

## The complaint

Ms W complains about how Aviva Insurance Limited (“Aviva”) handled a claim following the theft and recovery of her car. When I mention Aviva I also mean its suppliers and repairers.

## What happened

Ms W had a motor insurance policy with Aviva covering her car.

Her car was stolen and recovered about six weeks later.

She reported the theft to Aviva and made a claim.

It emerged that her car had been used and modified by the thieves during this time.

Aviva initially said it would repair her car. There were problems and delays arranging this with Aviva’s approved repairer and the car needed to be inspected by a main dealer.

Aviva said Ms W could receive the market value of the car, £22,250, or she could keep the salvage and it would pay her £15,575. Both subject to deduction of her excess.

Ms W chose to keep her car. Aviva then realised it’d made a mistake. It changed its offer and said she could keep the car and receive £6,675 instead.

Aviva caused Ms W confusion about the nature of the repairers it’d used.

Ms W made four complaints as she wanted Aviva to settle her claim at its original value. She also complained about Aviva breaching a code of settling claim insurers follow; that it delayed her claim and gave her poor service; she wasn’t paid for items lost in the theft and she had extra costs to pay due to the car being impounded.

Aviva said it would pay Ms W a total of £700 compensation for its poor service and misinformation it’d given her.

She brought her complaint to this service. Our investigator looked into it and thought it would be upheld in part. He said Aviva should pay Ms W the £6,675 plus interest at 8% simple from July 2023. He also thought an extra £75 compensation should be paid for Ms W’s loss of expectation, on top of the £700 Aviva had already offered for her distress and inconvenience and the incorrect information it’d given her.

He also mentioned Aviva have also offered to pay for the £150 for Ms W’s personal belongings, and £230 for her storage costs, both plus 8% simple interest.

Ms W had also said the theft claim had been mistakenly recorded twice, which had been raised with Aviva after its final response. But in the view, our investigator said he thought this should be corrected.

Aviva responded and said it was waiting for Ms W to accept both the personal belongings and storage charge fees so it could pay them. It agreed to pay interest on these. It also said

it would settle Ms W's complaint in accordance with the view, although it didn't agree with some of the dates interest was applied from.

Ms W didn't agree with the view. She asked that the interest should be applied from February to the date payment is made, as this was when she was told her claim would be settled from renewal.

But she also asks that Aviva settles her claim in the terms it originally agreed.

Because Ms W didn't agree, her complaint has been passed to me to make a final 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.

I'd like to begin by noting I've set out the background above in less detail than the evidence in the file. I want to assure Ms W that I've considered all the available information, including her responses and further points she's made to this service.

I'm not going to comment on every point made and raised. No discourtesy is intended by my approach which reflects the informal nature of this service as an alternative to the courts.

It's also important I say that this service isn't a regulator. We don't have the power to require a business to change its procedures and processes. But what I'm able to consider is whether Aviva has acted fairly and reasonably, and in line with its policy wordings, in how it's handled Ms W's claim.

In later correspondence with this service Ms W has raised points about Aviva deliberately sabotaging and being dishonest towards her desire to have her car assessed and repaired. I can't see that she's complained to Aviva about these, or that it's provided her with its final response, so I'm not able to consider those further points here.

That said, I agree with the view about the two separate claims on Ms W's records needing to be corrected. I can't include that in the 'My final decision' section but I'd ask that Aviva corrects this quickly, if it hasn't already. If Ms W is unhappy with how Aviva does this, then she's free to bring a further complaint to it.

Ms W has mentioned taking legal advice during her claim and complaint. If she disagrees with my decision then she can pursue action through the courts, which is her right. She should seek legal advice if she wishes to follow this course.

I've considered the various parts of Ms W's complaint and for ease I'll deal with them in turn:

#### ***The car***

I can see from the file that Aviva's engineers have significant concerns about the damage to Ms W's car. There's the matter of the visible 'bodywork' type damage to it, and evidence has been included in the file giving an idea of the likely cost of repairs. But as Ms W's car was with the thieves for an extended period, during which time it appears it was heavily used and modified, it seems to me that Aviva's concern is that underlying damage may have also been caused to the engine and transmission.

Aviva said it wasn't willing to repair the car due to this potential damage, which is why it offered Ms W the option of paying the market value at the time of loss. The ability to pay a

cash value in lieu is an option in Aviva's policy wording and I think its use is fair.

I can also see Aviva's policy wording says:

*"Claims procedures*

*Our rights*

*We shall have full discretion in the conduct of any proceedings or the settlement of any claim."*

This type of wording is common in motor insurance and again I think its use is fair.

What this means is that Aviva is entitled under the terms of the policy to settle Ms W's claim as it wishes.

Ms W has said she'd always wanted to retain her car and wanted it repaired. Aviva gave her the choice of receiving its market value, or the salvage plus a cash settlement. From the information I have, these options remain open to her. I know Ms W doesn't agree with the salvage plus cash settlement amount, and I'll deal with that later.

Taking into account the above condition from the policy wording, I think Aviva's offers are fair and give Ms W an option of choosing how the claim is settled.

I think giving her this choice was fair and reasonable of Aviva. So I'm not going to require Aviva to follow a particular path in how it settles Ms W's claim and I think it's Ms W choice about how she proceeds with her claim.

### **Settlement of the car's value**

I've looked carefully at the mistake made by Aviva during Ms W's claims process. And I can understand how frustrating it must have been for her to be told she could keep her car and receive a substantial amount from Aviva towards its repair, then to be told the figures were an error.

