

The complaint

Mr W and Mrs W have complained about the settlement Aviva Insurance Limited (Aviva) offered them following a claim under a home insurance policy.

What happened

Mr W and Mrs W made a claim for a pendant and chain that went missing in their home. Aviva accepted the claim and said its jewellery service could make the pendant and chain and that it would cost it £12,250 to do so. Mr W and Mrs W weren't satisfied that the replacement item would be suitable, including because of the great sentimental value of the lost pendant and chain. So, Aviva said it could make a cash settlement of £8,375.

Mr W and Mrs W complained. They thought it was unfair for Aviva to reduce the amount of the cash settlement when they didn't think the replacement Aviva could offer would be suitable. When Aviva replied, it didn't uphold the complaint. It said its jewellery service had confirmed it could make the pendant and chain. The policy terms and conditions explained how it settled claims. This included that a replacement would be on a like for like basis. Where it offered a replacement, if it offered a cash settlement, this would only be for the amount it would cost it to replace the item. It said Mr W and Mrs W could have as much input as they wished into remaking the item.

Mr W and Mrs W weren't satisfied with Aviva's response. So, they complained to this Service. Our Investigator upheld the complaint. He said it was unfair for Aviva to insist on replacing an item that had so much sentimental value. He said Aviva couldn't offer a replacement that would have the same sentimental value. He also said the discount applied to the cash settlement wouldn't indemnify Mr W and Mrs W and that it should offer a cash settlement of £12,250 to enable them to find a reasonable match and pay interest on that amount.

Aviva didn't agree that it needed to increase the cash settlement. It said it could replace the pendant and chain and it wasn't possible to factor in sentimental value. It said it needed to adhere to the policy terms and conditions and £8,375 was fair as a cash settlement. So, the complaint was referred to me.

I issued my provisional decision on 23 August 2024. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

The policy terms and conditions said:

"We can choose to settle your claim by

- replacing;*
- reinstating;*
- repairing;*
- payment.*

Replacement will be on a like for like basis or based on the nearest equivalent in the current market. If we can repair or replace property but agree to make a cash or voucher settlement we will only pay you what it would cost us to repair or replace it.”

So, the policy said that Aviva would decide how to settle the claim, which is a common policy term.

For this claim, Aviva said it could make the pendant and chain and that Mr W and Mrs W could have as much input as they wished into this. Mr W and Mrs W didn't want Aviva to make the pendant and chain because of its great sentimental value. Although I can understand Mr W and Mrs W's concern, I don't think it's generally possible to put a sentimental value on an item as part of settling a claim. So, I think, in principle, it was reasonable for Aviva to offer to make the item if it assessed it was able to provide an equivalent replacement.

However, I've seen the description of the item that Aviva's jeweller had said it could create. This seemed similar to the item Mr W and Mrs W had described as lost. But, Mr W and Mrs W had explained that the item was made from antique metal. This wasn't mentioned in the description, so I asked Aviva whether it would be made from antique metal. It didn't provide a response to this question. So, I'm not currently persuaded that Aviva would return Mr W and Mrs W to their pre-loss position. I don't think I can fairly say a more modern piece would be an equivalent of one made from antique metal.

I've also looked at the cash settlement offered. If Aviva can't offer Mr W and Mrs W an equivalent replacement then I don't think it's making a fair offer to replace the item. In which case, it wouldn't be fair for it to only pay the cost to itself of replacing the pendant and chain. I would expect it to pay the full cost without applying a discount to it.

However, I'm also not currently persuaded it is fair for it to apply a discount to the cash settlement offered anyway. When Aviva's jeweller told Aviva it could replace the item, it said "Our workshop confirmed we can manufacture a bespoke pendant ... for £12,250". When I asked Aviva about this, it described it as the "value" of the item. I'm aware there can be a difference, for example, between the retail value of an item and how much it costs to manufacture it. But, the jeweller doesn't refer to its "value", it says this is how much it would cost to "manufacture" it. So, £12,250 appears to be the amount it would cost the jeweller to create the pendant and chain.

Aviva has said that the cash settlement is discounted to £8,375, net of the excess, because of discounts it has in place with the jeweller. I'm aware it's common for insurers to have agreements in place with companies and contractors that mean they can obtain significant discounts. I asked Aviva how the discount was calculated for the pendant and chain, given £12,250 appeared to be the jeweller's cost to manufacture the item. Aviva said it obtained a discount with its jeweller and the cash settlement was what it would cost Aviva to replace the item. But I don't think this explains how it is able to discount the £12,250 manufacturing cost or shows it is in a way that is fair to Mr W and Mrs W for their specific claim.

