

The complaint

Mr R complains about U K Insurance Limited trading as Churchill's ("UKI") valuation of his car following a claim under his car insurance. He also complains about errors they made in disposing of his car.

What happened

Mr R's car was declared a write-off following an accident. UKI valued Mr R's car at £18,000 which they later raised to £18,170 and explained the salvage would become their property. UKI also explained they'd classified Mr R's car as a Category N – Non-Structural Damage write-off. Mr R challenged the valuation and sent details of similar cars being advertised for higher. UKI maintained their position, so Mr R complained about their valuation. Mr R also complained that he was told by UKI his car was a Category N write-off so he wanted to buy the car back. He said he was told the Category N write-off was incorrect as the car had structural damage and wouldn't be allowed back on the road. Mr R said, despite this, he found out the car had been repaired and was back on the road. Mr R also complained UKI moved his car despite telling him it would stay where it was until the claim was settled, and UKI never sought Mr R's agreement to dispose of his car.

UKI responded and explained they'd already carried out a valuation dispute so they couldn't take this issue forward. UKI also said when they spoke with Mr R about the value placed on his car, they mentioned that he would need to collect his personal items from his car before it was disposed of. UKI say Mr R called them to say he'd gone to the garage to collect his items but the car was gone. UKI said they contacted the salvage agent and arranged to have the items sent to Mr R. UKI apologised for any inconvenience caused by Mr R's car being collected so quickly by the salvage agent but they didn't feel any errors had been made as Mr R's items had been sent to him

UKI said they'd checked the original engineer's report and this showed that, when they spoke with Mr R, they asked if they could dispose of the car and the report shows Mr R agreed, so his car was passed to a salvage agent. UKI said they'd reviewed Mr R's call to them during which Mr R asked how much it would cost for him to purchase his car back.

UKI said the engineer explained he didn't feel the car should be back on the road due to the extent of damage. UKI said the engineer was disputing the Category N marker and would be getting it changed to a Category B – which would mean Mr R wouldn't be able to purchase the car back.

UKI said Mr R had been denied the opportunity to purchase his car back, but this was for a valid reason. UKI said they'd originally placed a Category N marker on Mr R's car but this was then changed to a Category B. They said, when this happened they should've updated the Motor Insurance Anti-Fraud and Theft Register ("MIAFTR") database but this didn't happen. They said, while they've upheld the complaint that the record should've been updated based on the engineer's review, they couldn't have prevented the salvage agent from selling Mr R's car after it was passed to them. UKI said, once a car has been cleared for disposal and they've met their obligation to settle the claim, their limit of liability ends.

They said the salvage agent will do their own assessment and choose what to do with the car – and in this case, they decided to sell the car. UKI said they understand knowing Mr R's car is back on the road has upset him so they sent £200 to Mr R's bank account.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr R and UKI on 22 August 2022. In my provisional decision I said as follows:

“Car valuation

My starting point is Mr R's car insurance policy document. This sets out the terms and conditions and says, under the heading 'The most we will pay', UKI won't pay more than the market value of the car at the time of the loss. The policy defines market value as “the cost of replacing your car with another of the same make and model and of a similar age and condition at the time of the accident or loss.” The policy goes further to say “If your car is damaged, we will pay the cost of repairing or replacing your vehicle up to its UK market value. This is the current value of the vehicle at the time of the claim...”

In assessing whether a reasonable offer has been made, we obtain valuations from motor-trade guides. These are used for valuing second-hand vehicles. We find these guides to be particularly persuasive, largely because their valuations are based on nationwide research of likely selling prices. The guides refer to advertised and auction prices to work out what the likely selling price for the same vehicle would be.

I note Mr R says UKI's valuation doesn't represent a fair market value as it doesn't factor in the unique market for used cars due to the Covid-19 pandemic and the rarity of the specific make, model and specification of his car. I've seen that UKI reached their figure by using industry recognised tools to find out the market value of the car. UKI have provided information which shows their search with Glass's returned a valuation of £18,170 and for CAP it was £17,431. UKI have provided a screenshot of the Cazana valuation which is £20,597 but they say this wasn't used at the time of valuation. I've also noted that for this search, UKI used an estimated mileage. It appears UKI then used the Glass's valuation to settle Mr R's claim.

