

The complaint

Mr and Mrs E have complained about their car insurer AA Underwriting Insurance Company Limited regarding a claim they made following an accident.

What happened

There was an accident on 28 October 2022, whilst Mrs E was driving the car. AA recovered Mr and Mrs E's car to its storage depot – but it thought it was likely the car was damaged beyond economic repair (total loss). Whilst the claim was ongoing, in November, it became apparent that AA's storage agent did not know where the car was. It was later found. From the date of the accident the car was missing for 46 days. AA apologised.

Mr and Mrs E had some extra cover which afforded them a hire car for 21 days in the event of an accident. This period expired whilst the car was missing and Mr and Mrs E then, from 24 November 2023, had to manage without a car. AA said it was regrettable that the hire had expired whilst their car was missing – but it couldn't provide them with a courtesy car because it was felt their claim would be settled as one of total loss.

The car was found in December 2022. Subsequently AA made an offer of settlement to Mr and Mrs E, which was increased in January 2023 to £5,470. That was based on an average of two trade guides used for motor valuations – AA had discounted a value given by a third guide as it felt it was too low. Mr and Mrs E said AA had accepted their valuation of £8,995 when arranging the policy, with this sum being added to the policy documents. They said cars like theirs were scarce and any similar models for sale had asking values of around and in excess of £9,000. They wanted AA to make an increased offer. In its final response of 23 January 2023, AA maintained its valuation was fair and offered to make an interim payment on that basis – explaining that Mr and Mrs E could accept it and then still complain.

Mr and Mrs E felt Mrs E had not been at fault for the accident. But AA felt it wasn't likely the claim could be settled as one of non-fault against Mrs E. It said it understood that Mr E felt the other driver had been speeding – but that speed is difficult to prove and it was Mrs E's duty, at the time of the accident, to give way at the junction.

AA, on reviewing everything, felt it had provided some poor service. It offered Mr and Mrs E £300 compensation. They remained unhappy, complaining to the Financial Ombudsman Service.

Our Investigator felt that £300 compensation for service and delays, including the car going missing, was fair and reasonable. She thought the market value had been fairly assessed and that AA's position on liability was reasonable. She noted liability hadn't been finalised yet and explained that the claim showing as open and fault, in the meantime, on Mr and Mrs E's renewal, was normal.

Mr and Mrs E were unhappy with the findings. They provided detailed comments in reply. Their complaint was referred to me for an Ombudsman's consideration.

I felt the complaint should be upheld in part – the part about the car going missing. In that respect I felt AA should pay a further £600 and an amount equivalent to interest on the market value settlement. But I felt its market value and liability assessments were made fairly and reasonably, and that its £300 compensation for upset was fair too. I issued a provisional decision to share my views with and explain them to both parties.

In reply AA said it would accept my findings and arrange payment to Mr and Mrs E.

Mr and Mrs E were disappointed with my decision. They replied at length over several emails. I've included below, under "What I've decided – and why", summaries of their replies, and then my responses, all after (where relevant) my provisional findings (in italics).

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.

As noted above, I've read and considered everything submitted by both parties, including the response to my provisional decision. In my findings though I may not mention every document or even every argument raised. Rather my findings will focus on the key issues I view as being at the heart of the complaint.

Our process and our decisions

Adjustment to our usual processes

In their reply Mr and Mrs E said – we should adjust our usual processes to allow involvement in this complaint from senior staff members and to invite other bodies into the process to investigate and advise, such as the regulator (the Financial Conduct Authority (FCA)) and the courts. They said their complaint should be placed on hold to allow for all of this.

My response – I appreciate that this is a very important issue for Mr and Mrs E, which has caused, and is still causing, them a lot of concern. But it's not dissimilar to the types of complaints I deal with regularly in my role as an independent decision maker. The complaint does not turn on new issues about which our Service needs to consider our general approach. I have all the necessary facts to hand and I'm satisfied I can make a fair and reasonable decision. So this isn't something which requires referral within the Financial Ombudsman Service. In terms of inviting other bodies into the complaint process – that is neither necessary nor possible. Simply put the Financial Ombudsman Service is an independent dispute resolution service; for example, we are an alternative to the courts and separate from the industry regulator the FCA. So I won't be inviting any other bodies into our complaint process or placing the complaint on hold to do so.

An additional provisional decision

In their reply Mr and Mrs E said – when any further decision is eventually issued it should be a further provisional decision initially. It should seek to protect the public, ensuring lessons are learned by AA. My findings should start from the point that AA acts deceptively.

