

The complaint

A company that I'll refer to as C complains Aviva Insurance Limited has unfairly declined a claim it made on a business protection insurance policy.

Mr M, the owner of C, brings the complaint on its behalf.

What happened

The full details of the complaint are well known to both parties, so I won't repeat them again here. I'll list below the key events that I believe lead to this complaint:

- C is a Jewellery business and holds a business protection insurance policy with Aviva to protect against losses arising from insured events.
- C's store was being renovated, and Mr M went to the bank to withdraw money to pay the builders. He put the money in a backpack which he was also using to transport some stock.
- Mr M rested on a bench to eat lunch, and the backpack was stolen from his side. Mr M reported the matter to the police and made a claim to Aviva on behalf of C for the loss of stock and money when it became obvious the items were not going to be recovered.
- Mr M also claimed for other losses such as replacing keys, updating alarm systems and locks at the store, the cost of a mobile phone and its case, as well as other expenses and lost income he'd incurred due to the theft.
- Mr M advised Aviva the police had informed him, after checking CCTV, that he was targeted by a gang of criminals when he left the bank. He was followed by one of the members who stole the backpack. Mr M also reports that it was the opinion of the police officer that, given the amount of money he was observed withdrawing from the bank, had that specific opportunity not arisen, it is likely the bag would have been taken by force in any event.
- Aviva considered the claim but declined it. For the money it said as Mr M withdrew it from his personal account it was not covered by the policy, as it is not considered as belonging to C. For the stock it said a Special Term added to the policy said items stolen from baggage aren't covered unless they are carried by hand under the personal supervision of the Insured or other specified members of the company. And it didn't think that applied here as the backpack was stolen from beside Mr M.
- It said the policy didn't provide cover loss of keys and the associated costs of replacing those or consequential loss of profits. It said while the mobile phone case and other items may have been claimable, the total of those items fell below the policy excess of £250 so no payment was due.
- Mr M disagreed with Aviva's decision, he complained but it did not change its position.

Our Investigator considered the complaint and thought it should be upheld. She said she didn't think Aviva had applied the policy terms in a fair and reasonable way. The Investigator accepted Mr M's explanation that he used both the business account and his personal account to manage the cashflow of the business. And concluded that as the money was to pay for builders working at C's store the money could be being used in the conduct of the business.

The Investigator also concluded she didn't think the special term Aviva was relying on was specific enough to exclude the circumstances of the claim. The money and stock were in a bag that was carried by hand, and they were under the personal supervision of Mr M, the owner of the business. She said Aviva should reconsider the claim for the money and stock in line with the remaining terms and conditions of the policy.

The Investigator did agree with Aviva that the policy didn't provide cover for losses associated with replacing keys or lost income.

Aviva disagreed it should reconsider the claim and asked for an Ombudsman's decision. It said Mr M had not provided evidence of the building work at C's store so it couldn't be sure the money was withdrawn in connection with that activity. It also said the intention of the special term was the bag was always carried by/in the full control of, a person at all times. It said Mr M putting the bag down and then it being stolen does not maintain that requirement and means it wasn't always under his supervision.

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 agree with the conclusions reached by the Investigator for the following reasons:

Money

The policy term does provide cover for lost money that is *'usual to the conduct of the Assured's business, the property of the Assured or in trust or on commission'*.

Mr M has said that he uses both his personal and business account to manage the cash flow of the business. This isn't wholly unusual for small business owners, so I don't see any reason to doubt Mr M's testimony here. He says the money was withdrawn to pay builder's working at C's store. I assume therefore he can provide evidence of this to Aviva. And, if that is the case, I think the loss of the money should be covered as it can be classed as being business spending which would meet the policy criteria.

On receipt of evidence of the building work the money was withdrawn to pay for, I think Aviva should reconsider this loss under the remaining policy terms and conditions.

Stock

The relevant term says:

"Baggage Clause (Jewellery)

This insurance excludes losses of Jewellery, Gold, Precious Stones, Pearls and Watches from baggage unless carried by hand under the personal supervision of the Insured, Partner, Principal or Employee".

Aviva has said the intention of the term is to mean the baggage should always be in someone's hand/on their person and one of the specified individuals must be actively watching over the baggage. However, I'm not persuaded that the wording of the policy is that clear. If that is what Aviva meant the term to say, then that is what it should have said.

I think the wording of the term is open to interpretation. The term is titled baggage and then it stipulates carried by hand. That could be interpreted to mean a bag or similar that is capable of being carried by hand - so a backpack rather than a large suitcase for example. I don't think it's clear enough to stipulate the baggage must always be in someone's hand or on their person.

I also think the wording "*under personal supervision of ...*" is also relatively vague – it could simply mean the stipulated individuals have to be around while the baggage is being carried by someone else. I don't think the wording can reasonably be interpreted to say the stipulated individual must be actively always watching the baggage.

Considering the circumstances of the theft of the stock was from a backpack which was under Mr M's care, I think this meets the criteria of the term as it is set out. I've considered Aviva's argument that the fact the backpack was next to Mr M when it was stolen and that he didn't notice it happening means he wasn't supervising it but again, I disagree such a literal assessment can be made here. The term refers to "personal supervision" by a stipulated person which alters the meaning of it – as it sets an additional criterion that for a claim to be successful, one of those individuals must be present rather than the baggage being carried by an unaccompanied, unrelated person to the business.

Aviva has said insurance can't consider what might have happened, so the fact the police apparently are of the opinion the bag would likely have been taken by force, had the opportunity to take it from the bench not arisen, isn't relevant here. While I agree with the principle, in this case it does suggest the theft more likely than not, would always have happened regardless of whether the bag was in Mr M's hand or on him. So, it likely would have been a loss Aviva would have needed to consider in any event.

Having reviewed all the evidence available to me, I think Aviva should reconsider the claim for theft of stock under the remaining policy terms and conditions.

Costs associated with lost keys and lost income

Having reviewed the policy, I'm satisfied no cover is in place for these losses. So, I'm satisfied Aviva has correctly declined to consider these.

Other stolen items

I'm satisfied having reviewed the policy there is a policy excess of £250 and these items on their own would have fallen below that limit. However, given I am now directing Aviva should reconsider aspects of the claim it should also reconsider whether it now needs to pay for these items in line with the remaining terms and conditions of the policy including the conditions set out in the Excess and Deductibles endorsement.

Having reviewed everything, I uphold C's complaint against Aviva, I don't think it acted fairly or reasonably when it declined its claim.

Putting things right

Aviva should reconsider the claim in line with the remaining terms and conditions of the policy. If it goes on to accept the claim and make payment to C, it should add 8% simple interest per year calculated from the date it originally declined the claim to the date it makes payment to C.

My final decision

My final decision is that I uphold C's complaint against Aviva Insurance Limited. I direct it to put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 21 October 2025.

Alison Gore
Ombudsman