

The complaint

Mr P has complained about the delay in Haven Insurance Company Limited having his van repaired after it was damaged in an accident and he made a claim under his Commercial Vehicle Plus Insurance Policy.

A claim handling agent acted for Haven in arranging the repairs to Mr P's van, but for the sake of ease I've only referred to Haven in this decision and its approved repairer.

Mr P is represented by Mrs B, although he has mainly corresponded with us on his complaint himself.

What happened

Mr P's vehicle was damaged in an accident in November 2022. He put in a claim for the damage and decided he wanted to have his van repaired by Haven on 2 December 2022. Haven arranged for his van to go to one of its approved repairers to be repaired. There were delays on Haven's part in authorising the repairs due to communication issues with the approved repairer. Then, once the repairs were authorised, there was a delay getting the parts.

Mr P complained to Haven about the delay in getting his van repaired. It investigated his complaint and issued a final response on 4 May 2023. In this it explained the reasons for some of the delays and apologised that these were – in the main – down to it or its approved repairer. And it offered Mr P £150 in compensation. It said the repairs couldn't proceed at that stage due to parts not being available as a result of an industry wide shortage of parts.

Mr P still wasn't happy and asked us to consider his complaint.

One of our investigators did this. He issued his first view on it on 18 August 2023. In this he said that the delay in repairing Mr P's van and the poor communication around this was unacceptable. He recommended a payment of £500 in total for the distress and inconvenience Mr P had experienced because of this. As it wasn't clear how long it would take to get all the parts needed to repair Mr P's van he said Haven should treat it as a total loss and settle his claim by paying Mr P the cost of replacing it, less any policy excess applicable. He also said Haven should have provided Mr P with a replacement van while his van was off the road. And that he'd lost income from his job as a self-employed delivery driver because Haven hadn't provided a replacement van while dealing with the claim. He said Haven should pay him £63.59 per day to compensate him for this up to the point his claim was settled.

Haven didn't agree with the investigator's view. It said it would pay the £500 in compensation for distress and inconvenience. And pointed out that all the parts had arrived and that Mr P's van should be repaired by 8 September 2023. In view of this it didn't agree it should be treated as a total loss. It wouldn't agree to cover Mr P's loss of income because it thought he'd turned down the small courtesy vehicle offered to him by its approved repairer and not told Haven he needed a large van instead. It said if he'd told them this it would have provided him with a van so he could continue to work.

Our investigator carried out some further enquiries with Mr P as a result of Haven's response. When he did this Mr P told him the approved repairer had never offered him a courtesy vehicle. He also said he had only worked for one day a week during the period he had been without his van, but that he was already doing this for additional income at the time his van was damaged.

Our investigator then issued a second view on Mr P's complaint on 15 September 2023. In this he explained that he no longer thought Haven should treat Mr L's van as a total loss, as it had been repaired and returned to him on 5 September 2023. But he explained why it remained his view that Haven should pay Mr P £63.59 per day for the period he was without his van, plus a total of £500 in compensation for distress and inconvenience. He gave Haven until 29 September 2023 to respond to his view. But despite the investigator chasing Haven, it didn't respond. Therefore, he told Haven it would be passed to an ombudsman for a decision. Haven still hasn't responded.

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 starting point is to look at the terms of Mr P's policy. And these say that if the insured vehicle is with one of Haven's approved repairer it will provide Mr P with a courtesy vehicle for the duration of the repairs. It goes on to say that where required it will supply him with a PV2 vehicle, as defined by the Association of British Insurers; such as a Vauxhall Vivaro.

Based on what Haven have said and its conversation with its approved repairer, I think it is more likely than not that Mr P was offered a small hatch back car by the repairer. I say this because the repairer has referred specifically to the make and model of the car it offered. And it would be normal procedure for it to offer this option to Haven's customers. I appreciate Mr P doesn't recall this after such a long period of time has passed, but I think it is likely Mr P turned this car down. But from what the repairer has said it seems he made it clear this was because it was unsuitable for his business. In view of this, I think the repairer should either have offered him a PV2 vehicle or – if it couldn't provide one - it should have told Mr P to contact Haven and ask for one. Or it should have told Haven Mr P needed a PV2 vehicle. And – as Haven's agent – I think its failure to do any of these things prejudiced Mr P's position. I say this because I think, if it had done so, Mr P would have realised he was entitled to a suitable replacement vehicle and contacted Haven straight away, who would have provided one. Or Haven would have contacted Mr P and offered him a PV2 vehicle, which he would have accepted. This would have meant he could continue his business as a delivery driver.

