

The complaint

Ms D has complained about her car insurer, U K Insurance Limited (UKI) in that it decided her car was a total loss following an accident. And she complained about the amount it paid her for its market value.

What happened

Ms D was involved in an accident on 3 December 2019. The other driver accepted liability. The accident occurred mid-afternoon, but Ms D had some difficulty in getting her car collected by UKI's recovery agent. Finally, in the early hours of the morning a taxi was arranged to take Ms D home and her car was recovered to the transport company's base rather than going to a garage. UKI then delayed arranging the hire car Ms D's policy provided for as she didn't get it until 6 December.

On 11 December 2019 UKI's engineer decided Ms D's car was beyond economic repair (although not structurally damaged). He had spoken to Ms D and believed she was aware of the value of the settlement UKI would be paying her for the market value of her car. But Ms D understood the engineer would be calling her back to talk about this. No call back occurred, and whilst a letter was sent on the same day explaining everything to Ms D, Ms D said she didn't receive it.

Ms D also understood from the engineer that any settlement paid would come to her, and she'd have a few days after that with the hire car before needing to return it. But Ms D had outstanding finance on the car, so UKI paid the settlement to the finance company – as advised in the letter but not by the engineer. On 22 December 2019, Ms D then got a text saying the hire car would be collected the next day. She called UKI and learnt it had settled her claim by paying her finance company £4,965 which it said was the market value for her car. But the total outstanding finance had been £6,398. Ms D was confused and upset as she had no settlement and no car. She said she would never have agreed to the settlement value, if she had been told what amount it was and she felt the car could have been repaired.

UKI said it would look into the settlement amount and tried to call Ms D to discuss her concerns. But around the time Ms D said she only wanted to deal with UKI by email. A second UKI engineer said he felt the original value was low but as Ms D would not speak to him, he could do nothing further to review the value. UKI accepted it had failed Ms D when she and her car had needed collecting after the crash, and it also accepted its original engineer's communication could have been better. For those failings it offered Ms D a total of £125 compensation (£50 and £75 respectively, with the £50 being paid to Ms D).

Ms D said she felt like UKI had stolen her car. She thought it should, at least, have offered her the chance to keep the car. When Ms D complained to us, UKI said it hadn't offered Ms D the chance to keep her car because she never said she wanted to do so. In November 2020, UKI also provided a revised valuation amount to our Investigator for Ms D's car of £6,686 but its engineer still had not spoken to Ms D about the value. Rather he had completed a desktop review taking into account internet sales data for the car. Ms D advised

she had been paying the finance company in the interim and UKI confirmed that the finance company had said that it no longer had an interest in the car.

Our Investigator felt UKI initially paid too little for the market value of Ms D's car which could have been reviewed around the time it was making the payment to the finance company. He said it should now pay the difference to Ms D between what it had paid the finance company and its revised market value. He was also of the view UKI should reimburse Ms D any extra costs she had to pay to the finance company. He also said UKI should pay Ms D a total of £400 compensation (an increase of £275 on what it had offered so far).

UKI didn't object to the findings but Ms D felt they didn't go far enough. She noted her car had been sold on rather than scrapped, and felt we should be making UKI get back her car for her – or at least making it produce details from its salvage agent of the buyer so she could track it down. She explained over several emails how unhappy she is and the amount of worry and stress all of this has put her through.

Ms D also explained her concern about how UKI had handled two previous claims for her, made earlier in 2019. She said she felt those claims had affected the car's market value. When we asked UKI about these claims, it said Ms D's concerns about them did not fall for consideration as part of this complaint. So the Investigator explained to Ms D that he wouldn't be able to look at her concerns about these two claims.

Ms D's complaint was passed to me for consideration. I had our Investigator make some enquiries with Ms D's finance company to see if she had incurred any extra costs because of UKI not paying the higher settlement earlier. The financier confirmed she had not. I issued a provisional decision explaining that I felt UKI had failed Ms D, but that I didn't think it had stolen her car. I said it should refund her the cost of car mats if she showed proof of purchase, as well as pay her the increased settlement value (plus interest) and a total of £1,500 compensation.