UKI accept that, in following our service's approach, they should've considered the average of the three motor guides. I can see they've carried out a further Cazana valuation and this gives a figure of £19,849 – but this valuation takes into account the correct mileage. The valuations for Glass's and CAP remain the same, so this gives an average of £18,483. So, UKI say they're prepared to offer the balance of £313 together with 8% simple interest from the date of loss. I can see that the valuations obtained by UKI take into account the make, model, age, mileage and specification of Mr R's car.

I can see our investigator looked at three motor trade guides to get their valuations for Mr R's car. I can see this also took into account the make, model, age, mileage and specification. Using CAP the valuation given was £18,395, Cazana gave a figure of £19,581 and Glass's was £18,570. I would add the Glass's valuation carried out shows the date of loss as October 2020, but this should be August 2020. So, I think it's fair to take into account UKI's valuation for Glass's at £18,170. Taking these figures into account, the average is £18,715. Given that the difference between this valuation and what Mr R received is £545, I don't believe Mr R received a fair settlement.

I can see our investigator is of the view that, given the increase in selling prices of some second hand cars due to Covid-19, it's not fair to value Mr R's car based on the

date of loss. And, to factor in this rise in price, our investigator has used the current date to value Mr R's car and used two motor trade guides to arrive at an average valuation of £23,644.50. I accept that many popular second-hand cars have steadily increased in value over the last two years. Therefore, I think in circumstances where a consumer has been unable to replace their vehicle because of an insurer's low offer we might think it's fair and reasonable to depart from the policy terms and ask the insurer to value the vehicle using the date of final settlement, instead of the date of loss, so the consumer can buy a replacement on the day they're paid. However, in the circumstances of this case, I don't think that's fair and reasonable as Mr R has already replaced his car. So, I don't think it would be fair to expect UKI to pay the market value at the time of payment.

I've also carefully considered Mr R's comment about UKI's valuation not taking into account the impact that Covid-19 had on the selling prices of some second-hand cars. But I'm not persuaded this means the guides aren't a fair and reasonable way of valuing his car. I say this because the guides use a range of sources to provide the values including car adverts and auction prices. I can see Mr R has provided a screenshot from the website of a car trading platform which shows a similar car for £23,495 and another for £24,500. He says he couldn't therefore find a like for like car for £18,170. We usually place less weight on advertisements as they contain asking prices that are often negotiated downwards. Nevertheless, I've looked at the examples Mr R has sent us. I am sorry to disappoint Mr R but they aren't enough to persuade me that the trade guides are unreliable for a car like Mr R's. I appreciate the arguments Mr R has made. But the policy isn't in place to pay the same price seen on an advertisement. It's in place to pay a market value as defined in the policy.

It's not the role of this service to put an exact value on a car. When looking into these types of complaints we check the relevant trade guides and consider whether the insurer has made a reasonable offer in line with them. It's our role to make sure UKI is giving Mr R a fair price using a fair and recognised approach. And based on the information provided about Mr R's car and using the trade guides, I don't think UKI have carried out a fair valuation. UKI have already paid Mr R £18,170, so they should pay Mr R £545 together with 8% simple interest from the date of loss to the date of settlement.

Disposing of Mr R's car

I note Mr R is concerned UKI disposed of his car without his authority and denied him the opportunity to repair and retain his car. I can see the policy says under the heading 'Uneconomical repairs', "Once we settle your claim, your car will become our property..." From the information I've seen, it appears Mr R's car was taken by the salvage agent prior to the claim being settled, so I don't believe, in line with the policy terms, the car had at that point become UKI's property. I've looked at the Audatex report and under the question 'Authority given to dispose of the vehicle', it's answered 'Yes'. I note UKI say this report shows when they spoke with Mr R, he agreed for them to dispose of his car. Mr R disputes this and says he never gave such authority.

