

The complaint

Mr V has complained about his car insurer U K Insurance Limited (UKI) because it said his car was a category B write-off and it wouldn't change that even when he presented it with evidence from his own engineer.

What happened

Mr V's home and the surrounding area were flooded. Whilst Mr V was trying to protect his home, he heard the alarm sound on his car. Realising that water would soon enter the engine bay if he did nothing, Mr V started and moved the car. He called UKI a few days later to make a claim. He told it the gearbox had been water damaged, water had come out of the air vents, there were a lot of warning lights on the dashboard and the reverse lights were permanently on. He said there had been water in the footwell, personal belongings in the car had been damaged and the water had risen to the bottom of the seats. He said the water was a mix of rain and sewage.

UKI accepted the claim. Mr V's car was taken to its salvage yard and it was confirmed the water had reached seat level, with the boot wet as well. UKI had also noted Mr V's description of what had happened and it had viewed a video he had sent of flood levels in his home. UKI declared the car a category B total loss.

Mr V had told UKI thought that he wanted to keep his car. So UKI said it would pay him the vehicles value less the policy excess and an amount for salvage. It then returned the car to Mr V. Mr V had the car repaired (for around £2,000) and obtained an engineer's report. He sent the report to UKI. UKI felt the report showed it should never have settled the claim and it told Mr V it wanted its claim outlay back. But UKI then revised that position. Upon review UKI said its original total loss decision had been correct. However, it realised it had caused Mr V upset and inconvenience in the way it had handled things and offered him a total of £400 compensation. Mr V said that didn't resolve matters – what should be done, he said was for the categorisation of his vehicle to be changed, even if that meant him giving some money back to UKI. When UKI wouldn't change its mind, Mr V complained to us.

Our investigator felt that, in the circumstances, UKI should be looking to amend the write-off category. He suggested Mr V pay it back part of the settlement in exchange. Mr V agreed.

UKI initially looked to mediate thing, and said it might look to do this if Mr V paid it back a larger sum. But upon review it said this couldn't be done. UKI explained that, in its view, the categorisation had been correctly applied and, therefore, it couldn't reasonably be changed. Our investigator said he still felt that was unfair – given further details Mr V had given to him (which were shared with UKI) and the findings of his engineer. When UKI wouldn't agree, the complaint was passed to me for an ombudsman's consideration.

I felt UKI had got some things wrong – but not the categorisation of the car. I issued a provisional decision to explain my views on everything and what I felt UKI needed to do to put things right. My findings from that decision were:

"I know Mr V thinks UKI shouldn't have categorised the car as B – break for parts only. However, I think that, in this respect, UKI gave a fair and reasonable answer when it said it had made the right decision which couldn't be changed.

UKI subscribes to an industry code of practice. This code is supported by the DVLA and its purpose is to ensure that damaged cars are categorised consistently, as well as ensuring that dangerously damaged cars aren't returned to the road. The code requires that cars given a category B classification are broken only for parts. And to ensure this occurs the subscribers to the code, such as UKI, usually take ownership of the car once settlement for the loss is paid. The subscribers won't usually allow a policyholder to take the car back, not unless it is going to or is collected by a breaker's yard with appropriate paperwork. To return a car to a policyholder (not their breaker's yard) defats the safety objective of preventing dangerously damaged cars returning to the road.

The code says that a car should be a category B write-off where it is damaged by contaminated or polluted water, and/or where any water has affected the electronics. Here Mr V's account of the flood suggested that had indeed happened. Later he said there may not have been sewage water, and he may have been mistaken about how and where the water was in the car. But I've heard the call where Mr V detailed the event. He was clear and calm about everything that had happened and the damage he had witnessed. I'm not persuaded he was likely labouring under any misconception when providing this detail, both about the water likely containing sewage and that the cars electrics were affected.

More than that though, I think it is fair to say that a flash flood like that which occurred when Mr V's car was damaged, usually contains an element of contaminated/polluted water. That is because it isn't just that excessively heavy rain occurs which then floods home and property. Rather it's usually the case that excessive rain causes rivers and drains to overflow. And the combined rain, drain and river water then floods the area. Whilst Mr V's engineer said the car had likely been affected only by rain water I'm not persuaded that is likely a reasonable conclusion given the nature of the flooding which occurred. I'm also mindful that the engineer didn't see the car until after it had been repaired and seems to have been unaware of the extent of flooding which occurred at this time, referring to the car having been found "in a puddle".

So I think it's fair to say that the car was most likely affected by contaminated water whether or not it contained sewage. And it also seems to be quite clearly the case, whether the water was contaminated or not, that the water affected the cars electronics. So I think UKI's act of classifying the car as a category B write-off was fair and reasonable.

For me, where UKI went wrong, was in returning the car to Mr V. In line with the code and the usual industry practice which stems from that, UKI should have kept and disposed of the car. If it had Mr V would have received a higher settlement (because UKI deducted £3,030 to allow him to keep the car). He would also not have incurred the cost for repairing the car. I also think he wouldn't have had the cost of the engineer's report. I note UKI's file refers to that fact that in returning the car to Mr V it effectively encouraged him to challenge its decision on the write-off category, so it should refund the costs he incurred. I think that's a reasonable response. All sums will be subject to interest payments.

However, as I mentioned above, the net result of UKI making these payments is that the car will become its. It will need to collect the car from Mr V and arrange for its disposal. I know that will seem unfair to Mr V as he feels the car is in perfect working order. But the code says cars categorised a B must be disposed of. And if UKI had handled this as it should have done, that is what would always have happened. So my award puts Mr V back in the position he would always have been in but for UKI's error.