UKI said it would accept my findings. Ms D said she disagreed with them. She said I had overlooked some things she had said, such as that UKI was not her insurer. Ms D said she felt I had ridiculed her about her having paid her finance agreement. Overall, she felt my decision was unfair because, in her view, UKI had stolen her car.

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 said provisionally:

"Previous claims

I understand that Ms D has some concerns about how these were handled, and that she says they weren't settled. As our Investigator explained, I can't look at that – UKI needs the chance to address these issues first if Ms D now raises them with UKI. But what I can see from this December 2019 claim is that no deduction from the market value for the car was made on account of it having any pre-existing unresolved damage. So, I'm satisfied the previous claims did not impact or affect this claim.

Roadside

UKI accepts it let Ms D down as regards its roadside recovery. Seemingly there was a technical issue which caused a delay, but which UKI should have known about and so

avoided the delay. It was clearly worrying and frustrating for Ms D to be waiting so long and at night. I'll take that into account when awarding compensation. But whilst I know Ms D thinks things would have gone differently – that her car might not have been sent for sale as a total loss – if it had gone to her garage, I can't be sure that is the case. That's because UKI could still have collected the car from Ms D's garage to assess it.

Conversation with UKI's first engineer

The call wasn't recorded. So, I don't know what was said. But clearly there was a breakdown in communication in some way. UKI did follow the call up with a letter and I don't know why Ms D didn't receive that. But I think the engineer should have known that the settlement for Ms D's car would go to the finance company – so she wouldn't know when it was paid or when the hire car she had would need to be returned. And if that wasn't a conversation for him to have with her – then a claims handler should have spoken with Ms D. I can understand why Ms D, a few days before Christmas was upset to receive notification, which for her was out of the blue, from the hire company that the car she had been using had to go back the next day. And I see from UKI's notes that it actually thought it should extend that hire period to 2 January 2020. UKI's notes show it would have done this, had the hire car still been with Ms D. But instead it took a couple of days for it to reach this view by which time Ms D had returned the hire car and it couldn't extend the agreement which had ended. Of course, it could have looked to provide another car. But it didn't do that either. I'll take this upset Ms D was caused into account when deciding about compensation.

Salvage

It's clear to me that Ms D wasn't given a proper opportunity to fully consider her position on the claim by the first engineer. UKI says it didn't give her the option to keep the car because she didn't ask to. Rather it told her it was a total loss and she sent in her documents as requested by the first engineer. But I don't think UKI has been reasonable here as it should have offered or at least ensured that Ms D didn't want to keep her car. Ms D came away from the conversation with UKI's engineer believing she would be happy with the total loss settlement but obviously not knowing the amount. So, from her perspective there was little need to challenge the position. Whereas I think she would have challenged the position had a proper and coherent conversation taken place with this engineer. It is clear to me that Ms D has some very strong feelings about this car. So, I think if UKI had been clearer with her about all the options which it should have explained properly to her, she would have asked to keep her car (potentially depending on the salvage value).

UKI has told us that if Ms D had asked to keep the car, it would have deducted 17% from the settlement value. The settlement value at that time was £4,965 which already left a shortfall for Ms D to pay the finance company. And 17% of the settlement was £844, so, in total, for Ms D to keep the car she would have been left owing the finance company £2,277, and would still have had to find the funds to repair her car. For some reason here, UKI's engineer failed to decide on the repair costs of the car. He seems to have heard that Ms D was reluctant to drive her car, and from there determined she wanted it to be classed as a total loss – so he did that. I don't consider that was an appropriate way of dealing with this by an insurance engineer. And I think, even if Ms D did have concerns about her car being repaired – if she had been told the market value which was anyway too low, and given her strong feelings of attachment she clearly has to this car, I think it's likely she would have opted to keep her car and repair it. After all, continuing to pay the monthly finance amount wasn't an 'additional' cost for Ms D, it was what she was doing anyway – and, in fact, always had to do following UKI's initial low settlement. And, importantly, whilst he didn't comment on what was needed to repair the car or the cost of these repairs, UKI's engineer did conclude that the car was not structurally damaged. As far as I can see from photos, the main damage was just the back windscreen having been broken. There was no sign of any major denting

or scraping or sign of parts of the car falling off or needing replacing. So, in the grand scheme of things, I don't consider this car could have been a total loss in real terms. As such, I will take the loss of her car into account when I'm deciding the compensation later in my decision.

