

## **The complaint**

Mr N has complained about Tokio Marine Kiln Insurance Limited (TMK). He isn't happy about the way it dealt with a claim under his Guaranteed Asset Protection (GAP) insurance policy after his car was written off.

Other companies have been involved in this complaint, but as TMK are responsible for it, I've just referred to them in this decision.

## **What happened**

I looked at this case and provided my initial thoughts in my provisional decision as follows;

*Mr N made a claim under his GAP motor insurance policy after his car was written off in an accident. TMK looked into the claim after the motor insurance company had paid out the market value of his car. It valued his car and offered to pay Mr N the difference between the market value paid by the insurer and the approximate cost of buying a similar replacement vehicle in line with his replacement vehicle and finance GAP insurance policy.*

*But Mr N wasn't happy about the amount TMK offered. This was because when he got the information about how TMK valued his car it became clear it had relied on incorrect information in making its offer. It had got two valuations or offers of the equivalent new model of Mr N's car and a direct valuation or offer from the dealership he originally bought his car from. But it transpired that the two offers or valuations were for a lower model and specification car than Mr N's. But TMK was satisfied that Mr N was offered a fair value as it felt he could have bought a very similar car from the dealership he originally bought his car from and so if it paid more (in line with the other dealership valuations and offers Mr N gained) that would amount to betterment.*

*When Mr N complained about this and the fact that he was told he would be paid an additional amount of money in relation to a paintwork product on his car TMK maintained its position. Although it offered £200 compensation for the mis-advice it had given in relation to the paintwork. But as Mr N remained unhappy he complained to this service.*

*Our investigator looked into things for Mr N and upheld his complaint. She thought TMK's valuation wasn't fair and that it should revalue the car and pay Mr N the difference plus 8% simple interest. And although she initially thought TMK should pay Mr N the cost he incurred in relation to the paintwork she eventually accepted that TMK's offer to pay £200 compensation for its mis-advice was fair. But she thought it should pay a further £100 compensation for the stress and inconvenience all this had caused Mr N.*

*As TMK didn't agree the matter has been passed to me for review.*

## **What I've provisionally 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 think the complaint*

*should be upheld. Put simply TMK feel that Mr N would be in a better position if it was to pay an amount in line with the valuations Mr N gained.*

*But even if I was to accept that position Mr N has been clear in his evidence that this wasn't the case. He contacted the particular dealership in question who wouldn't offer him the car for this value or even provide him with the documentation showing the valuation. It seems clear the particular model Mr N had wasn't common and that the few remaining models that were on the market were already earmarked for other consumers. So, I don't think offering Mr N more than the one dealership valuation TMK had obtained, which was out of line with the other valuations provided by other dealerships, would amount to betterment as it is clear he couldn't buy that car even if he wished to. Indeed, Mr N proceeded to buy a completely different model of car.*

*Furthermore, Mr N should be paid out in line with the policy terms and conditions and then he would be free to act as he wished. His policy said 'Following a valid claim where your vehicle is declared a total loss by a motor insurer we will pay the shortfall between the motor insurer's total loss valuation and the greater of either the cost of a replacement vehicle or, the early settlement amount that you owe under your finance agreement up to the sum insured'. And as Mr N's car was no longer in production the policy dictated that 'If your vehicle model is no longer available or no longer in production, then we will use the price of the nearest equivalent vehicle'.*

*Given this it seems clear Mr N should be provided with the shortfall between his motor insurer's total loss valuation and the cost of a replacement vehicle. And as TMK says it will 'use the price of the nearest equivalent vehicle' then I don't think it would be fair for its valuation to be solely based on one dealership offer or valuation, especially as the other two quotes TMK gained don't appear to be for the model that was closest to Mr N's. Ultimately, I don't think it would be fair for TMK's valuation to be based solely on one dealership's price, especially as this dealership wouldn't offer the car to Mr N in any event and he certainly didn't proceed to buy that particular car.*

*So, the fair and reasonable thing to do, in the particular circumstances of this case is for TMK to recalculate the settlement amount providing Mr N with a fair value adding 8% simple interest from the date of loss until the date of settlement for the shortfall. Mr N has provided a number of offers from other dealerships from around the time and it would seem fair to use an average of these as opposed to the one dealership quote TMK has used. And I agree that it should pay an additional £100 for the clear stress and inconvenience Mr N has faced in having to chase this matter.*

*Finally, I accept that Mr N was mis-advised in relation to the additional costs he incurred in relation to the paintwork. But I think TMK's offer of £200 compensation for this seems fair as I don't think he faced any further detriment other than being misadvised.*

## **Replies and developments**

Both sides responded to my provisional decision. TMK accepted my position but reiterated its original point and said again it thought its original offer was fair and that to do otherwise would amount to betterment.

While Mr N said he thought the position outlined was fair and just. But he said again he thought TMK should have honoured the offer it made when it mis-advised him about the additional costs incurred in relation to the paintwork. And he provided some general commentary about the fact that he was shocked about the way TMK had looked to value his car in the first instance and that it didn't change its position when he raised this.

## **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 both sides appear to accept the majority of the position outlined in my provisional decision I don't propose to rehearse the arguments again.

Ultimately, having reconsidered everything again I'm still of the view the complaint should be upheld. I don't think there is any aspect of betterment for Mr N here in looking to pay an average figure of the possible quotation prices that the various dealerships offered as opposed to just looking at one dealership price, especially as he wasn't able to buy the car from that dealership in any event.

I do accept Mr N's general point about what he was told about the additional costs incurred in relation to the paintwork. But as I've outlined I don't think he faced any detriment here, so I feel TMK's offer of £200 compensation alongside the additional £100 I outlined seems fair.

## **My final decision**

It follows, for the reasons given above, that I uphold this complaint. I require Tokio Marine Kiln Insurance Limited to;

- recalculate the settlement amount providing Mr N with a fair value adding 8% simple interest from the date of loss until the date of payment of any shortfall;
- use an average of the offers from other dealerships as provided by Mr N from around the time of loss to establish a fair price; and
- pay an additional £100 (£300 in total) compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 22 June 2022.

Colin Keegan  
**Ombudsman**