My response – a provisional decision is issued when a change in outcome or reasoning is felt to be needed. It lets both parties know of the intended change. But if no change is felt to be necessary our process is to make a final decision. Which is what I've done here. Our role is not to punish an insurer. That, where necessary, is the role of the regulator. And when I make a decision, I consider all of the evidence available to me in an impartial manner. I'll

take into account the views of either party as I go, but my findings would be flawed if I started from a premise that the respondent (or complainant) had acted as alleged by the other party, in a certain, negative way.

Request for a telephone conversation with the deciding Ombudsman

In their reply Mr and Mrs E said – they'd happily discuss their concerns on the phone if required. They noted their request for a call had been denied but think it would be reasonable to allow them to discuss the impact on them as victims, with a view to averting injustice. They remain concerned that prior to my provisional decision being issued, AA told them it had already heard from the Ombudsman – they feel they deserve further clarification.

My response – The Financial Ombudsman Service is impartial. One of the ways we can ensure impartiality is for the Ombudsman to not discuss the complaint individually with either party. And I can assure Mr and Mrs E that they've made their concerns and the impact this matter has had on them clear in their submissions. It's also an important part of our process that our decisions are issued to both parties at the same time. I did clarify in my provisional decision that I had not had any contact with either party prior to that decision being issued. My provisional decision was issued to both Mr and Mrs E and AA on 14 September 2023.

Grouping of complaints together

In their reply Mr and Mrs E said – their complaint reaches beyond the AA respondent business named in this decision and they want any final decision to reflect that. Their other complaint about the broker should be considered and answered in tandem with this one.

My response – The Financial Ombudsman Service considers individual complaints from complainants about respondent businesses. We don't have any power to look at grouped complaints, or to list more than one respondent. Rather we deal with complaints about each respondent business separately. That's because each complaint we deal with is considered on its own merits. As such there is no need to hold this complaint up whilst Mr and Mrs E's complaint against their broker is considered (which I understand is currently at a much earlier stage in our process).

Background summary

In their reply Mr and Mrs E said – they feel my background detail needs changing to better summarise what they've been through.

My response – I can assure Mr and Mrs E that my background was compiled having considered all of the available complaint evidence. I'm satisfied it fairly summarises and reflects the key points of what went on. My complaint summary and background sections within this final decision remain as those set out provisionally.

Our final decision

In their reply Mr and Mrs E said – they want to make it clear that if my view does not change, they will have the right to seek assistance from other professionals.

My response – our complaint process ends with a final decision. There is no further appeal within our service. I can't speak as to Mr and Mrs E's rights or ability to make complaints to

certain regulators or the police. Although I'm not aware of any impact our complaint process might have in those respects. But I do need to let Mr and Mrs E know about the potential impact our decision may have on any court action they may wish to take. If they accept my final decision it becomes binding on AA. It will have to pay any redress awarded. But they may not be able to pursue any remaining concerns they may have, or any part of the decision they disagree with, through the courts. If my final decision is not accepted, my findings are not binding. It may comply with my award, but it would not have to do so. Mr and Mrs E would then likely not be precluded, as far as any impact of our process is concerned, from pursuing any complaint through the courts. They may wish to take legal advice before deciding whether or not to accept my decision.

Valuation

I said provisionally:

"I realise that Mr and Mrs E were asked to give a valuation for the car when cover was agreed. But the policy paperwork, having set out the figure given (£8,995), explains that settlements will be based on the market value for the car as at date of loss. And the policy gives a definition for market value as "The cost of replacing the Insured Car with one of the same make, model, age, mileage, specification and condition at the date of accident or loss".

I know Mr and Mrs E feel the policy has been mis-sold to them and would like their premiums back. But I'm not persuaded that AA is looking to do anything that hasn't been agreed to. AA provided a policy which said it would settle claims based on the vehicle's market value – and that is what it has sought to do. Whether it settling on the basis of total loss, and whether the sum it has offered is fair and reasonable, or not, are different matters. But do not mean the policy itself was mis-sold.

Turning to the total loss settlement, I understand AA viewed the car as a category S total loss – meaning it had suffered structural damage which was repairable, but wouldn't be economic to do so. I also understand that the initial report of the accident was "front and back door are caved in and not functional, car won't lock". AA's file also details damage to the rear quarter panel, the "B-post", sills and a kink in the wheel arch. I can understand that AA thought any repair for the car would be costly. I think AA viewing it as a total loss was fair and reasonable.

