

The complaint

Mr P is complaining on behalf of R – a limited company – about the way Aviva Insurance Limited has settled a claim R made on its commercial vehicle insurance policy.

Mr P and R have also been represented by R's broker for large parts of this complaint. But for ease of reference I shall refer to anything she's said as being said by Mr P.

What happened

In March 2022, Mr P was involved in an accident where one of R's commercial vehicles suffered significant damage. So Mr P looked to claim for the damage on R's commercial vehicle insurance policy. Aviva initially thought the vehicle may be repairable, but it said it needed an expert assessment due to the extent of the damage and the nature of the vehicle. However, the repair estimate wasn't received until July 2022. Following this, Aviva thought the vehicle was a total loss, so it said it would settle the claim by paying R the vehicle's market value, less the excess of £1,500. And in August 2022 it valued the vehicle at £155,000.

Mr P didn't agree with the valuation as he said he'd bought the vehicle for £185,000 and the value of vehicles had increased since then. And he said the dealership he'd bought the vehicle from said to replace the vehicle with a new one would cost £225,000. And the dealership also said to buy a similar second-hand vehicle would cost around £160,000-£165,000. So Mr P complained about the amount Aviva was offering to settle the claim. He had also complained about the length of time it had taken to offer the settlement. He set out that R had lost a significant amount of money as a result of the time the claim had taken.

Aviva didn't uphold Mr P's complaint. It said that the initial delay in settling the claim was down to the length of time it had taken the manufacturer to inspect the vehicle, which it said was out of its control. And it was satisfied £155,000 was a fair assessment of the vehicle's market value. Mr P didn't agree, so he referred his complaint to this Service.

I issued a provisional decision upholding this complaint and I said the following:

"I should first set out that I acknowledge I've summarised R's complaint in a lot less detail than Mr P has presented it. Mr P has raised a number of reasons about why he's unhappy with the way Aviva has handled this matter. I've not commented on each and every point he's raised. Instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure all parties, however, that I have read and considered everything they've provided."

I think there two core issues for me to decide here:

- 1. Has Aviva fairly valued R's vehicle; and*
- 2. Has Aviva caused any avoidable delays in issuing the settlement to R?*

I shall address each point separately.

Valuation

This service's role isn't to work out exactly what the value of an individual vehicle is. We look at whether the insurer has applied the terms of a policy correctly and valued the vehicle fairly. Under the terms of R's policy, Aviva has to pay R the market value of the vehicle, less the excess of £1,500.

Aviva's engineer has said that there weren't any examples of similar vehicles of the same age and mileage at the point of loss. So he valued the vehicle by considering other similar vehicles which were older than R's and adjusted the value accordingly. And he considered £155,000 to be fair. However, I don't think this was a fair process given that the dealership who sold R the vehicle, and who is a specialist in this type of vehicle, has said that a fair valuation would be between £160,000-£165,000.

Usually, insurers will use valuation guides to value a vehicle. But this wasn't possible in this case. So I would have expected Aviva to use other available evidence – such as expert opinions or similar adverts. By its own admission, there aren't any adverts available of similar vehicles of the same age and mileage. I think the only clear evidence that was available to value the vehicle is the valuation provided by the dealership. So I think Aviva should've used this. As a starting point, I would expect Aviva to offer the higher figure of any range in valuation unless there's good reason not to. Aviva hasn't given anything to show that using the highest figure in the valuation range is unfair. Given this, I think Aviva should've valued R's vehicle at £165,000. It follows, therefore, that I think Aviva should pay R an additional £10,000.

Time taken to settle the claim

I can see that Mr P has raised three separate complaints about the delay in handling the claim. Aviva has, in turn, issued three separate responses to the individual complaints – in May 2022, August 2022 and December 2022.

However, I don't think this Service can consider the delays that took place up to May 2022 as I think this complaint has been brought too late. Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules, known as the Dispute Resolution Rules (DISP), written by the FCA in accordance with the powers it derives from FSMA. These form part of the FCA Handbook.

