

The complaint

Mr E has complained about the way MS Amlin Insurance SE ('MS Amlin') has handled a claim he made on his commercial vehicle insurance policy.

What happened

On 30 May 2023, I issued a provisional decision explaining why I was intending to partially uphold this complaint. This is what I said in the provisional decision:

What happened

MS Amlin are the underwriters of this policy, i.e., the insurer. Part of this complaint concerns the actions of MS Amlin's claim handlers. MS Amlin have accepted they are responsible for the actions of their claim handlers, and other agents. A reference to MS Amlin therefore includes the actions of their agents, including their claim handlers.

On 6 May 2022, Mr E notified MS Amlin of a claim for damage to his tractor, caused by the failure of an engine component.

MS Amlin accepted the claim and confirmed to Mr E, on 23 June 2022, that the vehicle was a total loss, and a pre-accident value (PAV) was placed on the vehicle for a sum of £60,000, subject to the deduction of the policy excess. Mr E was also informed that MS Amlin would instruct their salvage agents to collect the vehicle.

Mr E declined to allow the vehicle to be collected. He didn't agree with the PAV but said he would accept £50,000 together with being able to retain the vehicle. However, MS Amlin explained that, as the salvage value of the vehicle was £19,200, his proposal wasn't acceptable.

On 28 June 2022, Mr E contacted MS Amlin's claims team to challenge the salvage figure on the basis that he expected it to be closer to 10% of the PAV. During that call he was advised that he'd been given an incorrect salvage figure, and it should have been 15% of the PAV; so, £9,000. Mr E confirmed he was happy to accept the sum of £50,900 in settlement of his claim (after deducting the excess payment and the salvage value). On receiving confirmation of this in writing from MS Amlin, Mr E instructed a garage to carry out the repairs. He said he wouldn't have done that if the salvage cost was £19,200.

A few weeks later, on 19 July 2022, after Mr E had arranged for the vehicle to be repaired, he contacted MS Amlin to ask why the claim monies hadn't been transferred to him. At that time Mr E was advised that the claims' team adviser he'd spoken to on 28 June 2022 had provided an incorrect salvage figure, and the correct figure was £19,200, as originally notified to him. Mr E complained about this, as he'd authorised repairs to the vehicle, based on the revised lower salvage figure confirmed to him in writing.

In September 2022, MS Amlin issued their final response letter, partially upholding the complaint, and offered Mr E £100 compensation for the delays he'd suffered in his claim being settled. Unhappy with the response, Mr E brought his complaint to our service.

One of our investigators looked into what had happened and issued a view not upholding the complaint. She explained that she'd reviewed the matrix MS Amlin used to calculate the salvage figure. The matrix showed that the correct figure was £19,200. Therefore, our investigator said they shouldn't have to pay Mr E £10,200 as a result of a mistake being made. She said that the £100 compensation offered by MS Amlin was fair in the circumstances.

Mr E didn't agree with the investigator's view. He said that he'd questioned the amount of the salvage price because in the past he believed was around 10% of the value of the vehicle. He repeated that he'd asked for confirmation of the revised salvage price, on the call and in writing, which was provided. He explained that he had taken care to confirm that sum, because he wanted to be certain of the salvage cost, before he instructed the work to be carried out on the vehicle. Mr E said he never would have gone ahead with the restoration of the tractor on the basis of a salvage cost of £19,200, as it wouldn't be financially viable. It was only after the salvage cost of £9,000 was confirmed, that the work was instructed.

Mr E requested an ombudsman's decision on his complaint.

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'm intending to reach a different conclusion to that arrived at by our investigator. I will explain why.

Mr E hasn't disputed the decision to declare his vehicle a total loss. And while he wasn't completely satisfied with the valuation, he was willing to accept it, in the context of the vehicle being allocated a salvage value of £9,000.

