

## The complaint

A limited company, which I will refer to as M, complains about the handling and settlement of its motor insurance claim by Aviva Insurance Limited.

## What happened

The following is intended only as a brief summary of events. Additionally, although other parties have been involved in the communications etc. in relation to this claim and complaint, for the sake of simplicity I have just referred to M and Aviva.

M operates in what I will refer to as the construction industry and ran a fleet of vehicles to support this. M held a Minifleet policy underwritten by Aviva. In February 2023, one of M's vehicles suffered damage as a result of a large fire. M claimed under the policy with Aviva, and Aviva agreed to meet the claim. The damage to the vehicle was so severe that it was considered a total loss.

M's policy says that where a vehicle is a total loss, the most that Aviva will pay is the "market value" at the time of loss. However, the policy also contains a term relating to financed vehicles, and says claim settlements will be paid to the actual owner of the vehicle and:

"Where your vehicle is not or cannot be owned by you under the agreement (contract hire and some leasing arrangements) we will pay its asset value to the true owner."

The vehicle was leased from a third-party lease company, which I will refer to as L. So, as L was the actual owner of the vehicle, Aviva based its settlement on its value to L. Aviva has said that as L would not have paid VAT on the vehicle, it has deducted VAT from the market value before making the settlement. M is unhappy with this, as it is required to pay off the remainder of the lease agreement that has not been settled by the insurance claim. M also has some other concerns with the claim handling.

I will add here that there are some added complications, as the market value of this particular vehicle likely reduced significantly between the lease being entered and the damage occurring. This has meant much of the argument has been around what the appropriate market value is, rather than how the claim has been settled with L.

Aviva offered M £100 in relation to claim handling issues, but did not alter its position on the settlement. So, M brought its complaint to the Ombudsman Service. Our Investigator said that, whilst market value was defined by the policy, asset value was not. And that it was not reasonable to deduct VAT in these circumstances.

Aviva did not agree. It said that the asset value to L was the market value of the vehicle less VAT. And that, if the claim is settled to include VAT, this would put L in a beneficial position. Aviva said that the "written down value" of the vehicle, and the requirements of the lease agreement should not alter what the appropriate settlement of the claim is.

As our Investigator was unable to resolve the complaint, it has been passed to me for a 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 have come to the same outcome as our Investigator, largely for the same reasons.

One of the issues here is that when M entered the lease agreement with L, the value of the vehicle was likely a lot higher than it was at the time of the claim. This is the result of a change in the market in relation to this particular brand of vehicle.

Looking at a number of industry trade guides and other information that has been provided, I consider a fair and reasonable figure for the market value of the vehicle at the time of loss, including VAT, would be £39,349. Aviva has based its settlement on a figure of £38,940. However, it isn't entirely clear how it reached this figure. It has provided evidence from one industry trade guide, but none of the figures quite match. And it has also provided some evidence of advertised vehicles, again providing figures above and below this amount. No real explanation has been provided though of how the figure it has used has actually been reached. Ultimately, I am persuaded that the market value of the vehicle ought to be fairly and reasonably considered to be £39,349. The real question is whether Aviva ought to be responsible for paying all of this.

Whilst the lease agreement didn't include any provision for M to actually become the owner of the vehicle at the end of the term, the cost of the lease was likely in part based on the higher, earlier value. So, it is quite possible this change in value would mean that there would be a difference in what a claim would be settled at and what might be payable on early termination of the lease. Ultimately though, what is payable under the lease does not determine what Aviva needs to pay in terms of settling the claim.

What Aviva does need to pay is the "asset value". However, asset value is not defined within the policy. So, it is necessary to consider what this would be interpreted to mean by a reasonable person with all the background knowledge at the time the policy was entered.

Aviva seems to consider the asset value is the amount of money it would cost L to replace the vehicle. If this is true, this would arguably not include an amount for VAT. If L is VAT registered, it does not need to pay VAT on the goods it purchases for its business – so is unlikely to need to pay VAT on replacing the vehicle that has been lost.

However, given the lack of this term being defined within the policy, I am not convinced applying the meaning Aviva has used is fair and reasonable. Arguably, the value of the asset to L is the amount of money that the asset can generate. This would be the total income from all leases possible using the vehicle, or at least the total amount payable under the lease agreement M has.

In the absence of a definition of this term in the policy wording, and given the possibility of different interpretations of this term, I consider the fair and reasonable interpretation is that "asset value" has the same meaning as "market value".

Given that both terms are used within the policy, I recognise that it is likely that they are intended to have different meanings. And I accept that a court might interpret this contract differently. But in thinking about this complaint, I need to take account of all the circumstances, not just what a court might likely conclude. The policy was retail, rather than trade based. So, I consider it fair and reasonable that M should be able to claim the market value of the vehicle, including VAT.

I also do appreciate that this means L might be receiving more for this vehicle than it would have if it were the policyholder. But L is not the policyholder, M is. And I need to consider if Aviva's position is fair and reasonable in respect of Aviva and M, rather than on L. I should also add that, in the round, L will not benefit. The settlement it receives from Aviva, will proportionately reduce the amount it will receive from M in relation to paying off the lease agreement. The point is more who should be fairly responsible for paying this sum, M or Aviva. M is insured under the policy and, even though the vehicle is owned by L, in the circumstances of this particular complaint, I consider it is fair and reasonable that M be able to claim up to the market value of the vehicle.

Aviva may not need to pay all of this to settle the claim, depending on the cost of M terminating the agreement with L. I do not consider Aviva ought to pay more than this cost.

M has also raised some points around the handling of the claim. Aviva offered £100 to reflect this. However, given I consider that the settlement of the claim was not fair and reasonable, this caused additional issues not covered by this £100. So, I agree with our Investigator that this should be increased to £200 to reflect the inconvenience caused. I am unable to take into account any distress caused to any director of M, as the complainant in this case is the limited company – which cannot suffer distress in its own right.

### **Putting things right**

Aviva Insurance Limited should put things right by settling this claim on the basis that the market value of the vehicle was £39,349. If L has required less than this to terminate the lease agreement, Aviva should pay this lower amount. Aviva should also pay M £200 to reflect the inconvenience caused by its claim handling.

### **My final decision**

My final decision is that I uphold this complaint. Aviva Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 12 September 2024.

Sam Thomas  
**Ombudsman**