

The complaint

A company, which I will refer to as B, complains that Highway Insurance Company Limited (Highway) did not offer a fair market value for its van when it was written off in an accident.

Mr B who is a director of B, brings the complaint on B's behalf. References to B, or Mr B, will include the other.

There are several parties and representatives of Highway involved throughout the claim but for the purposes of this complaint I'm only going to refer to Highway.

What happened

Mr B had a commercial vehicle insurance policy with Highway, this was to cover a van that Mr B leased and used for his business.

Mr B was involved in an accident. Highway accepted the claim and the van was written off as a total loss.

Highway made an initial offer for the van and this was rejected. Highway reviewed its offer and it was increased to £9,513 and finally to £9,923.

Mr B said the valuation had not taken into account that the van had been converted to be a freezer van.

Highway did not increase its offer and £9,923 was paid to the contract hire company.

As Mr B was not happy with Highway he brought his complaint to our service.

Mr B said the offer was not enough. He said the amount Highway offered was similar to the amount outstanding to the finance company, with who he had the lease agreement, and feels that this was not a coincidence. He said that Highway had not carried out an assessment of the van.

Mr B further complains that Highway made the settlement directly to the contract hire company before he had the opportunity to agree the settlement amount.

Our investigator did not uphold the complaint. He looked into the case and felt that the offer made by Highway was fair and that it had settled the claim in line with the terms of the commercial vehicle insurance policy.

As Mr B is unhappy with our investigator's view the case has been brought to me for a final decision to be made.

What I provisionally said

Settlement amount

I have considered whether Highway acted fairly and reasonably in reaching its decision as to the level of settlement offered following the write-off of B's van. My role is not to provide an exact valuation but to make a judgment as to whether settlement is fair and reasonable and in line with the terms and conditions of the policy.

I looked at details within B's commercial vehicle insurance policy with Highway. In this case market value is defined in the policy as: "The cost of replacing your vehicle at the time of the loss or damage, taking into account its make, model, specification, age, mileage and condition."

Highway made an initial offer of £7,800 which was contested by Mr B. It was increased to £9,513 and then further increased to a final offer of £9,923.

We use trade guides to do this and they're based on nationwide research of likely selling prices and take the van's specifications, mileage etc into account.

The evidence shows that Highway calculated the settlement figure for the van by taking an average of valuations from three motor vehicle industry recognised valuation guides. The average valuation was £11,908 and the final settlement figure was £9,923. The amount was reduced by Highway to take into account VAT as it said its total loss offer is market value net of VAT.

Mr B provided details of adverts for similar vans on sale at higher prices than the valuation he was offered. And said this showed retail replacement costs for similar vans were at higher prices.

This service doesn't consider the question of market value to be an exact science, however our general approach is that the valuations given in the main motor trade guides provide the most persuasive and consistent evidence. These guides are based on extensive nationwide research of likely (but not actual) selling prices.

The national guides give a price at the current date and they take into account advertised and auction prices from the time of the quote.

When giving a settlement figure the industry recognised guides can tell if it's a commercial vehicle. They then give a settlement figure that doesn't include VAT. In this case Highway have used the figures from the guides and then removed the VAT. I do not believe that Highway should have reduced the figure to take into account VAT because the figures from the industry valuation guides are already net of VAT.

As the gross amount offered sits just above the average of the range, I'm satisfied that Highway's valuation is fair and reasonable. However, the VAT shouldn't have been deducted.

After putting this to Highway it accepts it made an error in removing VAT as it had already been removed. Highway said the average of the three guides would be £11,908 and it would be happy to pay a further £1,985 in settlement to the contract hire company.

I'm not persuaded that Highway will have acted unfairly or unreasonably in settling B's claim at £11,908. I believe that this amount is reflective of the current value of the vehicle, based on the valuations undertaken by Highway and by our Investigator for a similar freezer van.

Highway should settle the total loss claim at the full value and in this case this is £11,908. As Highway have already paid the incorrectly reduced amount of £9,923, it should now pay a further £1,985 to make a total of £11,908.

Payment of settlement

I looked at other details within B's commercial vehicle insurance policy. In this case within the policy terms and conditions it says;

"If your vehicle is on lease hire, hire purchase or personal contract hire, we may be required to pay the owner for damage to your vehicle. In that event our payment will be in full and final settlement of our liability under this section."

The policy further says;

"Paying your claim

We will

- *Settle the claim to the legal owner, up to the market value, if your vehicle is part of a hire purchase or leasing agreement or belongs to someone else."*

In this case, as the van was supplied to B on a contract hire basis the contract hire company is the legal owner of the van. Highway were correct to pay the settlement amount to the contract hire company as they are the legal owners.

I understand that B wanted to agree the settlement figure before it was paid to the contract hire company and Highway did not do this. Although I do not think that Highway have acted unfairly by paying the settlement to the contract hire company, I do think that it should have had better communication with B at the time the settlement amount was offered so that B's representative was aware of what was happening and knew in advance that the settlement was due to be paid.

I think the error made by Highway in paying an unfair and incorrect settlement amount to the contract hire company caused an amount of inconvenience to B. The time spent by B trying to obtain a fair settlement for the van, diverted it away from its normal business activities. I think that a compensation payment of £500 should be paid in recognition of this.

I have seen evidence from the contract hire company that says it is not possible for it to accept additional funds in settlement for the van as the vehicle was terminated in July 2021. It said "Any further payments would need to go directly to the customer".

Therefore, I intend to partially uphold B's complaint. I intend to require Highway to pay both the additional settlement for the van and the compensation for the inconvenience caused, directly to B.

Responses to my provisional decision

B's representative did not respond.

Highway responded to say

- It did not dispute it had made a mistake with the valuation.
- If it had valued the vehicle correctly in 2021 the full amount would have gone to the finance company and not the customer. So any amount that it had mistakenly undervalued the vehicle by, is money the finance company has missed out on and not the customer.
- Regarding the £500 compensation. As the customer had no financial interest in the van he hasn't missed out on anything as the finance company did not dispute the value paid.

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.

In response to Highway's points

In this case the policy holder was B and the policy was with Highway. The contract hire company were not the policy holder or a representative of the policy holder and so were unable to dispute the value paid.

Highway sent the settlement amount to the hire company without prior agreement of the amount with the policyholder. The contract hire company were not involved in the claim on the policy.

If the settlement offer paid by Highway to the contract hire company had been discussed with B's representative, as had been requested, the settlement amount would have been disputed and with further investigation the error may have been found then.

It is correct that if Highway had valued the vehicle correctly in 2021 the full amount will have gone to the contract hire company. However as B's account with the contract hire company is now closed, they said *"this is not possible as this vehicle was terminated in July 2021. Any further payments would need to go directly to the customer"*.

As stated in my provisional decision the compensation awarded is for time spent by B trying to obtain a fair settlement for the van due to Highway's mistake in calculation of value.

The agreement between B and the contract hire company is not part of this complaint.

After looking at the evidence again, alongside Highway's response to my provisional decision, I don't think it has said anything that requires me to change my decision.

Based on the evidence I've reviewed I maintain my provisional decision and I partially uphold B's complaint.

My final decision

For the reasons I have explained I partially uphold this complaint.

I require Highway Insurance Company Limited to pay a further £1,985 in settlement for the van. 8% a year simple interest should be added from the date of the incorrect settlement payment in July 2021.

I also require Highway Insurance Company Limited to pay B £500 for the inconvenience it caused to the company by paying the unfair settlement amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 23 May 2022.

Sally-Ann Harding
Ombudsman