

The complaint

N, a company represented by its directors, has complained about its vehicle insurer Aviva Insurance Limited regarding how it handled a claim made when the vehicle was hit by another car, resulting in N's vehicle being declared a total loss.

What happened

N's vehicle was damaged in an accident in June 2024. N claimed from Aviva and the vehicle was found to be a total loss. Aviva initially offered N a replacement new vehicle. But then it realised N's vehicle was leased, such that N would never be its owner. So Aviva decided to settle, with the leaseholder, for the market value for the vehicle. Aviva said that the market value it would pay would not include VAT. The settlement figure from the leaseholder given to Aviva was £36,423.94 and Aviva said its market value settlement would be £33,333.33, from which it would deduct the £250 policy excess. So, in December 2024, it paid the leaseholder £33,083.33. Leaving a shortfall of £3,340.

The leaseholder, given the shortfall, didn't view the agreement as settled and N continued making monthly payments, as it had since the accident, until the leaseholder said the contract was settled in June 2025.

N, in February 2025, had secured another vehicle for its use, although it was not a similar vehicle to the insured one. N had first sought to get a replacement vehicle in around September 2024, but delays with its manufacture resulted in N changing its order to ensure that, from February 2025, it had a car.

Around the time N first began trying to source another vehicle, it also complained to Aviva over its market value figure. N wasn't persuaded the figure was correct but N was most concerned that the figure did not include VAT. N was also unhappy that Aviva had changed its mind on the new car replacement – N said it had cars lined up which the leaseholder would have been prepared to transfer N's agreement to. N said it had incurred transport costs as a result and lost business as its reputation was affected by not having a prestige vehicle (an impact which N later explained to our Investigator continued even after February because the replacement vehicle was not like the insured one).

Aviva issued its final response on N's complaint in October 2024 (before it paid the settlement to the leaseholder). It said the new car replacement was not available for N and there was no reason to adjust the market value settlement upwards from £33,333.33. It did not address the VAT issue. It accepted it had caused delays and said it would pay £600 compensation – later offering an increase to £750. N complained to the Financial Ombudsman Service.

Our Investigator was satisfied Aviva's decision that the new car replacement couldn't be offered was fair – but he thought that decision should have been made much earlier. He didn't think Aviva's market value settlement had been fairly made. He felt both of these failures by Aviva had led to delays in the claim and N incurring costs. Noting the finance agreement had been settled, he said Aviva should reimburse the payments N had made to

the leaseholder between September 2024 and June 2025, plus interest and pay the compensation sum previously offered of £750. He wasn't minded to award any travel costs.

Also noted by the Investigator was that N had paid a deposit (£3,020.48 net of the first monthly lease payment) as part of the lease agreement. With the loss of the car subject of the lease meaning N hadn't been fully able to benefit from the deposit paid. Our Investigator noted that whilst this hadn't formed part of N's complaint it was something we would expect an insurer to deal with as a part of a claim like this. He said Aviva should provide a pro-rata refund to N, explaining what he meant by that.

N acknowledged a fair outcome had been put forward.

Aviva said it disagreed with our Investigator regarding the market value needing to include VAT. It said N never owned or could own the vehicle and so can never claim VAT regarding its value (with the actual owner, the leaseholder, being VAT exempt). Aviva said the policy doesn't offer cover for VAT but does say the policyholder will be responsible for any shortfall in a market value settlement. N, Aviva said, could have taken out GAP insurance (to cover any shortfall) but didn't. It said the deposit was a contractual and standard term of the lease, it is not a recoverable loss under the terms of the policy.

Our Investigator responded to Aviva. But as it was not prepared to accept the position set out by our Investigator, the complaint was referred for an Ombudsman's 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 find my view is the same as that expressed by our Investigator. I've set out my findings below. The parties may note that they are brief. This is in line with the informal nature of our Service which allows me to concentrate on the points key to my outcome on the complaint.

New vehicle replacement

I know N thought it was entitled to this. And Aviva did initially look to settle the claim on this basis. But, for settlement to progress in this respect, the policy does require the policyholder to be the owner of the vehicle. And N was not the vehicle's owner, that was the leaseholder. Aviva should have realised from the outset that N wasn't entitled to this type of settlement. Because Aviva did not realise that, delays to the claim occurred and N was caused inconvenience looking for replacements. Aviva offered compensation to reflect the inconvenience caused and I think that was a reasonable approach by it. It wouldn't be reasonable, in my view, to say Aviva had to honour the settlement type.

VAT

Aviva is aware of this Service's position on VAT. Here the car's owner is VAT registered, but N, as Aviva's policyholder is not. To be clear, this Service's position does not require Aviva to pay VAT as such – certainly I am not suggesting Aviva should pay beyond the settlement value put forward by the finance company – and that figure was exclusive of VAT. Aviva's total loss settlement figure for the claim though was unfair because of how Aviva treated VAT as part of the market value figure it determined.