As I don't think Aviva has shown why it is fair to apply a discount to the cash settlement offered to Mr W and Mrs W, I currently intend to say it needs to offer a cash settlement for the full amount to settle the claim. It should also add interest to this amount because Mr W and Mrs W lost use of the money.

I think Aviva's handling of the settlement overall has caused Mr W and Mrs W frustration and upset. This includes that Aviva initially provided incorrect information on the claim limit, as well as how it later proposed to settle the claim. I think Aviva should pay £100 compensation to reflect the impact on Mr W and Mrs W.

I asked both parties to send me any more information or evidence they wanted me to look at by 6 September 2024. Both parties replied before that date.

Aviva didn't agree with my decision. It provided screenshots of Mr W and Mrs W's jeweller's description of the item, along with some further details it had previously obtained by speaking to the jeweller. In summary, it also said:

- There was nothing within the documents that indicated the jeweller's acknowledgement or intention to remake using "antique" metal. Mr W and Mrs W also hadn't made Aviva or its jeweller aware of this.
- It was able to remake the pendant to the same specifications as detailed in the document and supported by the photos provided.
- It described the materials with which the pendant would be made and said the "*retail value*" would be £12,250. This was to supply a like for like item.
- Due to commercial agreements in place between Aviva and its supplier, the cost to it would be £8,575.
- The full replacement value was £12,250. However, the cash settlement would be limited to the cost to Aviva, which was £8,575.
- It described a conversation it had with Mr W and Mrs W about where the pendant was made and that a pair of earrings were used towards making the pendant. It had no further details about the earrings, including where they were acquired, their age or design. Dependent on this information, it was highly likely the jeweller had to add metal to the pendant to successfully complete the design. Even if the earrings were over 100 years old, it was presumed that the jeweller would have added additional metal to complete the piece.
- It said it hadn't been provided with any pre-loss substantiation detailing the hallmark but had based it on the metal, as assumed by Mr W and Mrs W's jeweller who saw and cleaned the final piece.
- Age would not affect the metal.
- There would be no impact on appearance, security or value of the item regardless of whether the metal was reused from existing items or not.
- The piece it could make would be a one-off and meet the same specification and design of the original.

Mr W and Mrs W agreed with my decision. They said they had nothing to add, but that they thought Aviva had been hoping that, as time was precious, Mr W and Mrs W would relent by accepting the lower offer.

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 uphold this complaint and for the reasons given in my provisional decision. As part of that, I've considered all the comments provided in response to my provisional decision, even if I don't comment on them here. I've focussed my comments on what I think is key to make a fair and reasonable decision.

When I made my provisional decision, I was aware of what the policy terms and conditions said. I had also read Mr W and Mrs W's jeweller's description of the piece and the notes of a conversation between Aviva and the jeweller. Aviva has now provided further details of the metal it would use and has said this would be appropriate to create a like for like piece and age wouldn't affect this. Even if all of this information is correct, I'm aware Mr W and Mrs W

don't want to accept a piece made by Aviva's jeweller, as they're concerned it won't have the same sentimental value. As I said in my provisional decision, I don't think it's generally possible to put a sentimental value on an item as part of settling a claim.

But, I'll focus on the basis of the cash settlement. Aviva has now said £12,250 is the retail value of the item. However, that wasn't what its jeweller said. Aviva hasn't explained why its jeweller said £12,250 was the cost to "*manufacture*" the item, not its retail value. Aviva also hasn't explained how it obtained its discount with its jeweller. All it has said is that it has a commercial agreement.

I'm not persuaded it would be fair or reasonable for me to ignore that the jeweller said it was providing the cost to manufacture the piece. I also don't think it would be reasonable for me to simply accept that Aviva could obtain a discount without being able to see this was applied fairly to Mr W and Mrs W's claim. Before I issued my provisional decision I asked Aviva about what its jeweller had said about the cost to "*manufacture*" the pendant and how it obtained the discount. I also commented on this in more detail in my provisional decision. So, Aviva has had the opportunity to provide evidence to show it wasn't the cost to manufacture the pendant. It has also had the opportunity to show how it could fairly apply a discount to the cash settlement for the claim. However, it hasn't done so.

Putting things right

As a result, I remain of the view that Aviva should pay £12,250 as a cash settlement and pay interest on that amount. I also remain of the view that it's fair for it to pay Mr W and Mrs W £100 compensation because of issues with how it dealt with the claim.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that this complaint is upheld. I require Aviva Insurance Limited to:

- Pay £12,250 for the pendant and chain to settle the claim, subject to any excess that needs to be applied.
- Pay 8% simple interest on this amount from 11 August 2023, which is around the date it seemed to decide the settlement figure, to the date on which the payment is made.
- Pay Mr W and Mrs W £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 1 October 2024.

Louise O'Sullivan
Ombudsman