

## The complaint

Mr K complains that Motors Insurance Company Limited have declined his Guaranteed Asset Protection (GAP) insurance claim after his brand-new car was written-off following an accident.

## What happened

In 2019 Mr K took possession of a brand-new car at his home address. The V5C registration certificate (log book) initially showed Mr K as the registered keeper, but two weeks after getting the car he changed it to the name of one of his businesses (Company U).

Just over a month later the car was deemed a total loss (written-off) after an accident. Although the third-party insurer accepted the claim, Mr K still owed money on the finance agreement, so he made a claim on the GAP insurance policy he'd bought when he purchased the car.

Motors Insurance Company Limited, the underwriters, declined to pay out. They said exclusions applied because the car appeared to be owned by a motor trader and had been used for "hire or reward".

Motors Insurance Company Limited pointed to a social media page which described Company U's business as "Automotive consultant · Vehicle leasing service · Car rental", and another social media account in the name of Company U where Mr K had posted a picture of the car and described it as the latest addition to the "fleet". They added that Mr K is not only the Director of Company U but also the Director of another business providing taxi services.

They highlighted the following sections of the policy:

### *Eligibility*

*You are eligible for cover if at the Start Date of the policy: ...*

*b) You are either the owner of Your Vehicle or have a Finance Agreement, contract hire or Lease Agreement in relation to Your Vehicle, or are the registered keeper of Your Vehicle;*

*Your Vehicle is eligible for cover if at the Start Date of the policy: ...*

*c) The Vehicle is not to be used for hire or reward, short-term self-drive or driving tuition in connection with Your occupation;*

### *Exclusions ...*

- Your Vehicle if it is Insured on any type of motor trade insurance policy ...*
- Your Vehicle if it is owned by a garage, Vehicle trader or any other associated Vehicle trade company ...*

- *Your Vehicle if it is used ... for any hire or reward or as a taxi ...*

Mr K said:

- The car was his personal vehicle, owned by him and used solely by him;
- The finance used to buy the car was in his name - the deposit and monthly payments were made from his bank account;
- The finance agreement prohibited leasing the car;
- Only Mr K was insured to drive the car;
- The car's number plate was personalised to Mr K;
- Company U was not a "*vehicle leasing company*", but sold and maintained cars;
- The social media post referring to the car as part of the "*fleet*" meant simply that the car had entered the family household;
- The social media page describing Company U's business as "*Vehicle leasing*" had been set up by his nephew, had not been active for 2 – 3 years and did not feature the vehicle involved in this claim; and
- He'd changed the registered keeper to Company U "*for ease of correspondence*".

#### *Our investigator's view*

Our investigator didn't uphold Mr K's complaint. Although he couldn't be certain the car had been used for hire, he said it seemed more likely than not, because of the V5C document, the car was owned by a vehicle trader. On that basis he thought it fair and reasonable for Motors Insurance Company Limited to rely on the exclusion and decline the claim.

Mr K didn't accept that. He said the V5C doesn't prove the car was owned by Company U.

#### *Further information from Mr K*

I asked Mr K for some more information about his ownership and use of the car. He was able to provide the following:

- He paid a deposit for the car on his debit card;
- The car finance agreement was in his name and referenced his home, not business address;
- He made the finance payments from an account in the name of Company M – Mr K is the sole Director of Company M – a food retail business – and he paid for the car from that account as it's his only income source;
- He held comprehensive insurance cover for the car which detailed the persons entitled to drive as Mr K only, and the permitted use as 'Social, Domestic and Pleasure';
- When taking out that insurance he'd estimated his annual mileage as 5,000 miles and said the car would be kept at his home address;

- When the car was written-off it had done 2,779 miles – mileage accumulated by driving his elderly mother to his sister’s home (around 180 miles away) to provide support after the birth of her child; and
- Changing the registered keeper to Company U made correspondence easier because he is usually at that address (the address he also runs Company M from), there are staff present to deal with queries when he’s away, and it was more “difficult” receiving post at home because of significant renovation works that were ongoing at the time.

Having considered all the available evidence, I thought Mr K’s complaint should be upheld, so I issued a provisional decision on 10 December 2020. I said:

*“Motors Insurance Company Limited have sought to exclude Mr K’s claim on the basis that the car was owned by a vehicle trader (Company U) and/or used for “any hire or reward or as a taxi”. But apart from the V5C registration certificate, I haven’t seen any evidence that the car was owned by “a garage, vehicle trader or any other associated vehicle trade company”. And apart from a social media post describing the car as part of Mr K’s “fleet”, I haven’t seen any evidence that the car was used or offered for hire or reward. Whilst Motors Insurance Company Limited are correct to identify that Mr K is also the Director of a business providing taxi services, that business has been dormant and non-trading since at least May 2017.*

*I’ve looked closely at the social media page and account referred to by Motors Insurance Company Limited. The page describing Company U as a “Vehicle leasing service” hasn’t been posted to since August 2016, and the web domain link provided on that page isn’t connected to a website. So, whilst the page talks about a “fleet of luxury and supercars” and contains pictures of several luxury cars “available to hire”, the lack of website suggests these aspirations for the business in 2016 weren’t fully realised. The page seems more aimed at sharing pictures of supercars and commenting on their performance. Moreover, the content of this page doesn’t lead me to conclude the car bought and written-off in 2019 was ever offered for hire.*

