

The complaint

Mr N complains about the settlement Aviva Insurance Limited (Aviva) paid him when he made a claim on his motor insurance. References to Aviva include other organisations and individuals acting on its behalf.

What happened

Mr N had motor insurance with Aviva. His car was involved in an accident and Aviva decided it couldn't be economically repaired. Because the car was less than one year old, Aviva initially looked at settling the claim under the new car replacement part of the policy, and its claims team and new vehicle replacement team discussed this with Mr N. Mr N says he was told that he would receive a new car as a replacement.

However the model of car Mr N had owned was no longer made and Aviva decided it wasn't possible to find an equivalent new car. So Aviva decided to settle the claim by paying Mr N the market value of his car. Mr N negotiated an increase on the original offer, and the claim was settled for £27,000.

Mr N wasn't happy with this as he says there was an equivalent new car as suggested to the replacement vehicle team by the specialist dealership. He was also unhappy that he was told that a new vehicle was being ordered, when this was actually subject to Aviva agreeing to pay for the different model. He complained to Aviva. Aviva said it had settled his claim in accordance with the terms of his motor insurance policy. However in recognition of the trouble and upset caused by delays and incorrect explanations Aviva offered Mr N £150 compensation.

Mr N wasn't happy with Aviva's response and so he complained to this service. Our investigator didn't uphold his complaint. She said Aviva had acted in line with the policy terms.

Mr N wasn't happy with what our investigator said, so his complaint has been passed to me. Mr N wants to be compensated for the difference between what was agreed as the market value of his car and the cost of the new replacement vehicle.

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 uphold Mr N's complaint. I'll explain why.

On 28 July 2023 I issued a provisional decision. My provisional decision said:

I intend to uphold Mr N's complaint. I'll explain why.

Mr N's insurance policy documents with Aviva said:

"New car replacement

We will replace your car with one of the same make, model and specification (providing one is available in the UK) if the principal policyholder, vehicle policyholder or partner are the first registered keeper (or second registered keeper where it was pre-registered and the mileage was less than 250 miles at time of purchase) and within 12 months of buying it from new:

- any repair cost or damage in respect of one claim is more than 60% of the car's UK list price (including car tax and VAT), or*
- it is stolen and not recovered.*

...If the qualifying criteria set out above are not met, or you do not wish us to replace your car with a new car of the same make, model and specification, the most we will pay will be the market value of your car”.

When Aviva looked to replace Mr N's car under this term of the policy, a car of the same make, model and specification wasn't available. However the main dealership suggested an equivalent replacement, which Mr N was happy with but Aviva rejected. As the policy provides new for old cover it's not really fair for Aviva not to provide this just because a manufacturer may have changed what a model is called, or removed some options. In this type of situation this service would expect an insurer to come up with a sensible solution rather than just defaulting to market value because its own suppliers can't find the exact same make, model and specification.

The main dealership gave three prices for the equivalent car, depending on the paint finish. Aviva has already paid Mr N £27,000. I think it would be fair and reasonable for it to pay Mr N a further £4,100 plus interest, which is the difference between the mid-range car suggested at £31,100 and the market value that Mr N has already been paid.

My provisional decision

For the reasons given above I intend to uphold Mr N's complaint. I intend to require Aviva Insurance Limited to pay Mr N the sum of £4,100 plus interest.

Responses to my provisional decision

Aviva didn't agree with my provisional decision. Aviva said:

“It is important to note that the motor policy does not provide ‘new for old’ cover this is a term generally used on a household policy.

The cover we are referring to here is New Car Replacement, you have quoted the terms for this which you have taken directly from the policy booklet;

...I have also attached the IPID which also specifies that;

New car replacement – if you've owned your car from new, and it's written off or stolen and not recovered within 12 months of purchase, we'll replace it with a new car of the same make, model and specification

You have suggested that it is not really fair for Aviva not to provide ‘new for old’ simply because a manufacturer may have changed the vehicle but this is exactly what the terms of the policy that you have quoted advises we will do so I am unsure why it is unfair to apply this. The policy clearly states that the most we will pay is the market value of the customer's car at the time of the loss. Market value is defined in the policy as;

The cost of replacing your car with one of the same make, model, specification and condition.

The market value, determined at the time of loss or damage, may also be affected by other factors such as mileage, MOT status (if one is required), how you purchased your car and whether it has been previously declared a total loss

You are asking us to pay a higher figure which is the cost of a different car to the one that was insured, that would be betterment and I simply cannot understand why we would be asked to pay this when we have adhered to the wording of the policy and have settled this at the market value of the customer's car as there is simply not a car of the same make, model, specification and condition available. You have referred to 'new for old' but this is not a cover provided under a motor policy, this is a home insurance term where contents are replaced as new unless the sum insured is not enough to do this and then an amount is deducted for wear and tear. The policy the customer has is car insurance and a market value policy and we are satisfied that we have paid the market value of the insured vehicle as per the terms of the policy."

Mr N said he was happy with my provisional decision and believed it was fair and balanced.

I have very carefully considered Aviva's comments but I don't think there is any reason to change my provisional decision. Mr N's policy clearly provided for him to be supplied with a new car, which would be of a higher value than the market value of the slightly older car he lost. The dealership has provided details of what it says is an equivalent new car to Mr N's car so this is not in my view "betterment".

My final decision

For the reasons given above I uphold Mr N's complaint. I require Aviva Insurance Limited to pay Mr N the sum of £4,100 plus interest from the date it paid the original claim to the date of payment at 8% a year simple. If Aviva Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr N how much it's taken off. It should also give Mr N a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 22 November 2023.

Sarah Baalham
Ombudsman