

## The complaint

Mr J complains about how his insurer, Haven Insurance Company Limited (Haven), handled a claim under his breakdown assistance policy.

Any reference to Haven in this decision includes their agents.

## What happened

Mr J had a breakdown assistance policy with Haven. In October 2022 Mr J's vehicle had a flat tyre so he called Haven. They arranged for a garage (L) to attend. But a locking wheel nut was damaged, so L then recovered Mr J and his vehicle to his home. Mr J contacted Haven the following day, saying L had damaged the wheel nut. Haven then arranged for the vehicle to be recovered by a separate firm (K). K took the vehicle to a local garage (A) for the tyre to be changed, remove the locking wheel nuts and replace them with standard ones (at a cost of £25 per wheel nut, a total of £100). A also replaced the flat tyre (£45). Mr J then went to a garage of the make of his vehicle to buy a replacement set of locking wheel nuts, at a cost of £23.75.

Mr J complained to Haven about the damage to the locking wheel nut, the subsequent cost of replacing them and buying new locking wheel nuts. Haven contacted L, who said they didn't attempt to remove the tyre and had told Mr J the locking wheel nut was broken. So, they didn't accept responsibility for the damage. K said they only recovered the vehicle to A, didn't change the wheel or any other work. So they also denied liability for the damage.

In their final response, Haven didn't uphold the complaint and refused to cover the cost of replacing the locking wheel nuts. They said they'd considered the records from their Control Centre as well as the recovery operators (L and K), but there was insufficient evidence to establish their liability for the damage. They thought L's denial of what Mr J said had happened was credible and supported by the evidence and the balance of probabilities. While they would reconsider the matter should Mr J provide further evidence to support his complaint, they considered the matter closed.

Mr J then complained to this service. He said Haven (L) damaged his locking wheel nut when they attended his vehicle, and they offered to take his car to a garage to have the damage repaired. The garage (A) told him to contact the dealer of the vehicle make to replace the locking wheel nuts. He said Haven had told him to invoice them and they'd pay for the replacement locking wheel nuts. He'd invoiced them but received no contact. When he did contact them, they said they had no record of his previous contact. Mr J wanted Haven to reimburse him for the cost of replacing the locking wheel nuts.

Our investigator upheld the complaint, concluding Haven hadn't acted fairly. Looking at the report from L when they attended Mr J's vehicle, there was no mention of the locking wheel nut being damaged. While L said they'd discussed the damaged locking wheel nut with Mr J when they attended, as this wasn't mentioned in their report, the investigator concluded they couldn't confidently say no damage to the locking wheel nut was caused by them. The report from K indicated they simply recovered Mr J's vehicle, they didn't attempt to remove the locking wheel nut. Based on these conclusions, the investigator thought (on the balance of probabilities) the most likely cause of the damage was by L attending the breakdown and

attempting to remove the wheel. To put things right, the investigator thought Haven should cover the cost of the replacement locking wheel nuts (£123.75) with interest from the date payment was made.

Haven disagreed with the investigator's view. They said there was no evidence the damage to the locking wheel nut was caused by L and there was a signed Condition Report Form and signed Waiver where Mr J agreed that if there were any issues following the callout by L, they wouldn't be held liable.

The investigator considered Haven's response but maintained their view they hadn't acted fairly. They didn't think the Waiver and Condition Report Form were sufficient to prove the locking wheel nut wasn't damaged by L (that it was already damaged when L attended). Had the latter been the case, the investigator thought it would have been recorded by L.

Haven disagreed with the investigator's further view and requested an Ombudsman review the complaint. They maintained the Waiver was a legal document that meant they (L) couldn't be held liable for any damage caused during the callout.

### **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.

My role here is to decide whether Haven has acted fairly towards Mr J.

The key issue in this complaint is whether the damage to the locking wheel nut (and the subsequent replacement) was the responsibility of Haven (through their agent, L). Mr J maintains it was, but Haven disagree.