I do not agree with Haven's view that it was for Mr P to contact it and ask for a PV2 vehicle after he turned down the small car he'd been offered. As, while I appreciate it is mentioned in the small print in his policy that he is entitled to a PV2 vehicle, he wouldn't necessarily have been aware of this. And it was Haven's job to make sure he was. And – even – when he complained to Haven about the delay with the repair, I can't see it ever checked with Mr P what the impact on him of this delay was. Despite the fact it knew he had a commercial policy and was using his van for his business. Instead, it simply acknowledged his complaint and offered him £150. I appreciate Haven's point that often when a customer refuses a courtesy vehicle it is sometimes because they have an alternative vehicle. But this is not always the case. And I think it is more likely than not that it was clear to Haven's approved repairer this was not the reason in Mr P's case. So, Haven should have made sure its approved repairer, as its agent, was aware of its customer's options and that it needed to tell Mr P to contact Haven about getting a suitable vehicle. Or, as I've already said, it could have let Haven know Mr P needed one. So this is a failing on Haven's part, which affected Mr P.

So, I'm satisfied it was Haven's fault that Mr P couldn't carry out his normal work as a delivery driver for a long period. And, in terms of what is fair and reasonable, I do not consider he should be held responsible for any failure on his part to mitigate this loss by either contacting Haven or hiring a replacement van himself. This is because I am satisfied he did not realise Haven might provide a replacement van and he could not be expected to commit to a significant outlay to hire a van without having any idea when the repairs to his van would be completed.

Therefore, as part of the fair and reasonable outcome to this complaint I think Haven should compensate Mr P for his loss of earnings in the period its approved repairer was instructed to repair Mr P's van to the point he got it back fully repaired. This is because I'm satisfied this loss flows directly from Haven's failure to comply with the terms of its policy and provide Mr P with a suitable PV2 replacement vehicle. And it is also due the failings of its agent. It seems this period was 2 December 2022, when Mr P said he wanted to proceed with the repairs and Haven instructed its approved repairer, to 5 September 2023, when Mrs B has said Mr P got his van back fully repaired. This is a period of 277 days, allowing for the fact Mr P couldn't really have expected to have a replacement van and work on 2 December 2022 if this was the date he said he wanted to proceed with the repairs.

I'm satisfied the amount of £63.59 per day on average is what Mr P lost. I say this because I have seen an account, signed by his accountant. And I have no reason to doubt the validity of this evidence. And it shows what Mr P's income and expenses were for a period of 137 days leading up to when his vehicle was damaged. He earned £17,820 in this period and had expenses of £9,108.08, leaving a net profit of £8,711.92. This works out at £63.59 per day. I can't see any reason why Mr P wouldn't have continued to earn this amount per day on average moving forward. I appreciate he wouldn't have worked at his delivery job every day, but this is an average amount across the full 137 days in the period. So I consider it fair and reasonable for Haven to compensate him by paying this amount per day for the whole period he was without a van, i.e. 277 days. This means I consider Haven needs to pay Mr P £17,614.43 in compensation for loss of income. It may be that Mr P will need to pay tax on some or all of this amount, but that is a matter between him and HMRC.

I'm not awarding interest on this amount, as it is part of what I consider to be a fair and reasonable outcome without analysis by a forensic accountant or with full scrutiny of Mr P's bank statements etc. I also appreciate Haven's point that I have not reviewed a full profit and loss account for the period leading up to Mr P's claim. But we are an informal dispute resolution service and I am satisfied with what Mr P has provided in evidence. Plus, our investigator has given Haven the chance to respond on it in more detail and raise further suggestions or objections and it has chosen not to do so.

I also agree with our investigator that Haven's failure to get control of its repairer and expedite matters also caused Mr P a great deal of distress and inconvenience. And I'm satisfied the right amount of compensation for this is £500 in total. Haven can deduct the £150 it offered Mr P if it has already paid it.

I don't see any need for me to require Haven to treat Mr P's vehicle as a total loss, as he now has it back fully repaired.

Putting things right

For the reasons set out above, I've decided to uphold Mr P's complaint and make Haven pay Mr P the following:

- £17,614.34 in compensation for loss of income.

- £500 in compensation for distress and inconvenience, less £150 if it has already paid him this amount.

My final decision

My final decision is that I uphold Mr P's complaint and order Haven Insurance Company Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 December 2023.

Robert Short
Ombudsman