decision before the deadline for further comments and evidence in response to my provisional decision.

I am not going to set out all the comments Mr L has made in response to my provisional decision. This doesn't mean I have not considered all his points in deciding what the fair and reasonable outcome to Mr L's complaint is. It is simply that we are an informal dispute resolution service. Instead, I have focused in this decision on the ones I consider are key.

In doing so I will not be detailing what Mr L has said about the issues with the hire car he was provided with by Aviva and what happened when it was taken back by the hire company. These will need to be considered as a new complaint to us if and when it is appropriate for us to do so.

The points that I will address from Mr L's are as follows:

1. He doesn't believe Aviva has fulfilled its responsibility to indemnify him in respect of his claim.
2. He doesn't consider he can replace his car for the amount I've suggested would allow him to do so.
3. He considers one of the industry guides, which I'll refer to as G, suggests the retail replacement cost of his car is much higher than I've suggested.
4. He thinks auction adverts from C's website show similar cars in a much worse state than his are selling for a lot more than I have suggested it would cost to replace his car.
5. He doesn't consider Aviva has complied with its obligations according to the Financial Conduct Authority (FCA) handbook.
6. He does not think the deductions I have said are reasonable for the fact his car is a previous total loss and for him retaining his car are appropriate or in accordance with a previous ombudsman's decision.
7. He does not think I have properly taken into account what he spent to bring his car up to the excellent state it was in prior to it being damaged.
8. The assumption I have made that he decided to keep his car is incorrect.

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, it remains my view that the fair and reasonable outcome to Mr L's complaint is as set out in my provisional decision. Although, I have also set out what should happen if Mr L decides he doesn't want to keep his car.

I will deal with each of the points I have set out above in the same order.

1. Aviva is obliged to settle Mr L's claim in accordance with the terms of his policy. And I consider it has done so. I understand the principle of indemnity and agree that essentially Mr L's policy is a contract of indemnity. And I'm satisfied that what Aviva has paid in settlement of his claim means it has complied with the terms of the policy and he has, therefore, been indemnified.
2. For the reasons set out in my provisional decision, I remain satisfied Mr L could replace his car with one of a similar make, model, specification, condition and mileage with the valuation amount Aviva has based its settlement on. I am not going to repeat these reasons here, as nothing Mr L has said in response to my provisional decision has altered my view on this aspect.
3. I've checked the industry guides and I do not agree that guide G shows the cost of replacing Mr L's car with one of a similar make, model, specification, condition and mileage is much higher than the amount Aviva has used to settle Mr L's claim. This guide suggests the replacement cost would be £3,590 before the deduction needed to reflect the fact Mr L's car was a previous category N total loss.
4. I've seen the adverts from C's website Mr L is referring to. And I do not consider they show similar vehicles in a worse state than his selling for more than I've suggested he can replace his car for.
5. Apart from deducting more than it should have done having assumed Mr L wanted to retain his car, which I agree wasn't treating him fairly, I'm satisfied Aviva has complied with its obligations in the FCA handbook for the reasons set out in my provisional decision.
6. I set out in my provisional decision why I consider Aviva has shown that the deduction it has made of 12% to reflect the fact Mr L's car was a previous category N total loss is fair. This included an explanation of the rationale and examples of cars that were previous total losses being advertised at considerably less than similar cars that had not been previous total losses. It is not appropriate for me to comment on what another ombudsman decided on another case around this issue. It is for me to decide whether what Aviva has deducted in this case is fair and reasonable. Having done so, I'm satisfied it is. And I think it is worth me pointing out to Mr L that ombudsman decisions do not set a 'precedent'.
7. I can assure Mr L I have taken into account what he spent on his car prior to it being damaged. But, as I explained in my provisional decision, I do not consider this impacts the '*market value*' as defined in Mr L's policy.
8. I did assume Mr L wanted to retain his car in its damaged state because Aviva had returned it to him. If this isn't the case, he should let Aviva know within 14 days of the date of this decision. And when Aviva takes possession of it, I expect it to pay Mr L the full amount it has deducted as a result of thinking Mr L wanted to keep it.
9. If Mr L decides to retain the car, then all Aviva will need to pay him is the additional £192.20 I said it needed to pay in my provisional decision.

My final decision

For the reasons set out above and in my provisional decision, I uphold Mr L's complaint about Aviva Insurance Limited in part and require it to pay him an additional £192.20 in settlement of his claim. If Mr L decides not to retain his car and lets Aviva know this within 14 days of the date of this final decision, once Aviva takes possession of it, it will need to pay Mr L the full amount it deducted as a result of it thinking he wanted to retain it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 April 2025.

Robert Short

Ombudsman