Looking at the market value figure AA offered, I note Mr and Mrs E feel they've provided sale adverts evidencing higher market values for cars similar to theirs. However, knowing the advertised sale price of a similar vehicle does not necessarily equate to having established what a fair and reasonable market value is for the insured car. Our service doesn't value cars. Instead we check to see that the insurer's valuation is fair and reasonable and in line with the terms and conditions of the policy. To do this we tend to use relevant trade guides. I usually find these persuasive as they're based on nationwide research of sales prices. It therefore means the guides are likely to have taken into account similar cars for sale to Mr and Mrs E's.

I note though that Mr and Mrs E state their car benefitted from lots of accessories when new (they were the second owners of the car). Also that these often don't feature on other cars, although even broadly similar cars to theirs are advertised far in excess of the guide prices. They presented some adverts for AA to consider, along with pricing detail from the manufacturer about the cost of such accessories. I can understand why AA chose to rely on the guides – but with the second-hand car market currently being quite competitive, I think it's reasonable to take the adverts into account when considering if the market value of £5,470 is fair and reasonable. The manufacturer's detail on pricing is not so relevant because Mr and Mrs E didn't buy their car new, nor was it new at the time of the loss. Further specifically chosen accessories for a car don't always add to its value in the second-hand car market.

The guides give market values for Mr and Mrs E's car of £4,875 (which AA discounted), £5,460, £5,480 and £6,912 (obtained from a fourth trade guide by our Investigator). Mr and Mrs E presented adverts showing two cars for sale at £10,475 and £9,500. Of these both were later models (by a year) and one had much lower mileage. Our Investigator checked some sale prices for similar cars, finding two of the same specification, one with similar mileage, and one slightly less. They were priced at £4,560 and £5,792 respectively. They appear to be in line with the trade guides too. I can see that the examples presented by Mr and Mrs E give higher values. But bearing in mind the spread of the guide values and that there are available examples for sale within that range, I'm not persuaded the adverts selected by Mr and Mrs E show the fair and reasonable market value for their car is around or in excess of £9,000. And whilst the fourth guide does show a higher market value (than the other three), I think AA's offer, which is within the range of the guides, and similar to the example adverts found by our Investigator, is fair and reasonable. I don't intend to make AA increase the market value applied to the claim."

Financial and emerging scam in the industry

In their reply Mr and Mrs E said – they feel this amounts to a financial scam by AA. And an emerging scam in the industry. AA's role should be reported to the police. And the media. They feel AA is exploiting a loophole in our complaint process – which they, by their replies, are seeking to protect us from.

My response – I thank Mr and Mrs E for seeking to offer protection, and I have carefully considered everything they've told us. I understand that Mr and Mrs E feel scammed. And they are free to share that view with others such as the police and the media as they wish. But I'm satisfied that AA and Mr and Mrs E entered into a standard car insurance policy, in respect of which, there is now an existing complaint, which I am deciding upon.

A previous Ombudsman's decision for another policyholder

In their reply Mr and Mrs E said – a previous Ombudsman's decision considered the validity of the value which appears in the AA policy schedule, for another policyholder.

My response – I understand why Mr and Mrs E think this is important. I've reviewed the decision they've referred to. But I'm not persuaded it assists them here. It does seem to be in respect of a policy like theirs. But the complaint is very different – it is about whether misrepresentation occurred when the policy was arranged, via a price comparison website and if AA acted fairly and reasonably in avoiding the policy (treating it as though it never existed). Whereas Mr and Mrs E's complaint looks at what fair settlement of a claim under the policy is. Which is a very different situation.

AA policy document

In their reply Mr and Mrs E said – they believe AA had provided an incorrect policy document to us, in order to deceive the Ombudsman – they asked that the copy they provided is used. The correct policy included cover for accessories.

My response – I noted that when we asked for AA's file of papers, it provided the policy renewal for 2019. That was clearly the wrong year as the accident occurred in 2022. But it isn't unusual for policy documents from the wrong year to be initially provided to us. And we'll always check we have the right documents when we assess a complaint. Here, when the 2019 documents were provided, Mr and Mrs E had already kindly provided copies from the year of the accident. These correct documents were relied on and referred to by myself when making my provisional decision.

Total loss

In their reply Mr and Mrs E said – AA forced the total loss on them, never costing repairs or assessing the cause of damage. Without completing a fair assessment, the total loss decision was fundamentally flawed and can't be fair. Thinking the car was a total loss was not an accurate or appropriate assessment.

My response – what an insurer will need to do to ensure a fair claim outcome is reached will vary depending on the circumstances of each loss. I bear in mind that insurers deal with damage assessments and repairs regularly – so they will know, with a reasonable degree of accuracy, what certain repairs will cost. Insurers are also aware that visible damage might only be the tip of the iceberg (so to speak), that particularly when substantial visible damage is present, there's possibly more damage that will need repair that will be uncovered once work starts. In the circumstances of this loss, given the obvious damage to the car, and the market value which was assessed and determined for it, I'm satisfied that AA's total loss decision was fair and reasonable.

