

The complaint

Mr G complained that U K Insurance Limited trading as Privilege undervalued his car following his claim on his motor insurance policy.

What happened

After Mr G's car was damaged in an accident Privilege decided that it was uneconomical to repair. So they offered him an amount for its market value, which they said reflected its pre-accident damage. This was £3090, less his policy excess.

Mr G said that wasn't his car's true value as it wasn't enough to buy a replacement car. He thought that his car was worth £6000 to £7000. He felt that Privilege had misled him into taking out the policy and it was unfair for them to rely on their engineer's personal opinion of its value.

Privilege said that they'd made deductions from his valuation as his car had pre-accident damage. They said they were entitled to rely on their engineer's opinion about that, and Mr G hadn't provided any expert evidence to contradict that.

The investigator thought that Privilege hadn't fairly valued his car in line with motor trade guides, taking into account their deductions for Mr G's car's pre-accident damage. So she recommended that Privilege should increase the amount for his car's value and also pay him compensation for his distress and inconvenience. Neither Mr G nor Privilege agreed, and so Mr G's case was passed to me to decide.

I issued my provisional decision on 31 August 2022. Both Mr G and Privilege responded, and as a result I asked them for some further information.

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 my provisional decision I said as follows :

"Mr G's car insurance policy says that Privilege will pay his car's market value which "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 investigator explained to Mr G our approach regarding complaints about car valuations. They also explained that Privilege aren't required to put him back in the same position that he was in before the claim took place. We don't decide what the market value of a car is; we merely consider whether the insurer has reached a fair and reasonable amount having regard to the valuations in the trade guides, as well as any other evidence the parties may provide, and that might include advertisements detailing the sale prices of similar cars.

He also said that second-hand car prices had gone up since the accident and so Privilege should pay him more. But he hadn't sent any persuasive evidence to show how that applied to his own car. And we bear in mind that cars usually sell for less than the advertised price, so we think that an insurer isn't bound by any advertised prices. And although Mr G says he wants his car's "true value", we think that assessing the value of a used car isn't an exact science.

I've looked at how Privilege say they worked out his car's market value. Privilege at first explained to us that they had used Mr G's car's trade value from the trade guides, rather than its retail value. This was because they felt it better reflected the pre-accident damage they said his car had. This isn't in accordance with our guidelines as Mr G's policy wasn't a trade car insurance policy.

However Privilege then said they'd made deductions to his car's retail market value for pre-existing damage to the car as follows :

*"Front bumper £1068
OSR door and ¼ panel damaged £600
NSF door damaged £442"*

Privilege said that these deductions represented 50% of the cost of repairing these items and so was in line with the Financial Ombudsman's' broad-brush approach re valuing and deducting for pre-existing car damage.

As the investigator explained, as pre-existing damage will often have a detrimental effect on a vehicle's market value, our approach is that there is nothing necessarily wrong with an insurer making a deduction because of pre-existing damage. And it's true that taking 50% of the repair cost of pre-existing damage to a car and deducting that from its market value is in line with our Service's established broad-brush approach. However we would expect to see an engineer's report detailing pre-existing damage, and why they believed them to be pre-existing, as well as an itemised estimate of the costs of their repair.

Privilege had sent us their total loss report dated February 2021. It said the £3090 was agreed with Mr G. It includes photographs and it says that Mr G's car pre-accident condition was poor, its tyres were unavailable, and it was dismantled and unroadworthy. It said it had damage to the centre front, mechanical and underbody.

But the report didn't explain how the market value offer was reached. It didn't distinguish between what damage was accident damage and what was pre-existing damage, and it's not possible to tell from the photos whether the damage they show was pre-existing or not. It also didn't mention the above specific deduction amounts that Privilege claimed, or itemise the repair costs for accident damage or for pre-existing damage.

Although Privilege say their engineer did work out the above deductions they claimed, the February 2021 report doesn't show that. So Privilege haven't shown that they told Mr G how they'd reached their market value offer, or the deductions they'd made and why. And I don't think that's fair. Privilege's final response letter to Mr G's complaint doesn't show that either.

As Privilege had not produced an itemised estimate of the repair costs for what they said was pre-existing damage, the investigator asked them for that. Privilege then said that Mr G's car's market value was the retail values from two trade guides, which I will call A and B. Guide A valued the car at £5200 and Guide B valued the car at £5350. The average of these valuations is £5275. The investigator has checked these and found them to be correct for Mr G's car.

Privilege then sent us an estimated repair report dated October 2021 which showed the pre-existing damage repair costs as being over £4000. I don't think it's necessary here to detail all the figures. But in short, Privilege said that taking 50% of that amount (in line with our stated approach) away from the £5275, gave a figure which was slightly more than the £3090 they'd offered, but not too far from it. So they maintained that their £3090 remained an acceptable market value offer.

However I don't think that approach for the deductions works because the October 2021 repair estimate for the pre-existing damage does not itemise a cost for each item of it. And it also doesn't tie in with what Privilege said they did in fact deduct for pre-existing damage. That's the specific figures above (£1068, £600 and £442). And so I think in this case it is more appropriate to take each of those Privilege's figures individually and see if it was fair for Privilege to make the deductions for them that they did.