Mr E's policy document explains what happens in the event of a total loss on page 17 of the policy terms and conditions, under the heading '(2.3) – Total Loss'. It says:

'If the insured vehicle suffers loss or damage where the costs of repair or replacement exceed the market value of the vehicle we will pay you up to the market value of the vehicle at the time of the loss.When we have paid you, the vehicle becomes our property and cover in respect of the vehicle ceases'

So, under the terms of the policy, MS Amlin was entitled to take possession of Mr E's vehicle. This means that by agreeing to return the vehicle to him, in exchange for a reduction of the total loss payment, by the salvage value, MS Amlin was acting outside the terms and conditions of the policy.

Our service typically agrees that an insurer should agree to allow customers to retain their vehicles, despite what the policy says, because the vehicle is still the customer's property until the claim is settled. So, they should have the right to keep it if they wish to do so. That said, we also typically agree that it is fair for the insurer to deduct the amount it would have received for the salvage. This is so the insurer doesn't lose out as a result of the customer keeping the vehicle.

In this case, the policy terms and conditions specifically state that MS Amlin can take possession of the vehicle. So, had MS Amlin stuck to the terms of the policy, it would have been able to sell the vehicle at auction. Mr E decided that he wanted to retain the vehicle, and MS Amlin agreed. So, I think it is fair and reasonable that it deducted a salvage value from the cash settlement it was to pay Mr E, so that it didn't lose out financially by allowing him to keep the vehicle.

In explaining how it arrived at the salvage value for the vehicle, MS has provided us with a matrix that explains for vehicles, such as the one Mr E has claimed for, with a value in excess of £40,000, the salvage value would be 32% of the value of the vehicle. In this case that gives a salvage value of £19,200. However, when Mr E queried that value with MS Amlin, before deciding to have the vehicle repaired, MS Amlin confirmed verbally, and in writing that the correct salvage sum was £9,000. In that same phone call, Mr E's bank details were obtained and a copy of the V5 was requested to enable the claim to be settled. The V5 was provided later that day, and Mr E told us that following written confirmation of the salvage value being £9,000 he decided to arrange for the vehicle to be repaired.

On 19 July 2022, Mr E contacted MS Amlin to chase the payment of the claim monies which he hadn't yet received. At that time, he was informed that the salvage value confirmed to him nearly three weeks prior, was incorrect and the correct salvage value was £19,200. Mr E made a complaint to MS Amlin shortly afterwards on the basis that he'd made arrangements for repairs to the vehicle based on the figures confirmed to him three weeks earlier.

As I've already explained, the policy terms and conditions don't specifically cover the issue in dispute here. On the one hand, MS Amlin is firmly of the view that the salvage value of £19,200 should be applied to the settlement of the claim, on the basis that Mr E shouldn't be able to financially gain from a mistake made by their claims' handler. On the other hand, Mr E says that he relied on the information he was given, verbally and in writing, and incurred costs he wouldn't have otherwise incurred, so his overall position has been worsened by MS Amlin's actions.

Where the evidence is inconsistent, incomplete or contradictory, as it is here, I make my decision based on what I think most likely happened and on what is fair and reasonable in the circumstances of the complaint.

Mr E specifically challenged the salvage value on the basis that he believed it should have been closer to 10% of the value of the vehicle. The second claim handler he spoke to agreed and said it should be 15%, not the 32% he was originally quoted. This was confirmed in writing. After that confirmation was received Mr E instructed the repair works to be carried out.

When Mr E was told that he'd been provided with incorrect information, three weeks later, he had already committed to incurring the repair costs. So, Mr E, in reliance on the incorrect information provided by MS Amlin, instructed the repairs to be carried out.

Mr E told us that he'd suffered detriment as a result of MS Amlin's actions, as, in reliance on the lesser salvage value advised to him, he decided to have the tractor repaired. However, before I can consider whether and to what extent, MS Amlin should pay Mr E the £10,200 difference between the first and second salvage values, I first need to be satisfied Mr E suffered a detriment as a result of MS Amlin's mistake.

Our investigator asked Mr E for some additional details regarding the losses he'd suffered which he considered were due to the incorrect salvage value being confirmed to him.

