

The complaint

Mr C complains about how his insurer, Mulsanne Insurance Company Limited (Mulsanne) dealt with the write off of his vehicle after an accident under his motor insurance policy.

Any reference to Mulsanne in this decision includes their agents.

This decision covers Mr C's complaint to this Service in May 2023, following Mulsanne's final response earlier that month. It doesn't cover further elements of complaint raised by Mr C in November 2023, primarily his not being able to purchase his vehicle after it being declared a total loss, which would be considered as a separate complaint.

This decision also covers Mr C's complaint against Mulsanne as the insurer of his policy. It doesn't cover the finance provider for his vehicle, a separate business.

What happened

In October 2022 Mr C was involved in an accident in which his vehicle suffered significant water damage to the engine and electrics from driving through flood water, with emergency services conducting vehicles through the floodwater. Unfortunately Mr C's vehicle stalled, and the electrics stopped working, including the odometer. The vehicle was recovered to a garage and then subsequently to a garage appointed by Mulsanne.

Mulsanne appointed an engineer to inspect the vehicle, who concluded it was a total loss and should be written off. Mulsanne then reviewed the vehicle to determine a Pre-Accident Value (PAV) which they estimated as £27,314. Mulsanne then deducted the policy excess (£600) and a proportionate reduction of £4,080.71 (14.94%).

Mulsanne applied a proportionate reduction because when Mr C took out the policy he estimated his annual mileage as 5,000 miles. However, when he notified Mulsanne of the accident he told them his annual mileage was 12,000 miles and the approximate mileage of the vehicle at the date of the accident was 91,000 miles. Mulsanne then took the mileage figures from the vehicle's two previous MOT tests and calculated the vehicle had travelled an estimated 67.44 miles per day. Applying this figure from the renewal of the policy before the date of the accident, Mulsanne estimated the vehicle had covered 17,400 miles. Adding this to the 71,909 mileage figure from the vehicle's most recent MOT certificate, Mulsanne estimated the mileage at the time of the accident was 89,309 miles. Which was within 2,000 miles of the 91,000 miles figure Mr C had provided.

Based on their estimate, Mulsanne said had Mr C declared an accurate annual mileage figure when he took out his policy, the premium would have been 14.94% higher than the actual premium (which was based on Mr C's estimated 5,000 annual mileage). So, Mulsanne were applying a proportionate reduction of 14.94% in accordance with the provisions of the Insurance Act 2015.

Unhappy at Mulsanne applying a proportionate reduction, Mr C complained. He said it was unfair to use the two previous mileage readings from the vehicle's MOT as the vehicle had been used by his wife at the time. He'd only started driving the vehicle when he changed

roles in his employment. The vehicles he'd previously used indicated lower annual mileage figures. He said he'd only given an estimate ('plucked from the air') of the vehicle's mileage at the time of the accident and the 12,000 miles annual mileage was the mileage limit under his finance agreement.

Mulsanne didn't uphold the complaint. In their final response, they maintained their view about the estimated mileage of the vehicle at the time of the accident and this was close to the figure Mr C provided when telling them about the accident. Based on this, Mulsanne said they'd correctly applied a proportionate reduction to Mr C's claim, reflecting the higher premium had the information provided by Mr C at the start of the policy been accurate. In applying a proportionate reduction, Mulsanne were applying a remedy under the Insurance Act 2015. Mulsanne also said details of annual mileages Mr C said he travelled in previous vehicles weren't relevant, as they were concerned with his current vehicle.

Mulsanne issued a separate final response in respect of issues raised by Mr C about the handling of his claim, its progression and communication and engagement with Mulsanne. Mulsanne upheld this complaint, apologising for the service they provided didn't meet Mr C's expectations. Mulsanne referred to a delay in obtaining the vehicle registration, for which they didn't think they were responsible. But they accepted the communication from the claims team was poor, for which they apologised, but they needed to obtain a mileage figure for the vehicle at the date of the accident.

Mr C then complained to this service. He said the mileage figure for his vehicle when telling Mulsanne about the accident was what he thought the approximate mileage was (as the odometer was damaged in the accident). The only verified mileage figure for the vehicle was from the MOT certificate issued in March 2022 (71,909 miles). He'd wrongly given the figure of 91,000 miles when notifying Mulsanne of the accident and had to hire cars and the finance provider for the car was threatening him with legal action. He wanted Mulsanne to pay the difference on the claim and settle the balloon figure with the finance provider. He also wanted the option to buy his written off vehicle and collect his belongings. He also wanted compensation for delays and stress he'd suffered.

Our investigator initially upheld the complaint in part. While he thought it reasonable for Mulsanne to settle the claim on a proportionate basis under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), he thought Mulsanne had incorrectly estimated the mileage of Mr C's vehicle. While they would still have insured Mr C's vehicle had he disclosed the true annual mileage at the inception of the policy, they would have charged a higher premium. Mulsanne had used the policy inception date – not the date of the last MOT of the vehicle, when estimating the mileage figure – a 3,035 mile difference. The investigator thought Mulsanne should revisit their proportionate mileage figure.