Aviva, in its policy wording has not chosen to set out anything regarding VAT in its definition of market value. It hasn't – in respect of a car's market value – chosen to treat N, which is

not VAT registered, which has sought cover for a leasehold car, any differently to its other customers who own their cars (and are not VAT registered). If Aviva had wanted to not pay VAT as part of a market value settlement for a leasehold car, its policy would have needed to clearly reflect that intent. And it does not. So Aviva's market value settlement should not have been paid net of VAT.

Market value

I've said above the settlement for market value should have included the VAT sum. Aviva has also noted within its claim file that there was absolutely no basis for its original market value, or at least no reasoning or evidence which might explain or support such a value when it was initially generated. Aviva will be aware that this Service would be unlikely to view such a settlement as having been fairly made. However – the issue for N has really always been that the market value didn't include VAT. From the figures concerned, if Aviva had added VAT to that original valuation, that would have allowed it to settle the leasehold sum in full, there'd have been no shortfall and N would have had no cause for complaint about the settlement. The shortfall N was left with here came about because of the VAT issue, and the shortfall meant N had to keep paying monthly payments to the leaseholder.

Deposit

Aviva is likely also aware that this Service usually finds it appropriate to require the insurer to refund, on a pro-rata basis the deposit paid for the lease. The deposit is paid in the expectation of having the car for a set period. The higher the deposit paid, the less the monthly payments are likely to be. This in turn lowers Aviva's liability – there's less outstanding finance. So, when a claim stops that from happening, we tend to think the 'unused' part of such an outlay should be settled as part of the claim as a matter of fairness. In this case, N paid £3,624.58 (not including the first monthly payment) and had use of the car for only six months of the 36 month agreement. So applying those figures roughly gives a pro-rata settlement figure for Aviva to pay for 30 months of lost use as £3,020.48.

Further monthly payments by N

N had to continue making payments to the leaseholder because Aviva did not pay a fair market value settlement for the claim (because its valuation was net of VAT). But for Aviva's failure in the market value settlement, N wouldn't have had to make these payments. So it seems reasonable to me to require Aviva to reimburse N's outlay.

That may well mean that Aviva will ultimately, if these payments by N are added to the market value paid, mean Aviva will have paid in excess of the finance settlement figure. But that does not mean I am saying, after all, that Aviva is liable for VAT beyond the finance settlement sum. Rather I am saying that if Aviva had settled fairly, including in a reasonably timely manner, N wouldn't have incurred these costs. So they were incurred as a consequential loss of its failures.

I've thought then about when Aviva should reasonably have settled with the finance company – noting above Aviva caused delays. The vehicle was deemed a total loss in June 2024 – so I can see no reason why the claim, if handled properly should have been on-going into September 2024. I think Aviva should reimburse any payments N made to the leasehold company for this insured car, starting in September 2024 until N settled the agreement in summer 2025. Interest should be added to each sum N paid the leaseholder.

Extra costs

N had use of a hire car until around the end of August 2024. I've said above that it's around this time the claim should have been settled by Aviva but wasn't. So it might seem like Aviva should reasonably cover N's extra costs from this point onwards. However, around this same time N had sought to mitigate the effects of the on-going situation by arranging a lease on another car. The only reason N then remained without a car was because the car it had selected for lease had to be manufactured. When delays with that car occurred, in February 2025, N arranged to lease a different car, one which was already made.

As of September 2024 N knew the claim was on-going and unresolved. N knew it needed to have a car to get around. N chose to mitigate that situation by leasing a car which was not made – and later rectified that same situation by leasing a car which was made and available for it to lease pretty much straightaway. I'm not persuaded, having reviewed what happened and the choices N made, that it's fair to blame Aviva for N's extra costs incurred for transport in the intervening months.

Compensation

Aviva has offered a total compensation payment of £750. Compensation of this sum is in line with our guidance for payments where there's been considerable inconvenience and disruption that needs a lot of extra effort to sort out. I'm satisfied that is a fair sum in the circumstances here and reflective of the inconvenience caused.

I'm aware that N feels its reputation has suffered because it hasn't had a prestige car. Whilst I can see why N thinks that is the case, I'm aware N has no real proof of that. There are many reasons in business why deals may fail or potential leads may not come to fruition. I'm simply not persuaded I can reasonably tie Aviva's failings to N's reported lost business.

Putting things right

I require Aviva to:

- Pay N £3,020.48 as a pro-rata refund of the deposit.
- Reimburse N's payments for the insured car made to the finance company, starting in September 2024 and until the agreement was settled in summer 2025. Subject to N providing evidence of payments. To each monthly sum being reimbursed, add interest*, applied from the date N paid the sum to the date of reimbursement.
- Pay N £750 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Aviva to take off tax from this interest. If asked, it must give N a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Aviva Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 7 November 2025.

Fiona Robinson
Ombudsman