When Aviva realised its mistake, it backtracked. Ms W researched the value of her car and has provided figures from well-known websites based on its registration number and condition. The figures she's obtained seem to align with the original offer from Aviva of the salvage being around £6,000 in value. I can also see mention on the internet of salvage values being typically around 30% of a vehicle's pre-loss market value.

Aviva's engineers have commented on this point more than once in the file. The make and model of Ms W's car means that the salvage value, if it was handled by Aviva, would not align with Ms W's research. What Aviva has said is that it would expect Ms W's car to achieve about 70% of its pre-loss value if it were disposed of by it.

While this is a significant uplift on the values obtained by Ms W, I can see it repeated in Aviva's evidence by its engineers and I must give due weight to its findings.

Although the original valuation was made in error, Aviva realised its mistake during the claim process. I don't think it's fair that Aviva has to stand by its mistake, even though I do appreciate its error was significant and has had a substantial impact on Ms W.

Because of this, I think it's fair Aviva pays Ms W compensation for its error and the disappointment she's then faced. I'll deal with that later in this decision.

It's important I say that by not upholding this point about the mistake Aviva made, the impact on Ms W's claim is significant. I do understand Ms W has rejected the view and asked for her car to be returned to her, and the full £15,575 payment on top. But by saying I don't think Aviva needs to do this, what that means is its payment under the claim for her car to Ms W is limited to the £6,675 it should have offered her, in addition to the salvage.

Ms W has talked about having her car repaired, whether that's by Aviva or by herself. I've said above that Aviva made a fair decision that it wasn't going to repair her car as it has the choice of how to handle a claim under the terms of its policy wording.

If Ms W chooses to retain the car, she can opt to repair it herself. But as I say above, the amount Aviva needs to pay her to settle the claim I reasonably think is limited to £6,675 because that's the amount it should originally have told her it would pay.

Ms W may feel this decision is unfair, as the estimate for the bodywork repairs was in excess of this amount, but as I have said I don't think it's fair Aviva is held to the mistake it's made, then it follows that it's fair for the claim to be limited in size to the amount it should have said, which is £6,675.

Ms W may be able to source more cost effective repairers if she still wishes to retain and repair her car and that is her choice.

In the view, our investigator said he thought Aviva should pay interest at 8% simple on the settlement amount from July 2023. Ms W disagreed with this as she said she was promised by Aviva that her claim would be settled by her renewal on 10 February 2023. Aviva also said it didn't agree with the July date as Ms W hadn't provided it with her bank details in August, so it had tried to settle her claim but couldn't make payment. Aviva then agreed to pay interest from July to settle the case.

I've thought about this carefully. I can see Ms W talks about Aviva telling her that interest would be applied from early January on its settlement, but I can also see that when Aviva tried to settle the claim in early August, it said Ms W hadn't supplied her bank details for it to make payment.

The situation remains that Aviva have told Ms W how interest would be applied, but Ms W in turn hasn't allowed Aviva to actually make payment.

Taking everything into account, on balance I think the date of 12 July originally mentioned by our investigator is a fair outcome for both parties, and that is when I'd expect the 8% simple interest on the settlement amount for the car to run from, until the date payment is made.

### ***Code of practice***

Part of Ms W's complaint relates to her saying that Aviva breached a code of practice set by the Association of British Insurers, of which Aviva is a member.

The key question in this code relating to Ms W's claim is this: *"Is the damage sufficiently severe to warrant settlement on a total loss, constructive total loss or vehicle replacement basis in accordance with the code?"*

What I'm able to say is that Aviva did offer Ms W to settle her claim by it retaining her car – in other words, by settling her claim in full for its market value. The reason it did this was because it suspected her car may have further damage hidden at the time of recovery due to the nature of the use it as put through by the thieves who took it.

So, her car wasn't ostensibly damaged enough to write it off, but there was an option for Ms W to effectively receive full payment. But as the damage wasn't enough, I don't reasonably think the ABI code applies in this case and I'm not able to uphold this part of Ms W's complaint.

### **Claims service**

It's my understanding that Aviva has accepted Ms W's claim for her personal belongings and the storage costs she's had to pay, plus interest at 8% simple.

Aviva has already said that it gave Ms W poor service during her claim.

This includes the error on the claims settlement amount it made, but also there are gaps in its communications with her. I can also see Ms W struggled with Aviva's approved repairer and it failed to communicate with her effectively about these.

Throughout her claim I can see Ms W has been given incorrect and contradictory information and I can see that's caused her substantial distress. Aviva also failed to respond quickly, or at all, to several of Ms W's queries.

Aviva has already offered Ms W £600 for this, plus a further £100 for misinformation. Our investigator also said he thought it should pay an additional £75 for Ms W's loss of expectation, and add interest at 8% simple.

I've thought carefully about the total amount of compensation it's offered her and compared it with this service's guidelines. I think Aviva's offer is fair and reasonable and I'm not going to ask it to pay more.

### **My final decision**

It's my final decision that I uphold this complaint. I direct Aviva Insurance Limited to:

- Pay Ms W a total of £775 compensation for her distress, inconvenience, loss of expectation and misinformation it gave her during the claim. If amounts have already been paid towards this, then they can be deducted. Interest at 8% simple should be added from the date this compensation was offered to the date this payment is made.
- Settle Ms W's claim at her choice by paying her the market value or the amount shown in this decision above, subject to the remaining terms and conditions of the policy wording. Interest at 8% simple should be added to the settlement amount from 12 July 2023 to the date payment is made.

Aviva Insurance Limited must pay the amount within 28 days of the date on which we tell it Ms W accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

If Aviva Insurance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Ms W how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 13 August 2024.

Richard Sowden

**Ombudsman**