On the issue of progression of the claim and the communication with Mr C, the investigator thought Mulsanne acted fairly and reasonably in upholding the element of Mr C's complaint. He thought Mulsanne could have been more proactive in their communication, although the impact of this was minimal and didn't affect the date the claim was settled.

Mr C disagreed with the investigator's initial view and asked that an ombudsman review the complaint. He said the investigator's view didn't take account of the fact that the 12,000 mile figure he'd provided was the annual mileage limit under his finance agreement. He didn't think the mileage figure used to calculate the proportionate reduction reflected his current role, which involved fewer business miles. He also wasn't given the opportunity to buy the vehicle after it had been written off, which he wanted to do.

Mr C also provided further information about the mileage for his vehicle, principally an MOT test certificate dated 28 July 2023 which recorded the vehicle mileage as 76,204 miles, and the previously recorded mileage of 71,909 miles in the MOT certificate dated 24 March 2023.

Based on the new information, our investigator issued a second view upholding the complaint. Given new MOT test certificate, the investigator concluded Mr C's vehicle hadn't exceeded the 5,000 mile estimated annual mileage he'd stated when taking out his policy. So, the investigator concluded Mulsanne should settle Mr C's claim in full, without a proportionate reduction, as he hadn't made a misrepresentation about his annual mileage.

Mulsanne considered the additional evidence and revised view, but they disagreed and requested an ombudsman review the complaint. They said the more recent MOT evidence wasn't admissible as the vehicle was off the road at the time of the accident and the engineer unable to obtain a mileage figure as the odometer wasn't working. And Mr C told them he travelled 12,000 miles and estimated the mileage at the time of the accident as 91,000 miles.

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 Mulsanne has acted fairly towards Mr C.

The key issue in Mr C's complaint is whether Mulsanne acted fairly in applying a proportionate reduction to the settlement value of his claim. From what I've seen and from Mr C's complaint, it isn't about the valuation of the vehicle (PAV) before application of the proportionate reduction. The other issue is engagement and communication from Mulsanne.

On the first issue, Mr C maintains he gave what he thought an approximate figure for the vehicle's mileage at the time of the accident, and the 12,000 annual mileage figure was the limit under his finance agreement. And he was travelling fewer miles annually due to a change in his job role. Previous annual mileages of other cars he'd used showed he'd driven fewer miles annually. Mulsanne say they calculated an estimated mileage at the time of the accident from previous MOT mileage figures, and their estimate was within a couple of thousand miles of the figure Mr C gave them when telling them of the accident.

In considering both points of view, I've looked at the policy in force at the time of the accident. The Policy Schedule indicates the insurance ran from 7 February 2022 to 6 February 2023, with a £600 total excess (compulsory and voluntary) for accidental damage. The date of the accident was 23 October 2022 (the date of claim is recorded by Mulsanne as 24 October). The Statement of Fact document issued at the time the policy was taken out, and on which facts the policy was issued, states a *Total Annual Mileage* of 5,000 miles with Mr C as the registered keeper and owner. The certificate of Insurance lists only Mr C as the insured driver of the vehicle.

I've also noted the Insurance Product Information Document (IPID) includes the following requirements under a heading *What are my obligations*:

- *"You must take reasonable care to answer our questions honestly, with accurate and complete information.*
- *You must inform us without delay if any information on your Statement of Fact or Policy Schedule is incorrect or changes..."*

The full Policy document also sets out, under a heading *Changes to your insurance*, the following statement:

"It is important that you tell us immediately about any changes to the information that you have provided which is detailed in your statement of fact schedule and certificate of motor insurance...Failure to notify us of any changes may result in your policy not being valid and we may not pay your claim or only pay part of your claim. We may also cancel or void your policy."

I think this makes it clear that a change in the information supplied, including a mileage different to (or likely to be different to) that declared in the Statement of Fact document should have been disclosed. Or as is the case here, information on the ,mileage at the time of the accident indicates a higher mileage figure to that in the Statement of Fact. In terms of the remedy applied, I note Mulsanne applied a proportionate reduction to the settlement offered to Mr C under the Insurance Act 2015. In the circumstances of the case I don't think that was unreasonable at the time, given the information available, including that provided by Mr C and in the absence of a definitive mileage reading from the vehicle odometer. They didn't seek to cancel or void the policy for misrepresentation under CIDRA, so I've not considered this in detail.

Looking at the first obligation, Mr C says he only provided an estimate – 'plucked from the air' in his words - of the mileage of his vehicle when telling Mulsanne of the accident. While this may have been the case, it didn't relieve Mr C of the obligation to provide a reasonably accurate mileage figure, in the absence of a verifiable figure from the odometer (the engineer said the mileage couldn't be obtained from the damaged odometer). As Mr C had driven the vehicle up to and including the date of the accident, I also think it's reasonable to expect he would have had some idea of the vehicle mileage, if not the exact figure.

