

## The complaint

Mr E and Mrs E have complained that Aviva Insurance Limited declined a claim for a watch made under a household insurance policy.

## What happened

Mrs E made a claim following the theft of a watch in June 2024 belonging to her granddaughter, Ms R. The watch was bought by Mr E Jr, Mrs E's son, who lives at a different address. It was specified as high value on Mr E and Mrs E's policy. Aviva declined the claim – it said that it believed that the watch was owned by Mr E Jr.

Unhappy Mr E and Mrs E brought the claim here. They are represented.

Our investigator didn't recommend that the complaint be upheld. She didn't find that Aviva had unfairly declined the claim. Mr E and Mrs E's representative appealed on their behalf and requested that the matter be considered afresh by an ombudsman.

I issued a provisional decision saying as follows:

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

*I'd like to reassure Mr E and Mrs E and their representative that whilst I've summarised the background to this complaint, I've carefully considered all the submissions the parties have made. In this decision though I've focused on what I find is the key issue here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts.*

*The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the contract terms; regulatory rules; good industry practice; and the available evidence, to decide whether I think Aviva treated Mr E and Mrs E fairly. Having done so, and although I recognise that they will be disappointed by my provisional decision, I don't find that Aviva treated them unfairly by declining the claim when it did. I will explain why.*

*Firstly I should say that in this decision I am considering Aviva's final response to the claim. This was dated 2 August 2024. For completeness I would add that there has been further evidence and representations submitted by both parties which post-date the final response. This includes a Statement of Truth dated January 2025. If parties consent, this Service will sometimes consider evidence post a final response in order that the matter can be progressed. I note here that Mrs E's representative has specifically objected to that approach and considers that relying on later evidence and submissions was unfair to Mrs E. I appreciate the points they make and for the purposes of this decision, as indicated, I'm considering the reason for the claim decline as set out in the final response of 2 August 2024.*

*In that response Aviva noted that the watch claimed for was purchased in November 2022*

by Mr E Jr – Mr and Mrs E's son. Mr E Jr had tried to add the men's watch, worth £37,700, to his own insurance policy, but Aviva declined this request as adding the watch would have meant that the risk it was prepared to take with regards to policy limits was exceeded. Some days later the watch was added to Mrs E's policy. The evidence before me is that Mr E Jr had gifted the watch to his daughter, Ms R who lived with Mrs E.

Unfortunately, the watch was stolen from Mr E Jr's house. Mr E Jr was away at the time, but Ms R's testimony is that she had gone to the house to use the gym and left the watch in the safe. The accounts of Mr E Jr and Miss R differ, but not significantly in my opinion.

That said, in order for claims to be settled the policy requires proof of ownership. Aviva didn't find that the evidence of ownership submitted at the time of its final response was sufficient. Although at that time Aviva had been provided with one photo of Ms R wearing the watch, it had also seen an image of it on Mr E Jr's wrist when the watch was purchased by him. It is submitted that it was understandable for the watch to be insured under Mrs E's policy once it was gifted, and that it was reasonable to try the watch on before purchase as the intention to gift it at that stage hadn't been fully formed.

It is not for this Service to make a claims decision; rather I must consider whether Aviva treated Mr E and Mrs E unfairly in its assessment of the claim. In all the circumstances, given the background to the claim, I don't find it did. Mrs E's representative argues that Aviva was wrong to repudiate the claim because there was no compelling evidence of dishonesty. But Aviva's repudiation was because it wasn't satisfied on the evidence regarding ownership of the watch. Given the evidence available to Aviva when it made its final response, including the purchase history and the attempt to add the watch to another policy, I don't find that conclusion was unfair.

For completeness I note that in the final response Aviva commented on the call that had been made to Mrs E, with Mr E Jr present on 12 July 2024. In the response to the investigator's view, the representative writes Aviva appears to use the phone call simply to antagonise the consumer and that it is confrontational. Having listened to the call I don't agree. The adviser set out the position clearly. He said that Aviva didn't dispute that a burglary had taken place but explained why Aviva wasn't able to alleviate the concerns it had regarding ownership of the watch. I don't agree that the adviser was unsympathetic or uncaring – he simply explained the position regarding the claim.

Finally the representative has said there were data breaches by Aviva in its assessment of the claim. It is the Information Commissioner's Office that regulates data protection laws in the UK. However I am considering the fairness of Aviva actions here – and I don't find that when considering this claim and a linked claim concerning the same burglary Aviva was obliged to consider the matters in isolation.