Regarding the bumper, Privilege said that Mr G had made a previous claim for damage to that in 2018. They'd paid him cash to settle that claim, so that he could pay to repair it himself, but he hadn't repaired it. So they deducted half of that, which was £1068. I think it's unlikely that Privilege would misrepresent a previous claim made against them or what they did to settle it, so I'm willing to be persuaded by that. I think it would be fair for them to deduct that amount from Mr G's market value settlement on this current claim, as otherwise they'd be paying twice for the same damage.

However as regards the "OSR door and ¼ panel damaged £600" and the "NSF door damaged £442" I don't think that Privilege have adequately shown that these matters were pre-existing damage and not accident-related, or that their deductions for them were fair or reasonable. They are not proven by the photos; they are not supported by an engineer's report and the repair estimate report of October 2021 does not itemise their stated repair costs. So I don't think they have acted fairly with regards to the valuation, and I don't think it's reasonable to make any deductions for those items.

I think Privilege's last suggested approach to the starting point for the car's market valuation is a fair one. That's the average of guides A and B above, which is £5275. Deducting £1068 from that leaves £4207.

£4207 is £1117 more than the £3090 they have already offered Mr G. So I think that Privilege should pay him £1117, plus interest on it, as he has lost the use of that money. It's not clear if Privilege have paid him the £3090 less policy excess, although the investigator asked him to confirm that. But if Privilege have not paid him that yet, they should obviously do that too.

I see that since Mr G brought this complaint to us, he has mentioned that if Privilege didn't pay him what he thought was his car's true value, he would like Privilege to give him his own car back. However Privilege said that his car had been disposed of. I haven't seen anything in the evidence provided to suggest that Mr G did ask Privilege to have his car back, in the course of his claim. If he had wanted to buy back his car, or (or enquire about the option to buy it) then it would have been up to him to raise the issue with Privilege. So I don't think Privilege have done anything wrong there. And if Mr G had bought his car back, Privilege would have been entitled to deduct any salvage value from the market value they offered him.

Mr G tells us he's been unwell for some time and that Privilege's actions caused him stress, and inconvenience and he still hasn't bought another car. I can see that Privilege didn't show or explain their deductions to Mr G either in their total loss report of February 2021, or in their response to his complaint. I think that this was unclear and that Mr G has been worried

because he doesn't understand how Privilege have come up with the settlement offer. I think this increased his stress and inconvenience. I think Privilege should therefore pay him £200 compensation for this.

My provisional decision

For the reasons I've discussed above, it's my provisional decision that I uphold this complaint and I require U K Insurance Limited trading as Privilege to do the following:

- ☑ pay Mr G £3090, less policy excess, if they have not already done so*
- ☑ pay Mr G £1117*
- ☑ add interest on the £1117 at the rate of 8% per year simple from the date of total loss to the date they pay it to him*
- ☑ pay Mr G compensation of £200."*

Mr G and Privilege both responded to my provisional decision.

Mr G thought that this new total loss claim shouldn't have anything to do with his previous claim for the bumper damage that Privilege had paid him for already. He said it was history and it was his discretion to accept a cash settlement for that and do the repairs himself, or not. That's true, but pre-existing damage does reduce the overall value of his car and if Privilege have paid for that damage already, they aren't required to pay for it again. So they're entitled to make a deduction for it from their market value settlement.

Mr G also said that he hadn't bought a new vehicle and had spent £2,000 on taxis. But Privilege have shown us that they paid him the market value settlement, less his policy excess, in March 2021. So he would have been able to buy a vehicle with that, and we would expect someone to do that to mitigate their loss.

Mr G repeated that used car values had gone up and similar cars to his were now being advertised online for £6,500. However as I said in my provisional decision, Privilege fairly valued his car at the date of the accident, and we would see any interest award as making up for any loss of use of money.

Mr G have sent us some additional photos of his car taken in 2019 and these do support that there was some pre-existing damage to it, including the bumper. However Privilege have given us yet another completely different set of figures for the various items of pre-existing damage and say they have paid Mr G those as cash payments.

These figures do not correspond to the information Privilege previously gave us, nor are they supported by any objective evidence such as screenshots of their payment records of those payments. They also aren't supported by the engineer's report or any repair cost estimate report.

So I still don't think that Privilege have adequately shown that all their deductions for pre-existing damage were fair and I don't think it's reasonable to make the deductions they claim for those items. The one exception is the claim for bumper damage. That's is because Mr G said that Privilege did make payment to him for the bumper. Privilege now say that payment was £1027, less than what they previously claimed, but they've been unable or unwilling to provide objective confirmation of that despite many opportunities. And as Mr G has said he doesn't want to comment any more, I don't intend to ask him about it. So I will use that figure of £1027 and take that from the market value stated above of £5275. This leaves £4248. That's £1158 more than the £3090 Privilege offered Mr G in settlement and so I think that

Privilege should pay Mr G £1158. I think that's a fair approach overall and I make no other changes to my provisional decision.

My final decision

For the reasons I've given above, it's my final decision that I uphold this complaint and I require U K Insurance Limited trading as Privilege to :

- ☐ pay Mr G £1158
- ☐ pay Mr G interest on the £1158 at the rate of 8% per year simple from the date of total loss to the date they pay it to him
- ☐ pay Mr G compensation of £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 30 December 2022.

If Privilege consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr G how much they've taken off. They should also give Mr G a tax deduction certificate if Mr G asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.



Rosslyn Scott
Ombudsman