Mulsanne based their estimate of the vehicle mileage from the previous two MOT mileage figures – 46,688 miles on 15 March 2021 and 71,909 miles on 24 March 2022. Mulsanne's calculation of the estimated mileage figure at the date of the accident is based on a total of 25,221 miles in the 374 days between the 2021 and 2022 MOT dates, an average of 67.44 miles per day. Applying this daily average figure to the 258 days between the policy inception date of 7 February 2022 to the date of the incident of 23 October 2022 gives an estimated 17,400 miles. Adding this figure to the 71,909 mileage figure from the March 2022 MOT mileage figure of 71,909 miles gives an estimated mileage of 89,309 miles, Which is 1,691 less than the 91,000 figure provided by Mr C.

Mulsanne calculated that applying the 17,400 mileage figure to the policy (rather than the 5,000 mileage estimate provided when the policy was taken out would have meant an annual premium of £1,771.90 rather than the actual premium of £1,507.21. This former is 14.94% higher than the latter, which is the proportionate reduction applied by Mulsanne.

While I can understand why Mulsanne came to their decision to apply a proportionate reduction in the circumstances and information available at the time, I've considered the points made by Mr C, including the new information he's supplied from the most recent MOT test certificate for the vehicle. I also recognise the points he's made about a change of role and that his wife was previously driving the vehicle.

The most recent MOT test certificate records the vehicle mileage as 76,204 miles on 28 July 2023. It also includes the same 71,909 mileage figure recorded on the previous MOT test certificate dated 24 March 2022. The difference between the two figures is 4,295 miles. Which means that whatever the actual mileage figure was at the date of the accident, Mr C can't have covered more than 5,000 miles. So, this would have been within the figure of

5,000 miles he gave when taking out the policy. It follows he didn't make a misrepresentation when taking out the policy.

While he gave an inaccurate estimate of the mileage when reporting the accident, it was the absence of an independently-obtained odometer mileage reading that led Mulsanne to use the figure initially supplied by Mr C. But the new evidence from the most recent MOT test certificate shows this estimate was incorrect.

Mulsanne say the new evidence from the MOT test certificate isn't admissible. But they haven't said why they believe this, nor have they sought to question the validity of the certificate, which our investigator has independently verified. That being the case, while the new evidence provides retrospective information about the vehicle's mileage at the date of the accident, I'm persuaded it supports Mr C's other points about his previous mileages in other vehicles and what he's said about his change in role and consequent lower mileage whilst on business.

So, I've concluded it's reasonable to use the new evidence and information to decide whether Mulsanne have – in the light of the new evidence – fairly and reasonably applied a proportionate reduction. My conclusion is they haven't.

Having reached this conclusion, I've considered what Mulsanne need to do to put things right. As I've concluded they haven't acted fairly and reasonably in applying a proportionate reduction, then they should reimburse Mr C the proportionate reduction they applied to the settlement figure (£4,080.71).

As they applied the proportionate reduction to the settlement paid to Mr C, I also think they should add interest on the reduction, at a rate of 8% simple, from the date they paid Mr C the balance of the settlement (after they've paid the finance provider) to the date they reimburse Mr C, assuming he accepts my final decision.

I've also considered the issue of the time to progress the claim and the communication and engagement between Mr C and Mulsanne. Looking at the sequence of events, the accident was notified in October 2022, following which the vehicle was recovered to Mulsanne's salvage agent and inspected by the engineer, declaring it a total loss, at the beginning of November 2022. Mulsanne's case notes indicate Mr C contacting them for updates in the following weeks, but with some delay in Mulsanne obtaining the vehicle's registration document from Mr C (it wasn't in the vehicle as he originally thought) and the notes indicate it was only provided by Mr C at the beginning of February 2023. The policy document requires the policyholder to send the registration document to the insurer where a vehicle is declared a total loss, so I can't hold Mulsanne responsible for the delay in Mr C providing the registration document.

Notwithstanding these points, the case notes indicate Mulsanne accept they took too long to provide a settlement offer to Mr C (the beginning of March 2023) and he hadn't received updates on a timely and reasonable basis. So, Mulsanne have acted reasonably in upholding that aspect of Mr C's complaint.

Putting things right

Your text here

My final decision

For the reasons set out above, my final decision is that I uphold Mr C's complaint. I require Mulsanne Insurance Company Limited to:

- Reimburse Mr C for the proportionate reduction they applied to his claim (£4,080.71).

Mulsanne Insurance Company Limited should also add interest, at a rate of 8% simple, on the reimbursed proportionate reduction, from the date they made the original settlement payment to Mr C to the date they reimburse Mr C the proportionate reduction, assuming Mr C accepts my final decision.

If Mulsanne Insurance Company Limited consider they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they've taken off. They should also give Mr C a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 December 2023.

Paul King
Ombudsman