*Turning to the other social media account, it’s clear Mr K uses it to share pictures of supercars, car modifications and coachworks. He also uses it to promote his food retail business (Company M) and his family member’s coachworks business. But there are no recent posts relating to car leasing.*

*The car involved in this claim does feature in the posts on that account, but not in connection with hire or booking details. In these pictures the car is often parked at Mr K’s place of work (Company M), suggesting he was using it himself to get to and from work. Although the first picture of this car described it as an addition to a “fleet”, I think this signifies it was a new car for an extended family who own a large collection of cars between them. I don’t think this description can be taken to mean that this particular car was available for hire or reward. I think it’s more likely Mr K included photographs of this car to attract followers to his social media account.*

*I’ve also taken into account that when Mr K insured this car he did so in his own name, bought a comprehensive car insurance policy that specifically excluded hiring the car, and estimated the annual mileage to be 5,000 miles. Had he intended to make the car available for use by others I think he’d have insured the car to take account of that and estimated a higher annual mileage. I acknowledge that by the date of the accident the car had done more than half of the estimation. But Mr K has*

*provided a plausible explanation about why the mileage exceeded his initial expectations. I can't say, without more, that the mileage at the point of the accident indicates the car was used for hire or reward.*

*With regard to the ownership of the car, I have seen that the finance used to buy the car was provided under an agreement in Mr K's name. He's also shown that he made payments towards the finance from his food retail business account, not an account in the name of Company U. The sales invoice for the car is also in Mr K's name and references his home address. If it had been bought for the benefit of Company U, I would have expected the invoice to be addressed to Company U.*

*Although I understand why his decision to change the registered keeper to Company U has prompted Motors Insurance Company Limited to question who owns the car, the V5C doesn't prove ownership. And I don't think Mr K's reason for changing it is unreasonable when considered in the context that his house was undergoing renovation, and he thought correspondence could be more easily accessed and handled at the address of his businesses.*

*So, I currently don't think there's sufficient evidence that this car was owned by a vehicle trade company. I'm satisfied Mr K used the car in his capacity as a private individual and remained the owner of the car when the registered keeper was changed.*

*It follows that I don't think Motors Insurance Company Limited have turned down Mr K's claim fairly."*

## **Responses to my provisional decision**

In reply, Motors Insurance Company Limited accepted that the evidence the car was used for hire or reward is not strong enough, but they still thought the car was owned by a vehicle trader, rather than Mr K as a private individual.

They provided a screen shot showing that the car dealership (the broker of the GAP policy) registered the policy in the name of Company U and using Mr K's home address. Motors Insurance Company Limited said this wouldn't have been apparent to them until the point of claim.

They also said the written-off vehicle was repaired by Mr K's family member's coachworks business; a business which appears to specialise in repairing written-off vehicles. They said he may therefore have benefited from preferential rates – vastly reducing the cost of repairing the damaged vehicle. Finally, they said Mr K had also been a Director of this coachworks business in the past.

They said Mr K's claim should be declined on the basis that his connections to the motor trade will have given him "advantages".

Mr K also provided further information; statements from his mother and sister to support what he'd said about the car's mileage at the time of the accident.

## **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'm going to uphold it.

I note that the broker seems to have registered the GAP policy in the name of Company U, but I don't think their doing so undermines the other evidence which points to this car being owned by Mr K. I also note that the premium paid for the GAP policy was included on the invoice addressed to Mr K, not Company U.

I acknowledge that Mr K is the Director of a business (Company U) that is involved in selling and maintaining used cars. I can also see that Mr K has family connections in the motor trade. But the exclusion Motors Insurance Company Limited are seeking to rely on here is about who *owns* the vehicle, not what connections the vehicle's owner has. And I still don't think there's enough to say this car was "*owned by a garage, Vehicle trader or any other associated Vehicle trade company ...*".

Mr K and Company U are separate legal entities. When Mr K buys something, be it car related or not, that doesn't mean he's bought it for the benefit of Company U or that it becomes an asset of Company U. And I've seen that the sales invoice for this vehicle was in Mr K's name and referenced his home address, which is different to the registered business address of Company U. As I said in my provisional decision, if it had been bought for the benefit of Company U, I would have expected the invoice to refer to Company U.

I also find the certificate of comprehensive car insurance persuasive; it shows the vehicle was insured by Mr K, that he was the only named driver and that it was insured for '*Social, Domestic and Pleasure use only*'. I think this indicates its principle use was as a private car for Mr K's personal use, and that is supported by the social media posts I've seen which show Mr K regularly used the car, including for commuting to and from his place of work. And it was Mr K who paid the deposit for the car, entered into the agreement to finance the purchase and paid the monthly payments.

I think the policy term Motors Insurance Company Limited are seeking to rely on here is designed to exclude claims where the car is a benefit to or asset of a business. But I'm satisfied that's not the case here, and that this car was bought by Mr K for his personal use. So, I still don't think it would be fair for Motors Insurance Company Limited to decline the claim on this basis.

### **My final decision**

For the reasons set out here, and in my provisional decision, my final decision is that I uphold this complaint.

I require Motors Insurance Company Limited to settle Mr K's claim subject to the remaining terms and conditions of the policy. It should add simple interest to any settlement at a rate of 8% a year from the date of Mr K's claim to the date it makes payment.<sup>1</sup>

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 February 2021.

Beth Wilcox  
**Ombudsman**

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<sup>1</sup> If Motors Insurance Company Limited considers its required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a certificate showing this if he asks for one, so he can reclaim the tax from HMRC if appropriate.