DISP 2.8.2 sets out the time limits within which a consumer must bring a complaint to this service. And they say:

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received unless:

- 3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or*
- 5) the respondent has consented to the Ombudsman considering the complaint.”*

Aviva issued its first final response letter on 31 May 2022, so Mr P needed to refer this complaint to this service by 1 December 2022. But he didn't do so until 24 January 2023. So he brought it to us more than six months after Aviva's final response letter. And Aviva hasn't

consented to us looking at this complaint.

Our rules say we can consider this complaint if I think the failure to bring the complaint in time was due to exceptional circumstances. But Mr P hasn't shown this is the case. So I'm unable to consider Aviva's handling of R's claim up to 31 May 2022.

However, I'm able to consider Aviva's handling of the rest of the claim. I think this again falls into two parts – the initial time taken to declare the vehicle a total loss and value the vehicle, and then the time taken from then to pay R the vehicle's market value.

I note Mr P asked that Aviva considered writing the vehicle off at the start as its engineer had estimated that it would take around six months to repair the vehicle. He said this timeframe without a vehicle would have a profound impact on R's ability to operate. But Aviva is entitled to decide how to settle a claim, so long as it exercises this right fairly and reasonably. The engineer's initial review concluded that the vehicle was likely to be repairable. And Aviva was entitled to be mindful that the vehicle had a declared value of £185,000. So I think it was entitled to investigate whether it was economical to repair the vehicle or not.

This vehicle was not a standard car, but a significant commercial vehicle. So it seems that an expert was needed to assess the vehicle to see how much it would cost to repair it. I can see that Aviva sent the vehicle to the specialist on 21 May 2022, but the specialist set out that it would take a number of weeks before it would have the capacity to inspect the vehicle. It eventually sent the repair estimate to Aviva on 7 July 2022. I appreciate R was losing a lot of money during that time. But the terms of the policy don't cover losses arising from loss of use and I can't say that Aviva caused any delays up to this point. Further to this, as I set out above, this wasn't a straightforward vehicle to value. So I can understand why it took a few weeks to complete the valuation process. Aviva sent its valuation offer on 8 August 2022. I don't think this was an unreasonable timeframe.

However, as I said above, I think Aviva valued the vehicle unfairly. So I shall now think about whether the situation would have been different had it valued the vehicle at £165,000 and, if not, should it have done anything to minimise the impact to R.

It's clear that the delays caused in issuing settlement ultimately stem from the fact Mr P didn't agree with Aviva's valuation. But I'm also conscious that he considered the fair market value to be £197,000. So, even if Aviva had offered £165,000 I think there still would have been a dispute over the value. That said, I think Aviva should've offered to pay an interim settlement sooner than it did. But it seems this wasn't done until around January 2023. I can also see that Mr P had been asking for this from around October 2022. Had Aviva paid this sooner, R wouldn't have had to pay interest on the finance any longer. So I think R has lost out because of this.

I don't think it's clear precisely when the interim payment should've been made as there would also be a period of time when R had to produce the relevant documentation Aviva required – notably the V5C form, proof of purchase and early settlement figure. But, as I said, Aviva should've offered to do this sooner. I think the fairest way to assess this is to say Aviva should've paid £163,500 (£165,000 less the excess of £1,500) by 10 October 2022 when it reiterated the valuation. So I think Aviva should refund any interest R paid on £163,500 from 10 October 2022 until it issued settlement in February 2023. Further to this, it should pay 8% simple interest on the additional £10,000 from the date it issued settlement in February 2023 until R gets it back."

Mr P responded to accept my provisional decision. Aviva didn't respond.

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.

As neither party has given me anything else to think about, I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I uphold this complaint for the reasons I set out in my provisional decision.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Aviva Insurance Limited to:

1. Pay R a further £10,000;
2. Refund any interest R paid on £163,500 from 10 October 2022 until it issued settlement in February 2023; and
3. Pay 8% simple interest on the additional £10,000 from the date it issued settlement in February 2023 until R gets it back. If it thinks that it's required by HM Revenue & Customs to deduct tax from this interest, it should tell Mr P how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so R can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 20 January 2024.

Guy Mitchell

Ombudsman