It follows that in the circumstances I don't find that Aviva treated Mr E and Mrs E unfairly, unreasonably or contrary to regulation by declining the claim when it did. I am sorry that this doesn't bring them welcome news.

I invited the parties to provide any further comments or evidence for me to consider but said that unless the information changed my mind, my final decision was likely to be along the lines of my provisional decision.

Mr E and Mrs E's representative responded. In summary they made the following points, which they felt that taken together materially affected the fairness of the provisional outcome:

- The wrong test has been applied: Insurer doubt versus fair investigation
- Aviva's evidential concerns were created by its own investigative failures

- Inconsistent application of scope and timing
- Failure to consider the owner's witness statement
- The phone call of 12 July 2024 compounded the procedural imbalance
- Ownership was assessed against an elevated evidential standard

### **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 thought carefully about the submissions made by Mr E and Mrs E's representative in response to my provisional decision. However I'm not persuaded to depart from the conclusion I reached there. I'll explain why.

The representative has said that the wrong test has been applied in reaching my provisional decision. They have said that the relevant question under ICOBS 8.1.1R, ICOBS 2.5.1R, and DISP 1.6.2R is not whether an insurer's doubt is understandable, but whether that doubt arose from a fair, reasonable and sufficiently thorough investigation. I don't agree with that interpretation of the rules.

ICOBS 8.1.1R provides that an insurer must:

- 1) *handle claims promptly and fairly;*
- 2) *provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;*
- 3) *not unreasonably reject a claim (including by terminating or avoiding a policy); and*
- 4) *settle claims promptly once settlement terms are agreed.*

I referred to the first and third parts of this rule in my provisional decision. I don't find that there were breaches of 1 or 3 for the reasons I gave. I note that it is suggested that the fact that the claim was repudiated promptly (approximately 16 days after notification) is deemed to be an investigative failure. I don't agree. Likewise, I'm not persuaded that Aviva had failed to provide reasonable guidance to Mr E and Mrs E. Importantly 8.1.1R doesn't override the basic proposition that it was for Mr E and Mrs E to show that they had a valid claim. The fourth limb isn't relevant here.

ICOBS 2.5.1R provides (as far as relevant) that:

*A firm must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a customer or other policyholder unless it is reasonable for it to do so and the duty or liability arises other than under the regulatory system.*

Again, I don't find that there was a breach of this rule by Aviva. I find its actions in respect of the claim were reasonable in the circumstances.

DISP 1.6.2R sets out the requirements for a final response. The final response was provided in accordance with this rule.

It is not for this Service to tell an insurer how a claim should be investigated but I don't accept that Aviva's evidential concerns were created by its own investigative failures.

Having considered all the representations and the insurer's file I'm satisfied that it declined the claim fairly and reached a fair and reasonable conclusion on the evidence presented up to the time it wrote its final response.

Mr E and Mrs E's representative now complains that this Service declined to consider the witness statement provided by the owner of the watch. Our investigator had considered evidence post Aviva's final response – but the representative claimed this was unfair. Accordingly I considered only evidence presented before the final response. However I found that Aviva was entitled to take into account the policy's history and a linked claim. The representative submits that this asymmetrical application of scope materially affects the fairness of the assessment. I don't agree – these matters were materially relevant and didn't only come to light post the final response.

The representative has made further comments regarding the phone call on 12 July 2024. I won't repeat the findings I made in my provisional decision in relation to this call. It is also now suggested that the 'procedural imbalance' is compounded in the call. In particular because the call handler relied on the premise that the watch was worn every day. I acknowledge he made this comment on three occasions. But if the handler's genuine understanding was incorrect, it isn't unreasonable to suppose that Mr E Jr would have said so and explained what he felt was the true position. It follows I don't agree with the submission made here.

As mentioned, it is for the claimant to prove their claim, the evidential standard to be applied is the balance of probabilities – more likely than not. I have not found, or sanctioned, any departure from this standard. Nor is there any evidence to suggest that in assessing the claim Aviva assessed ownership of the watch at a higher standard.

I am sorry that my decision doesn't bring Mr E and Mrs E the news that they hoped for, but I don't uphold this complaint for the reasons given in my provisional decision (and adopted here) and above.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 12 March 2026.

Lindsey Woloski  
**Ombudsman**