In response, Mr E said that repairs were only completed four months after the tractor broke down which led to him losing a substantial amount of business and customers during four of the busiest months of the season. He also explained that MS Amlin's poor handling of the claim led to it taking an excessive amount of time for the claim to be settled, during which time he was losing business. Mr E also told us that while the repairs cost less than £40,000 he can't understand how a company are able to agree figures both verbally and in writing and not honour that agreement, regardless of the costs later involved.

I've considered Mr E's further comments and understand his frustration. But, the commercial motor policy doesn't provide cover for lost income. So, while I accept that his business did suffer as a result of the tractor breaking down, and the period of time it took for the repairs to be completed, the policy doesn't specifically provide cover for that. I've therefore next considered whether it would be fair and reasonable in the circumstances of Mr E's complaint for MS Amlin to settle his claim on the basis of the second salvage value advised to him.

Before I can reasonably require MS Amlin to settle Mr E's claim on the basis of incorrect information he was provided by their claim handler, I need to be persuaded that he did suffer a financial detriment which directly resulted from that. So, Mr E would need to show either that:

- had he known he was only going to get £40,700 he would have taken the settlement of £59,900 and bought a like for like replacement tractor without spending his own money; or*
- he couldn't have had the tractor repaired for less than £40,700, so still would have had to spend his own money on the repairs.*

On the basis of the evidence I currently have, it seems that neither of the above scenarios apply. The letter from a supplier of tractors to Mr E said that it would take nine to twelve months to supply a like for like replacement tractor, given the bespoke nature of the tractor. Bearing in mind the losses which Mr E suffered from the four months of having the tractor out of service, I think it unlikely he would have chosen an option that gave rise to a longer period of delay. And Mr E has told us that the tractor cost less than £40,000 to repair, so after deducting the original salvage value, he was able to have the same tractor without having to pay anything in excess of the claim settlement monies.

So, having considered all of the information, while it was wrong of MS Amlin to provide Mr E with an incorrect salvage value, and not promptly correct that information, I am not convinced that it made Mr E's position worse, in relation to the damaged tractor. Consequently, I am not currently persuaded that Mr E suffered any loss or detriment from this. Undoubtedly, being a tractor down during the busiest period of the year for his business did cause Mr E to suffer losses, as he's explained. But, for the reasons given, I can't hold MS Amlin responsible for those other losses.

However, when considering whether MS Amlin has acted fairly and reasonably, I can award compensation for the inconvenience Mr E has suffered due to the way that his claim was handled. And I can see, in the evidence provided, that there were delays caused by MS Amlin which would likely have protracted the period of time it took for

the claim to be settled.

MS Amlin offered Mr E £100 for the inconvenience he'd suffered as a result of the way it had handled his claim. However, I don't think that goes far enough to compensate Mr E for the inconvenience he's experienced. As MS Amlin was advised, Mr E had to make do without a tractor during his businesses' busiest period. And, it was only when Mr E contacted MS Amlin to chase the payment of the settlement sum that he was informed a mistake had been made, three weeks after he'd been provided with the incorrect information. I'm satisfied that this would have caused Mr E additional inconvenience during what was already a stressful time. I also note that in the early part of the claim, several weeks passed before MS Amlin took any substantive action to progress the claim. I therefore think the compensation should be increased to £350.00.

I concluded by saying I intended to partially uphold the complaint and require MS Amlin to pay Mr E £350 compensation. I asked both parties to let me have any final arguments or information they'd like me to consider, before giving my final decision. Mr E didn't respond to my provisional decision. However, MS Amlin responded to say it accepted the provisional decision and agreed to pay the increased compensation to Mr E.

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 neither party have provided any new evidence for me to consider, I see no reason to depart from the conclusions set out in my provisional decision.

I therefore uphold this complaint in part and require MS Amlin to put things right as I've set out below.

Putting things right

For the reasons given in this decision and in the provisional decision, I uphold this complaint and require MS Amlin Insurance SE to pay Mr E £350 compensation for the distress and inconvenience he's suffered as a result of the way it has handled the claim (less any amount already paid to him).

My final decision

My final decision is that I uphold this complaint and require MS Amlin SE to pay the award detailed above.

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

Carolyn Harwood
Ombudsman