However, I can't make UKI find Ms D's car and get it back for her. I know Ms D thinks this can or should be done but that is simply not reasonable, or possible. With regret for any upset this causes Ms D; her car is no longer hers, it became UKI's property when it paid the settlement to her finance company, it was legitimately sold on to UKI's agents and those agents sold it on again. In short it now belongs to someone else. Even if I felt it would be reasonable to do so (which I don't), I don't have the power to undo all of that. And I can't reasonably require UKI to share with Ms D details from its agent about the onwards sale of the car. That sort of information is confidential. This service will not make UKI track the car down and return it or divulge details to Ms D of the new owners.

I know Ms D would have liked to have taken some things from her car. She said that when she bought the car she paid for some mats and heated leather seats, so she wanted to take these back. Whilst I can understand Ms D's position on this, I'm not sure it's a reasonable one. The seats at least are an integral part of the car – they aren't accessories. When a car is sold for salvage we would usually expect an insurer to give the policyholder chance to remove any personal possessions – but the seats don't amount to personal possessions. However, the mats do, which I think UKI should pay for, pending proof from Ms D of their purchase cost.

Market value

UKI's original settlement figure was low. Its second engineer identified that. And, later he used information readily available to him, to determine what a reasonable value was. However, I consider it grossly unreasonable that neither UKI nor this second engineer wouldn't increase the market value simply because Ms D wouldn't speak with him. UKI and/or its engineer could have easily emailed Ms D its further thoughts on the market value of her car at the earliest opportunity. The difference in the increased value from what UKI had paid to the finance company originally could then have been paid to Ms D, and she would have had the benefit of those funds. Or if at the time the review was completed, Ms D still owed some repayments to the finance company, part of that increased amount could have been used to pay that off, and the remaining part paid to Ms D. Either way she'd have still had more money in her pocket because in the months after the original settlement made by UKI, Ms D paid off the remaining finance. I think UKI should pay the increased market value to Ms D, plus interest* from 13 December 2019 being the date the original settlement was paid to the finance company, until settlement is made to Ms D.

I know Ms D thinks that even the second assessment of the market value is too low. But I'm satisfied that value was reached reasonably. We expect insurers to use trade guides to assess the market value of cars. Here, UKI's second engineer completed some research which satisfied him that cars were actually selling for more than the values in the trade guides. So he then calculated an average increase above the trade guide prices and that increased amount was the basis for the second, higher valuation. In completing that calculation, I can see that the relevant make and model for Ms D's car was considered. And that make and model comes with a folding roof and heated seats. So those features were taken into account in the market value for Ms D's car. I think that was reasonable and indeed much in Ms D's favour too. So I don't consider UKI needs to make any further increase to the market value figure.

Finance agreement

Ms D's car was subject to a finance agreement. When UKI paid its original settlement to the finance company, Ms D was left with £1,433 to pay to the finance company. But the difference between UKI's original value and that calculated by the second engineer was £1,721. So, even if Ms D had chosen not to keep her car, if UKI had calculated the correct market value initially, or quickly re-evaluated it, Ms D's finance agreement could have been paid off in full by UKI with a payment of £288 going to Ms D. That of course wouldn't be enough for Ms D to buy a new car, but with the finance agreement concluded, she could have looked to buy a new car under another finance agreement. I understand the frustration and worry Ms D suffered by having to continue this arrangement. An award of interest by me on the increased market value amount will make up for her not having had money during that time, and I'll take this into account when deciding compensation too.

