

The complaint

Mr S is unhappy with how Acasta European Insurance Company Limited handled his guaranteed asset protection (GAP) insurance claim.

All references in this decision to Acasta include any of its appointed administrative agents.

What happened

Mr S contacted his motor insurer and Acasta following the theft of his car in February 2022 and soon received a settlement offer from the former, which he accepted. He wanted to claim on his GAP insurance policy to cover the gap between the motor insurer's settlement and the higher of either the price he paid for the car or the finance settlement amount that was still outstanding on his car finance.

Acasta investigated the GAP claim and offered Mr S a lower settlement figure for it than he expected. That was because Acasta felt the motor insurer had undervalued his car. So, Acasta had instead based its settlement offer on what *it* considered to be the correct – and higher – value of the car at the time of the theft.

Unhappy with Acasta's offer, believing it to be too low, Mr S complained. Acasta noted that the terms also required Mr S to gain Acasta's acceptance of the motor insurer's settlement figure before accepting it and that he hadn't done that. That being the case, Acasta confirmed to Mr S how it had worked out his claim payment and confirmed that, in its view, this was in line with its policy terms and its view of the car's market value.

Mr S remained unhappy and brought his complaint to us. One of our investigators looked into the complaint and recommended that it should be upheld. They said Mr S was entitled to rely on the motor insurer's valuation, which was based on an established motor trade guide. They felt, in any case, that it probably would have made no difference if Mr S had sought Acasta's acceptance of the motor insurer's settlement.

Acasta didn't agree with the investigator's findings. It reiterated that the policy terms made clear Mr S should have obtained its authorisation before accepting the motor insurer's offer. It said even if the motor insurer refused to deal with Acasta as Mr S suggested, it could have instructed Mr S to negotiate with the motor insurer himself.

As the complaint couldn't be resolved informally by the investigator, it was passed to me to review afresh.

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. I'll explain why.

I think the starting point is to see what the policy terms and conditions say about how claims such as Mr S's will be handled. Under the heading '*Acceptance of Motor Insurer's Offer*', the terms say:

'This insurance covers you for the difference between the total loss settlement by your motor insurer and either the outstanding balance under your finance agreement or purchase invoice price.'

Acasta points out that the terms then require the insured to have sought its acceptance of the motor insurer's settlement offer before accepting it.

The terms go on to say that if an offer of settlement from a motor insurer's accepted before contacting Acasta then it might, at its option, negotiate with the motor insurer on behalf of the insured.

It's not in dispute that Mr S didn't seek Acasta's acceptance before agreeing to the terms of the motor insurer's settlement offer. So Acasta was entitled by the policy terms to seek to negotiate with Mr S's motor insurer in the circumstances, although I can't see that it did that. Mr S says he asked his motor insurer whether it would have negotiated with Acasta and it replied that it wouldn't have. This suggests to me that it wouldn't have made much difference to the motor insurer's settlement offer even if Mr S had contacted Acasta before accepting the motor insurer's offer. So, I'm not persuaded that Acasta's lost out through Mr S's actions.

There's also the question raised by Acasta about market value and whether the settlement offer from Mr S's motor insurer was fair. Acasta says the policy terms allow it to use the car's '*market value*' in settling the claim on the grounds that Mr S didn't gain its acceptance prior to accepting the motor insurer's offer of settlement. Although I can see the term in Acasta's Insurance Product Information Document – effectively an intended summary of the insurance cover provided at the time of the sale – I can't see the clause or anything similar in the policy terms and conditions themselves.

The policy terms and conditions do refer to – and define – market value, but that's in relation to the motor insurer offering a replacement car on a '*new for old*' basis which is refused by the insured. I can't see that Mr S's motor insurer made such an offer to him, or that he refused such an offer. It follows that I don't believe the policy definition of market value has the same relevance or importance to Mr S's claim or subsequent complaint as Acasta suggests.

In the circumstances, I'm satisfied that the insurance Mr S held with Acasta ought to have covered the difference between the motor insurer's settlement and either the outstanding balance under his finance agreement or purchase invoice price, whichever is higher. I'm not persuaded that Acasta's settled the claim on that basis, and I think it should pay him compensation as a result.

Putting things right

Acasta should, in line with the remaining policy terms, pay Mr S for the shortfall between the motor insurer's offer and either the outstanding balance under his finance agreement or purchase invoice price, whichever is higher. Acasta should add interest to the amount it's underpaid at the rate of 8% simple a year, from the date of its initial offer to Mr S to the date of payment to him†.

† HM Revenue & Customs requires Acasta to take off tax from this interest. Acasta must give Mr S a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given, I uphold this complaint. I require Acasta European Insurance Company Limited to put things right for Mr S as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 February 2023.

Nimish Patel
Ombudsman