

The complaint

Mr B has complained about Bastion Insurance Company Limited. He isn't happy that it turned down a claim under his GAP motor insurance policy.

For ease of reading any reference to Bastion includes its agents.

What happened

Mr B took out a GAP insurance policy through Bastion. But when he made a claim under the policy it avoided his policy (treated it as if it never existed) and refused to pay his claim as it believed Mr B had misrepresented. It felt Mr B had failed to disclose that his car had been deemed a total loss on two separate occasions which Bastion felt was deliberate. So, Mr B complained to Bastion about this.

Bastion maintained its position. It felt Mr B should have disclosed two total losses in relation to his car and that it considered this failing to be a deliberate, or at least reckless, qualifying misrepresentation which meant it could avoid his policy, decline his claim and retain his premiums. But Mr B felt his policy should be restored, and his claim met as he wasn't specifically asked about his previous losses, so he approached this Service.

Our investigator looked into things for Mr B and upheld his complaint. She explained to Bastion that as Mr B wasn't specifically asked any questions during the sales call about previous losses and there was no mention in the policy documentation, including the Schedule of Insurance, sent to Mr B of the need to declare such losses (which Bastion accepts) that there wasn't a qualifying misrepresentation.

Initially our investigator thought the claim should be paid in full before eventually agreeing with Bastion that this would lead to an unfair outcome as it would be overly beneficial to Mr B. But she thought Mr B should be paid £250 by way of compensation for the stress of having his claim refused and policy avoided. And suggested Bastion should pay Mr B £6,771 which was in line with the actual value of Mr B's car (taking into account it was previously a total loss) as opposed to the full market value.

Mr B didn't agree, maintaining that the full market value of his car should be paid. He said the fact that his car had been a total loss previously shouldn't be taken into account. So, the matter has been passed to me for review.

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 agree the complaint should be upheld. And I also agree that to pay Mr B the full market value of his car (when it wasn't worth that much when he took the policy out) would put him in a far better position than he ought to have been. I know this will come as a disappointment to Mr B but I'll explain why.

As both sides now accept there wasn't a qualifying misrepresentation, as Mr B wasn't asked any questions about whether the car was previously a total loss or not, I don't propose to go over this point again now. It is clear that there wasn't a qualifying misrepresentation and so I will move on to the key remaining issue – how the claim should be settled now, and the level of compensation Mr B should be paid.

I know Mr B would like the full market value of his car from the time he took out the policy to be used in settling his claim. However, I think that would put him in a far more beneficial position than he should be. I say this as the actual value of his car at the point he took the policy out was far less than the full market value as it had been declared a write off previously. So, I think it would be fairest to use the market value of his car factoring in that it had been a total loss. And ordinarily cars that have been declared a total loss have a market value of around 20% less.

As our investigator explained Mr B's insurer said that the car's market value at the time of claim was £55,000 and it went on to deduct 20% from the valuation as his car had been written off previously. And while this matter has been with this Service for consideration Bastion suggested settling the claim in line with this. It offered to pay the difference between the purchase price (£61,771) and the market value his insurer used at the time of claim (£55,000) before the previous total loss deduction as a way of settling Mr B's claim – in effect pay £6,771 in order to settle the claim.

I've considered this and I agree with our investigator that this seems a fair and reasonable way to settle this case. I say this as it wouldn't be fair for Mr B to get more than his vehicle was actually worth at the time of loss under his GAP insurance policy as I feel this would be betterment. Plus, I think it must have been clear to Mr B that his car was worth less as it had been written off when he took out the policy. But it wouldn't be fair not to pay out under the claim either as I agree that there wasn't a qualifying misrepresentation here.

Given this I think the fair and reasonable thing to do, in the particular circumstances of this case, is for Bastion to pay Mr B £6,771 plus 8% simple interest for the time Mr B has been without the money from the date of claim until the date of settlement. And I agree that Mr B should be paid £250 compensation in acknowledgement of the delay and inconvenience all this has caused him.

Finally, I agree that Mr B's first policy should be reinstated to allow payment under the policy. However, the second policy should remain cancelled, but Bastion should return any premium if applicable. The first policy covered the claim and the second policy would have to be reworked if it was to stand in any event as the agreed value would be significantly less given the car had been written off on two occasions. And Mr B is free to look to gain cover elsewhere now on the basis of the true value of the car now if he wishes and he still has the car.

My final decision

It follows, for the reasons given above, that I'm upholding this complaint.

I require Bastion Insurance Company Limited to pay Mr B £6,771 plus 8% simple interest from the date of claim until the date of settlement. And to refund the cost of his second policy and pay £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 October 2023.

Colin Keegan
Ombudsman