Mr V has reported that he hasn't been able to use his car. I understand that, but I'm aware this is not the only car Mr V has access to. And when he spoke to UKI to report the loss he said he had last used the car for 'fun'. I think that matches the nature of this car – it isn't one that is usually used for every day driving. So I'll bear in mind the frustration Mr V has faced at not being able to use the car (when he was expecting to have been able to) when making my compensation award. But I won't be making a separate award to him to account of loss of use of the car (which is an award I sometimes make where someone has had no use of any car due to an insurer's fault).

I think this claim, due to UKI's failures, dragged on for far longer than it needed to. And that Mr V ended up going to a lot of fruitless effort as well. If UKI had acted to keep the car in the beginning of August 2021, rather than returning it to Mr V, everything that happened after would have been avoided. Instead it was November 2021 before UKI confirmed its final positions. And in the middle of all that, UKI had told Mr V that it was actually going to completely reverse its claim decision by declining it and asking him to repay its substantial settlement sum. As I said, Mr V also wasn't able to use the car. I think, in the circumstances here, £500 compensation is fairly and reasonably due. UKI has offered and or paid £400 in total to date (£50 and £350). If those sums have been paid to Mr V then it will now, if my final decision remains the same and Mr V accepts it, only need to pay him anything outstanding.

As I said above, I know my provisional findings will likely disappoint Mr V. But I've found that UKI didn't fail him in respect of classifying the car as a category B write-off. Which means I can't reasonably require UKI to amend that classification. If Mr V keeps the car, it is unlikely he'll be able to sell it – because the DVLA will have it marked for disposal. And it's also unlikely he'll be able to insure it in order to use it himself. So he can't use or sell it due to the category and I can't reasonably make UKI change the category. But what I can do is make UKI pay him a fair settlement for the claim and compensation to account for his financial and non-financial loss caused by its errors. And that is what I've sought to do here."

UKI said the repair estimate it saw for Mr V's car was only for £295, so it is concerned how it increased to £1,815.60. It said an invoice or receipt, rather than an estimate, to evidence Mr V's financial loss should be provided.

Mr V reiterated that his call to UKI to report the incident was made at a time of great stress. He said this means his observations at the time may not have been correct and his engineer said it was likely water had only entered via the drainage channel, which is situated in the vicinity of the air vents. He said if UKI had inspected and reported on the car properly it would have known this. Mr V said there's no evidence of anything other than rainwater entering the car, so the categorisation should be changed. He said he'd completed other work on the car because UKI said it would be. Mr V said he was surprised that no compensation had been suggested, given how much upset this had caused him.

Mr V said the car is very special to him and he really wants to retain it for himself, even if just for use off-road. So Mr V proposed a compromise that would allow him to keep the vehicle. His proposal was put to UKI. UKI said it couldn't agree to it due to the car being a category B write-off and the obligations it has under the code to ensure that cars categorised in that way are disposed of.

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 think UKI's refusal of Mr V's proposal is reasonable. With the car being a category B write-off, UKI is bound to not allow it to return to the road. Whilst UKI clearly made a mistake

in this respect before, I can't reasonably expect it to knowingly overlook its obligations in order to agree to Mr V's proposal.

UKI was sent the repair estimate by Mr V before Mr V complained to us. UKI's file refers to it showing repair costs of £295. But £295 was just part of the estimated cost. The total was always £1,815.60. The estimate was also seen by Mr V's engineer. He confirmed that the repairs had been done and that the costs for that work set out in the estimate were fair and reasonable. And he viewed the car less than a week after the date of the estimate. So I'm satisfied that Mr V had these repairs done, at the stated cost and that it's reasonable to require UKI to reimburse them, plus interest* from the date of the estimate.

I considered previously what Mr V had said about his initial report of the incident to UKI, as well as the content of his engineer's report. In my provisional decision I explained why, even taking that into account, I felt UKI had made a fair decision to deem the car a category B write-off. I understand that UKI not inspecting the car initially has caused some frustration for Mr V. But I think its enquiries were proportionate and reasonable given the circumstances. Nothing Mr V has said in reply gives me cause to change my provisional view, so I'm not going to require UKI to change the write-off category.

I know UKI agreed to review the categorisation if Mr V got his own engineer's report. But I don't see it ever guaranteed that it would change the category. And when Mr V sent his report to UKI, he knew it was considering its content. UKI then confirmed that it would not be changing the category, and Mr V complained to us. If Mr V completed other repairs to his car, I'm not convinced I can reasonably make UKI reimburse that outlay.

I did consider compensation in my provisional decision. I explained that I felt a total of £500 was warranted here – but that if UKI has paid any part of that sum already, it will only now (if Mr V accepts my final decision) need to pay the difference remaining.

Putting things right

I require UKI to:

- Pay Mr V £3,030 being the sum for salvage deducted from its original settlement, plus interest* from 6 August 2021 until settlement is made.
- Pay Mr V £1,815.60 being his repair costs for the car, plus interest* from 22 September 2021 (the date of the estimate) until settlement is made.
- Reimburse Mr V the cost of his engineer's report, plus interest* from the date he paid for this until settlement is made.
- Pay Mr V a total of £500 compensation. If any part of this has been paid already, only the amount outstanding will now have to be paid.
- Once the settlement amounts have been paid, arrange to collect the car for disposal.

*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 Lloyds to take off tax from this interest. It must give Mr V a certificate showing how much tax it's taken off if he 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 Mr V to accept or reject my decision before 31 August 2022.

Fiona Robinson

Ombudsman