

The complaint

W has complained about what Aviva offered in settlement of its claim under its Mini Fleet Insurance policy.

W is represented by a director, who I'll refer to as Mr J.

What happened

One of W's vehicles, which it bought new in September 2023, was damaged in an accident. It seems W reported the claim to its insurance broker, and that they referred W to an accident management company (ACM), who took on the claim. The ACM then decided the vehicle was a write-off and referred the claim to Aviva on 7 December 2023, so it could deal with it. Aviva then had the vehicle inspected by one of its engineers. He decided it was repairable, subject to a strip down on 19 December 2023. There was then a delay because Aviva didn't arrange for the vehicle to go to one of its approved repairers to be stripped down. This wasn't picked up until Mr J called Aviva to find out what was happening. There was then a delay on Aviva's part in getting the vehicle to its repairer and it didn't arrive there until 26 February 2023. The repairer stripped the vehicle down and Aviva then decided it shouldn't be repaired on 4 March 2023.

The terms of W's policy state that Aviva will provide a new replacement of the same make, model and specification, subject to availability, if the insured vehicle (provided it is a private vehicle) is less than 12 months old at the point it is damaged, and the repair cost is more than 50% of its list price at point of purchase. So, Aviva tried to arrange a new replacement vehicle for W. However, it discovered the vehicle had been discontinued by the manufacturer in December 2023. And this meant it couldn't obtain a replacement. So, Aviva offered to pay W the market value at the point it was damaged. This is defined in the policy as replacing the vehicle with one of the same, make, model, specification and condition at the time of the loss or damage.

Mr J wasn't happy with Aviva's offer and complained. Aviva wouldn't alter its position on the claim, but it did offer W £500 in compensation for the inconvenience caused by the delay on its part.

As Mr J wasn't happy with Aviva's response to W's complaint he asked us to consider it. One of our investigator's did this. He said it should be upheld, and that Aviva should pay W what it paid to purchase the vehicle it had claimed for. This was on the basis Aviva should have realised it was a total loss in December 2023 and at this point a replacement would most likely have been available.

Aviva didn't accept the investigator's view. It has said that even if its engineer had deemed the vehicle a total loss on 19 December 2023, it would still not have been able to source a suitable replacement at this point. And it would have offered W the market value at point of loss in accordance with the terms of W's policy.

As Aviva didn't accept the investigator's view the complaint was referred to me for a

decision.

I issued a provisional decision on 20 May 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.

The policy term Aviva has relied on to justify its offer in settlement of W's claim is as follows:

We will replace your vehicle with a new vehicle of the same make, model and specification, subject to availability, where your vehicle is a private car within 12 months, or a goods - carrying vehicle within 6 months of its first registration as new, and

*1) it is stolen and not recovered, or
2) the repair cost of damage in respect of any one claim covered by this section exceeds 50% of its United Kingdom list price (including vehicle taxes) at the time of its purchase.
We will only replace your vehicle if:*

*1) you are the first registered owner of the vehicle, or you bought it under a hire purchase agreement or other type of agreement where ownership passes to you, and
2) any interested financing company agrees.*

If you or your vehicle do not meet the qualifying criteria for this cover, or you do not wish us to replace your vehicle with a new vehicle of the same make, model and specification, the maximum we will pay is the market value of your vehicle, including accessories and spare parts, immediately prior to the loss or damage.

So, while the policy term does say Aviva will replace a vehicle that is less than 12 months old if the repair cost exceeds 50% of its list price at the time of purchase, subject to availability, it doesn't actually say what should happen if a replacement is not available. In view of the fact that the policy wording isn't clear on what should happen where a replacement isn't available. And because W wanted a replacement vehicle when its vehicle was damaged, but due to circumstances beyond its control there wasn't one available, I think it should at least get back what it paid for the vehicle originally. This would include the delivery charge, road fund licence and number plate fee, as these are all costs I see as part of purchasing a new vehicle. This is because W was expecting to be provided with a brand-new replacement vehicle. And getting what it paid for the vehicle originally will mean it should be able to clear the finance on the vehicle and then purchase a suitable new replacement. If W was able to claim back the VAT it paid when it bought the vehicle, Aviva will be entitled to deduct this. In determining that Aviva should pay this amount to W as the fair and reasonable outcome to its complaint, I have also taken into account the fact that Aviva provided W with a policy under which it undertook to provide it with a new replacement for the vehicle that was damaged if the repair cost was more than 50% of its list price at the time. And the fact that this would have been reflected in the premium it charged. Aviva will of course have to pay what is needed to the finance company to clear any remaining finance on the vehicle, but it should pay any balance after this to W. If Aviva has already paid what it offered to the finance company, it can of course deduct this. I do not consider the fact there was a delay in Aviva deciding that repairing W's vehicle would cost more than 50% of the list price as relevant to the outcome of this complaint. This is because, even if Aviva had decided this was the case in December 2023 and there wasn't a replacement available at this time, I'd still have expected it to pay W what it paid for the vehicle for the reasons I have explained.

I have considered the fact that W had to carry on paying the finance payments on the

damaged vehicle, but I do not consider it should receive compensation to reflect this. This is because the further payments made by W will have reduced what is needed to clear the finance and it will receive anything above what it costs to clear the finance in cash from Aviva. And I have assumed that if Aviva had paid W what it paid for the vehicle back in December 2023, it would have then entered into a finance agreement with a similar amount of interest to replace the damaged vehicle.

And I'm satisfied that the £500 Aviva has already paid W for the inconvenience it experienced due to it taking longer than it should have done to check the cost of repairing W's vehicle is appropriate.

My provisional decision

For the reasons set out above, I've decided to uphold W's complaint about Aviva Insurance Limited and make it pay what W paid originally for the damaged vehicle it claimed for, including what it paid for the delivery charge, road fund licence and number plate fee. Aviva is entitled to deduct the VAT W paid if it claimed this back. If W didn't claim the VAT back it will need to provide Aviva with evidence to prove this. Aviva should pay whatever is needed to clear the finance on the vehicle first to the finance company. And it should then pay the balance to W. If the amount left on finance is more than what is due for the vehicle, Aviva will not need to pay anything to W and W will be responsible for the amount left outstanding. Aviva can deduct any amount it has already paid to the finance company.

I gave both parties until 2 June 2025 to provide further comments and evidence in response to my provisional decision. But neither party has provided any further comments or evidence.

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.

As neither party has provided any further comments or evidence in response to my provisional decision, I see no reason to depart from the view I set out in it on the fair and reasonable outcome to W's complaint.

Putting things right

For the reasons set out in my provisional decision, I've decided to uphold W's complaint and require Aviva to do the following:

Pay W what it paid originally for the damaged vehicle it claimed for, including what it paid for the delivery charge, road fund licence and number plate fee.

Aviva is entitled to deduct the VAT W paid if it claimed this back.

If W didn't claim the VAT back it will need to provide Aviva with evidence to prove this.

Aviva should pay whatever is needed to clear the finance on the vehicle first to the finance company. And it should then pay the balance to W.

If the amount left on finance is more than what is due for the vehicle, Aviva will not need to pay anything to W and W will be responsible for the amount left outstanding.

Aviva can deduct any amount it has already paid to the finance company.

My final decision

I uphold W's complaint and order Aviva Insurance Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 1 July 2025.

Robert Short
Ombudsman