I haven't been provided with a recording of this call, so I've looked at UKI's contact notes. The notes don't record any conversation around disposal of the car or Mr R agreeing to this. I've listened to call recordings following Mr R's car being taken by the salvage agent. In one call, Mr R says he has visited the garage to collect his belongings from his car but his car has been moved. The agent explains they will arrange for the salvage agent to do a sweep of the car and forward Mr R's belongings to him. Mr R then explains which items he would like returned. There's a call from UKI's engineer to Mr R. During this call Mr R explains he has been to the

garage and his car was gone so he wasn't able to collect his belongings. Mr R explains he understands his car is now with a salvage agent. There's a further call with UKI's engineer during which Mr R raises the point that he was told his car wouldn't be moved until his claim had been settled.

From the information I've seen, I don't believe Mr R was told his car would be moved. It's clear from the phone calls that Mr R visited the garage expecting to collect his belongings and was shocked to see his car was no longer there. And, the phone calls are a contemporaneous account of Mr R's frustration. In relation to getting Mr R's agreement for the car to be sent to salvage, while I've noted what the Audatex report shows, based on all the other information I've seen, I think it's more likely than not Mr R hadn't given agreement at that point. Given that Mr R didn't know his car had been moved, I don't believe he'd given any agreement at that point for his car to be disposed of.

I understand why this has upset Mr R and I acknowledge his preference was to buy his car back and repair it. However, even though his agreement wasn't obtained, and the car was taken by the salvage agent, I don't believe this caused a missed opportunity for Mr R to buy back and repair his car. I say this because the information shows Mr R's car was originally written-off as a Category N, but this was later changed to a Category B. During a call with the engineer, they explain to Mr R that the car's write-off categorisation has changed from a Category N to a Category B. There's a discussion around Mr R buying the car back but the engineer explains they can't because it's a Category B write-off.

I can see UKI sent a query to the engineer about the write-off category and they confirm they placed a Category B on the car due to the extensive damage sustained to the rear structure. I can see UKI have provided photos which show the damage together with commentary, so I'm persuaded by the engineer's findings here. A revised Audatex report also shows the car has been written-off as a Category B. So, even though I do understand Mr R's reasons for wanting to buy his car back, I can't say it was unreasonable for UKI to decline this request.

Write-off category

I understand the car was sold by the salvage agent, and this was made possible because UKI didn't update the MIAFTR database to reflect the change in the write-off categorisation.

I can see Mr R has provided an email from the salvage agent which confirms the car came through to them as a Category N vehicle and it was therefore sold on by them as a salvageable Category N vehicle. System notes provided by UKI say "...the dispute engineer has confirmed we should have updated the category to prevent this vehicle going back on the road." There's also a separate note by UKI which says a MIAFTR amendment should've been made.

So, while I note UKI say in their complaint response that they couldn't prevent the salvage agent from selling the car on, it appears in this case the car was sold as a Category N – and this occurred because UKI hadn't updated the MIAFTR database. I accept, had the car been sold after UKI had amended the database, then that's out of UKI's control. But, in this case, the car was sold by the salvage agent as a Category N – and at that time it was still showing on the database as a Category N.

I do understand why this has caused Mr R significant upset, but I don't believe this changes the position in relation to Mr R buying his car back. I agree the car has been

sold while incorrectly still showing as a Category N, but I've explained above why I believe it's reasonable for UKI to treat the car as a Category B write-off. So, in this case, the error by UKI has been their failure to update the database with the change in category which has allowed the car to be sold. They haven't though made an error in declining Mr R's request to buy back his car.

That said, I do understand why Mr R has been left very upset at learning his car is back on the road. It was his intention to repair his car back to a roadworthy standard, but due to UKI's error, someone else has brought his car back on the road. So, while UKI have paid Mr R £200 for the upset caused, I don't think this goes far enough to reflect the impact on him. In addition to this, Mr R has provided information which shows the car was still showing as a Category N more than a year after he was told it was a Category B. It's not clear whether UKI have updated the MIAFTR database, but I would remind UKI they have an obligation and ongoing responsibility for ensuring information on the MIAFTR database is accurate. In particular, I refer to the Association of British Insurers' 'Code of Practice for the categorisation of motor vehicle salvage'. This says "Any changes in a category must be notified to MIAFTR and to any party whom the affected vehicle has been transferred as soon as reasonably practical following re-classification." And, "It is essential that loss information on MIAFTR is accurate and up to date." I will leave it for UKI to take any action they feel is appropriate in light of this code."