However, I've made enquiries with the finance company, who said that the money she paid to it was just repayment of the purchase price of the car. So, I'm satisfied there were no extra charges or costs that would have been avoided if full settlement had been made earlier, at the time of UKI's original settlement. Therefore, whilst Ms D was out of pocket for funds because she had to continue the monthly finance payments, she didn't incur any extra costs because of UKI's failure to settle her claim initially at a reasonable market value. As such, apart from the increased market value, plus interest, and compensation for upset (including that of not having a car), I'm not going to make UKI pay anything more to Ms D.*

Compensation

This whole matter has been very upsetting for Ms D who also suffers from poor health. And it's clear the problems began with the roadside recovery. With UKI's first engineer then letting her down further by not being clear with her, which then led to a series of concerns and issues for Ms D. I think that if UKI had handled things better, Ms D would either have taken her car back with a view to repairing it, or her finance agreement for that car would have been cleared, giving her the opportunity to try and find another car subject to a similar agreement. Either repairing her old car or finding another might have taken time, and I can't be sure, if things had transpired in line with either of those scenarios, when or if Ms D would most likely have had a car again. But I think that UKI should have left her in a position where she could have got another car – as it was she was left with no car for her to repair and outstanding finance to be paid. UKI's failures simply didn't afford her the opportunities she should have had if it had handled her claim reasonably. And, a key cause of significant upset for Ms D, was that her car was sold on and lost to her.

Additionally Ms D has been very upset and frustrated by everything that has happened, I know she feels lied to by UKI and that she feels it effectively, stole her car. UKI didn't steal her car. But I understand why she feels this way. And I think if UKI's communications with her had been better and professional to include detailing the costs of the repairs, as well as the market value, plus permitting her the option of keeping her car subject to the salvage amount, Mrs D wouldn't have got to this point of feeling utterly let down and deceived. So taking all this into account plus the fact that UKI disposed of her car when it really shouldn't have, and the fact that she should have been left in a position of either having her car back for repair or, at the very least, being able to look into getting another car via finance, I think UKI should pay Ms D a total of £1,500 compensation.

UKI paid Ms D £50 previously, as referenced in its letter dated 18 January 2021. It also offered £75 compensation in its letter of 9 January 2020 but it didn't pay that figure. So I now consider it should pay her another £1,450."

I can assure Ms D that I have taken into account everything that she has said. But my decision can't refer to everything. Rather it is my job to look at the issues at the heart of the matter and make findings on them. And Ms D's insurer is UKI. UKI is the company behind the branded name that appears on Ms D's contract paperwork.

I'm sorry if Ms D thinks I ridiculed her about her actions in paying off the finance agreement. That was not my intent at all. Ms D did exactly the right thing by continuing to pay her finance agreement. My point was that she *would not have had to* if UKI had done the right thing. And, to make sure I awarded her fairly for its mistakes I had to find out what her losses because of its errors were. She had the expense of continuing to make the payments which she otherwise shouldn't have been paying. So I awarded interest to her to make up for that. But sometimes finance agreements will cost more the longer they continue. Or other charges might apply. And so I made enquiries with the finance company, because if Ms D had paid more in those payments than would have been the total owing to the finance company at the time of UKI's original settlement, I'd have made UKI reimburse her *anything extra* she'd had to pay. But the finance company confirmed there were no extra costs. Ms D did absolutely the right thing, which mitigated her loss incurred because of UKI's unfair act.

I understand, from Ms D's point of view, why she thinks my decision doesn't go far enough to correct the situation UKI's unfair treatment created for her. But I am satisfied that, despite what Ms D believes, UKI did not steal her car. That's not to say that UKI didn't fail her. I think it did. But I remain of the view that the fair and reasonable resolution for its failures is as explained provisionally and summarised in the "*putting things right*" section below. My provisional findings and award, along with the further comments I've made here, are now those of this, my final decision.

Putting things right

I require UKI to pay Ms D the following:

- The cost of the car mats (pending proof of purchase from her).
- £1,721 being the different between its original settlement paid to the finance company and its revised market value figure. Plus interest* applied from 13 December 2019 until settlement is made.
- £1,450 compensation for missing out on the opportunity to repair or attempt to replace her car, and the other distress and inconvenience caused to her by its failings. Where total fair and reasonable compensation is £1,500, but £50 of that sum has already been paid to Ms D.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires UKI to take off tax from this interest. It must give Ms D a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold this complaint. I require U K Insurance Limited to provide the redress set out above at "*putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 25 April 2022.

Fiona Robinson
Ombudsman

