

The complaint

Mr D complains about how UK Insurance Limited (“UKI”) settled a claim under his motor insurance policy. Mr D is represented in this complaint, but I’ll refer to him throughout for ease.

What happened

Mr D had a vehicle insured with UKI. The vehicle was leased to Mr D under a lease agreement with a third-party company who I’ll refer to as L.

In September 2022 the vehicle was severely damaged. UKI assessed it and declared it a write-off.

UKI contacted L and asked for its settlement value, which is known as a ‘write down’ value. This was £17,570.88. UKI paid this amount, less Mr D’s excess, direct to L.

Mr D contacted L to say that he had a financial interest in the vehicle. He expected UKI to pay him the difference between the write down value and its market value, which he was expecting to be around £23,000.

The lease agreement was about 34 months into its 36 month term.

UKI said it had paid the correct amount to L. It said Mr D’s lease agreement had ended with the vehicle being a total loss.

Mr D remained unhappy and brought his complaint to this service. Our investigator looked into Mr D’s complaint and partly upheld it. He said that UKI had settled Mr D’s claim by paying L correctly, but Mr D had also paid a deposit amount to L which he would be entitled to a pro-rata refund. Under the terms of his lease agreement, if L wouldn’t refund this, then he’d expect UKI to pay it, plus interest at 8% simple from the date of the claim to the date UKI paid.

UKI agreed with the view. Mr D asked for it to be reviewed by an ombudsman, so it has been passed to me to make a final decision.

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 examined the evidence I’ve been provided, I am upholding Mr D’s complaint in part.

I’m not upholding the main part of his complaint, about the market value of the vehicle, which I know will be a disappointment for him.

I’ve been provided with a copy of the lease agreement between Mr D and L. It’s clear to me that it facilitates the leasing of the vehicle in question to Mr D over a period of three years.

To pay for this, Mr D agrees to pay L a deposit amount plus monthly rentals on top.

As a lease agreement, Mr D won't own the vehicle. At the end of the lease he couldn't retain the vehicle but would either enter into a new lease agreement for it, or sell it to a third party and keep any profit that remained after L has been paid off.

I think it's Mr D's position that he would have taken this second option, therefore he would be entitled to expect UKI to pay out the market value.

Looking at UKI's policy wording, this says:

"If your vehicle is under a leasing agreement, we will make any payment for the total loss of your vehicle to the leasing company."

And looking at the lease agreement, this says (these sections are from different parts of the agreement):

"We shall be entitled to collect any insurance monies from your insurers and where necessary we may, but will not be obliged to, negotiate and affect a settlement with the insurers which will be binding on you."

"[if] the vehicle is declared a total loss. We shall be entitled to terminate the Agreement."

It's clear to me that the lease agreement has been terminated as a result of the total loss of the vehicle, so at that point in time there's nothing further for Mr D to pay for, or crucially to benefit from. The possibility of him making some profit from the eventual sale of the vehicle assuming the lease had progressed to its natural conclusion is an expectation only.

There's nothing in the lease or the policy that guarantees him this return, and as I say above, the lease agreement had been terminated by the vehicle being declared a total loss.

Mr D has also focused on the part of the policy wording that talks about the amount that will be paid under the policy:

"The most we will pay is the market value of your vehicle at the time of the loss or damage."

I can understand why he's focused on the phrase "market value" as it features prominently. But I'd emphasise that it does state "the most" and in the same section of wording is the part I've mentioned above about payment being made to the leasing company who own the vehicle.

I've also considered Mr D's lease agreement further and I can see that he paid a substantial deposit at the commencement of his lease agreement. But because the vehicle was written off before the end of the agreement, Mr D has effectively lost out on the full benefit of his deposit.

What this means is that Mr D paid a deposit which reduces the monthly rentals he would pay over the term of his agreement with L. But because the agreement ended early, Mr D is effectively out of pocket because he can't benefit from the reduced rentals.

UKI said in its evidence that Mr D should ask L for a refund of the deposit. It would consider payment only if L refused to refund it. It's this service's approach that this isn't fair and reasonable, because UKI has already benefited from Mr D's deposit because it will have

reduced the amount it needed to pay L. So I think the fair solution is to ask UKI to refund a portion of Mr D's deposit on a pro-rata basis, plus interest at 8% simple.

My final decision

It's my final decision that I uphold this complaint in part. I direct UKI Insurance Limited to pay Mr D:

- A pro-rata refund on the deposit amount paid by Mr D to L.
- 8% simple interest on this figure, calculated from the date Mr D's vehicle was damaged to the date UKI make this payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 July 2023.

Richard Sowden
Ombudsman