I've looked at all the evidence provided by Mr J and Haven, including photographs of the wheel with the flat tyre and of the damaged locking wheel nut. It's clear from the latter and from what happened that the locking wheel nut was damaged and had to be replaced. It also seems all four locking wheel nuts had to be removed (for which Mr J was charged £25 for each nut, a total of £100) and he then bought a new set of locking wheel nuts (£23.75).

Mr J also paid £45 for a replacement tyre. But as he had to replace the tyre in any event, I haven't considered this cost any further.

So, the key issue is whether the locking wheel nut was damaged by L (as Mr J contends) or it wasn't (as Haven contend). While Mr J says it was L who damaged the wheel nut, I've considered K's role and actions. K say they simply recovered the vehicle at Haven's request to A. They didn't change the wheel or carry out any other work, so they take no liability for the damage. K's job report confirms recovery to A and there's ticked box to the statement *"No damage caused by K"*. The report is also signed by Mr J.

Looking at Haven's case file, there's a note of Mr J phoning them the morning after the incident to say L damaged the locking wheel nut and didn't change his tyre. The note goes on to say Haven's call handler advised Mr J to look for a garage to change his tyre and that they (Haven) would recover the vehicle to that garage. There's then a second breakdown job initiated by Haven (which was the recovery by K to A).

Taking these points together with the fact K were simply recovering the vehicle to A, I'm persuaded by their account.

Turning to the role of L, in their response to our investigator's view, Haven refer to the Waiver signed by Mr J. This includes the following statement that's ticked:

*"I am aware that indication of condition on this report form does not imply that no additional faults or marks exist at the time of acceptance by the service provider. If for any reason any damage/marks have been missed you will not hold this against me."*

Looking at the wording, it appears to relate to any damage or marks that may have been present on the vehicle at the point at which the service provider (which would be L in this case) attends a callout. It doesn't actually refer to any damage that may have been caused by the service provider during the callout. So, I don't think the Waiver can be used to deny liability for any such damage.

Haven also refer to the Delivery Condition Report being signed by Mr J. This is a separate part of L's report, where there's the following statement:

*"Customer accepted delivery in the same condition as recovery"*

However, while there's a box underneath the statement with the date, the separate box headed 'Name' is blank. Whereas the section of the form above (Vehicle Condition Report) has Mr J's name against the 'Name' box (and date and time filled in). But the form doesn't record any mention of wheel nut damage (the Vehicle Condition Report section includes a tick box option for 'Damaged Wheels', which isn't ticked).

Thinking about these points, if the locking wheel nut was already damaged when L attended, I would have expected the job report to reflect this in some way (which could have included ticking the 'Damaged Wheels' box). Also, as L couldn't change the flat tyre (the reason Mr J called Haven) suggests that either the locking wheel nut was already damaged when L attended, or it was damaged when they tried to change the tyre.

The Haven case file also records a note of Mr J saying L apologised for the damage to the locking wheel nut and recovered him (and his vehicle to his home).

Taking all these points together, on the balance of probabilities, I'm more persuaded by Mr J's version of what happened. So, I've concluded Haven haven't acted fairly and reasonably in saying they can't be held responsible (or liable) for the damage to the wheel nut. And as I've concluded the wording of the Waiver doesn't actually cover damage caused during a callout, Haven can't use that to deny responsibility (or liability).

Having reached these conclusions, I've thought about what Haven should do to put things right. As I've concluded the damage to the locking wheel nut was most probably caused by them (and/or L and K) then they should reimburse Mr J for the cost of replacing the damaged wheel nuts and fitting replacements (£123.75). As Mr J has incurred that cost, Haven should also pay interest, at a rate of 8% simple, from the date Mr J incurred the cost to the date Haven reimburse him.

### **My final decision**

For the reasons set out above, my final decision is that I require Haven Insurance Company Limited to:

- reimburse Mr J for the cost of replacing the damaged wheel nuts and fitting replacements (£123.75).

As Mr J has incurred that cost, Haven Insurance Company Limited should also pay interest, at a rate of 8% simple, from the date Mr J incurred the cost to the date they reimburse him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 November 2023.

Paul King  
**Ombudsman**