So, subject to any further comments from Mr R or UKI, my provisional decision was that I was minded to uphold this complaint and require UKI to pay Mr R a fair valuation for his car and pay additional compensation.

Following my provisional decision, UKI have responded to say they have no further comments. Mr R has responded and provided an ombudsman's decision which he says refers to the price increase of cars over the last two years. Mr R says the ombudsman comments that prices in adverts do represent the actual sale price. Mr R has also provided an email sent to UKI which shows cars similar to his car advertised for between £21,990 to £23,000. Mr R has also provided evidence of enquiries he has made to try and locate a similar car and the availability of cars similar to his being limited. Mr R also says I've commented that he hasn't showed our service enough adverts of cars at a higher price.

Mr R also believes there was an opportunity to challenge the write-off categorisation of his car. Mr R has provided information which shows his car is still showing as a Category N write-off. Mr R also disagrees with the remedy being awarded.

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've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I believe are the key issues. I wish to reassure Mr R I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

I have looked at the ombudsman decision Mr R refers to but the first point I would make is that each complaint is looked at on its own facts. I can see the ombudsman does say that

more recently the advertised price has been a true reflection of the selling price due to high demand. However, the ombudsman in this case does take into account the trade guides and decides a fair valuation as being the average of the two highest trade guide valuations. In this case, I've taken the same approach by considering the average of the trade guide valuations – which I think is fair in the circumstances of this case.

I have taken into account Mr R's comments and the information he has provided about advertised prices. The guides refer to advertised and auction prices to work out what the likely selling price for the same vehicle would be – and that's why we find a valuation based on the trade guides to be persuasive. I do wish to clarify my provisional decision didn't say Mr R hadn't provided enough adverts, but rather, the adverts didn't persuade me that the trade guides are unreliable for a car like Mr R's.

I understand Mr R believes, had UKI not prematurely disposed of his car, he could've challenged the categorisation. I note Mr R believes there would've been merit in raising such a challenge. I do acknowledge Mr R feels very strongly about this, but I haven't seen any persuasive or compelling evidence that the Category B assigned to Mr R's car was incorrect or that Mr R would've successfully challenged the categorisation. I do understand Mr R feels he should be awarded additional compensation for this, but I haven't seen any evidence which challenges the engineer's assessment of a Category B.

I do acknowledge Mr R's concern about the write-off category not being updated. I would again remind UKI of their obligations under the relevant Code of Practice I've referred to in my provisional decision.

I have carefully considered Mr R's points about the redress being awarded and I'm sorry to disappoint Mr R but I'm not persuaded the remedy is unreasonable. Mr R has replaced his car and even if UKI had paid the fair valuation of £18,715 at the time they paid the settlement, I can't see this would still have matched the advertised prices Mr R had provided at the time. So, I can't say the shortfall of £545 has caused Mr R to miss out on the opportunity to replace his car at the time. I agree the price of second-hand cars has increased over the last two years and, while I acknowledge Mr R wasn't able to replace the exact car he lost, he has replaced it. So, it's for this reason as well as what I've already mentioned here, that I don't believe it's fair and reasonable in the circumstances for UKI to meet a valuation based on today's prices.

Putting things right

I've taken the view that UKI haven't carried out a fair valuation of Mr R's car, they led him to believe his car wouldn't be moved until his claim was settled and their error has led to the car being sold as a Category N write-off. So, UKI should pay Mr R £545 together with 8% simple interest from the date of loss to the date of settlement. And, to reflect the significant impact caused by their errors, in addition to the £200 already paid, they should pay a further £200 to bring the total compensation to £400. UKI should provide Mr R with a certificate showing any taxation deducted.

My final decision

My final decision is that I uphold the complaint. U K Insurance Limited trading as Churchill must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 October 2022.

Paviter Dhaddy

Ombudsman