AA Insurance premium

In reply Mr and Mrs E said – they had paid a premium for what they viewed as a contract for AA to pay £8,995 in the event of a total loss. Or at least that figure would be the starting point for the rising or falling of market trends within the policy period. With the market having risen in this period. So a rising scale for the period should be applied to determine the fair total loss settlement for their car. Whereas the trade guides referenced are based on data gathered previously, during a period of downward trend in car sales, so they're not reliable. Applying a rising trend scale to the base point of £8,995 would give a fair settlement for their car in the region of £12,000.

My response – I understand what Mr and Mrs E thought they were contracting for. But that is not what the policy promised. That said their argument in respect of the second-hand car sale market is one recognised by this service. The Financial Ombudsman Service accepts that, recently, in some cases the values given by the trade guides may not reasonably reflect the true market value. Which is why I took into account, when reaching my provisional decision, what prices were actually available for cars similar to Mr and Mrs E's on the sale market. In that way the values given by the trade guides were 'sense' checked. In this case I found there were similar cars for sale within the range of values returned by the guides.

Undervalued vehicle

In their reply Mr and Mrs E said – their vehicle was undervalued – it had rare and expensive accessories. These can't be cast aside without getting valued. Certainly they'd be replaced if the car was damaged and being repaired. If they'd continued to own the vehicle it would have become a rare classic. They don't accept that only new vehicle sales gain from fitted accessories. They said that it's certainly the case that the more rare accessories a car has, that are unique, the higher the value will be that the car is made available for sale for.

My response – I can see that Mr and Mrs E feel strongly about their car. Clearly they loved it. But the finishes applied to a car when new, are often a matter of personal choice. Sometimes that choice, when the car is sold on, meets the desires and expectations of a buyer. But that doesn't necessarily mean that a car that was fitted with, for example, chrome handles rather than the standard finish for that make and model of car, will be generally more desirable in a second-hand market. Whether or not it might be advertised at a higher price does not necessarily speak to what it will likely sell for. Had AA been repairing the car, for example replacing the door, it would have had to provide a like-for-like replacement. And the policy schedule does set out "Car valuation (inc. accessories)". But it also immediately explains (as I set out provisionally) that claims will be settled on the basis of the market value for the car. I remain of the view that AA has fairly and reasonably applied the policy terms when seeking to settle Mr and Mrs E's claim.

Vehicle model

In their reply Mr and Mrs E said – their car was part of the last manufacturing year for that model – so the examples they presented are not 'younger' than their car. They feel the differences I highlighted are immaterial. Because of the quality and fitments of their car, they'd paid over the average to purchase it, and that overpayment is reflected in the examples of cars they provided to evidence the market value of their car at the time of loss. The examples they presented weren't the most costly they'd found. The examples found by our Investigator might be based on later prices and didn't include all their accessories.

My response – a car's age is most usually measured from the year it was first registered for use. Certainly most people buying a car will use the registration as a measure of age, and will view a 2012 plate as being a 'younger' car than one with a 2011 plate. And the age of a car, in that respect, is a key selling point that is likely to make a difference to the selling price for a car. That and the mileage the car has done.

Both of Mr and Mrs E's examples were younger than their car and one had done significantly less mileage. Whilst Mr and Mrs E may have been persuaded to pay more than average for their car when they bought it – and they've then been able to track that 'extra' over to the prices set in the examples given, I can't say that would be a reasonable way to determine the market value for their car. It's not something which is measurable for one thing. But also, as I set out above, the desirable traits of a car, which may or may not prompt someone to pay more for it, are subjective. Whilst AA, in settling claims, and the Financial Ombudsman Service in determining complaints, have to consider what is most likely. Which is why the trade guides are often used as part of the process of determining fair and reasonable market values – because they consider such a wide range of data. As I've explained, those values can then be 'checked' with reference to what is available for sale in the market.

Our Investigator did check the sale prices during our claim process – so at a later date than those provided by Mr and Mrs E – but there has been no change in the market trend. So I'm satisfied the examples found by our Investigator reasonably show the trade guide valuations are reliable in this instance. AA's market value of £5,470 was within the range of values

offered by the guides and was similar to the average of the values found by our Investigator. I remain of the view that AA's market value of £5,470 which it applied to its settlement offer for the total loss of Mr and Mrs E's car, was fair and reasonable. I'm not going to make it increase that.

Delayed insurance claim

In reply Mr and Mrs E said – they feel AA has denied them their total loss settlement for a year – so my decision should award interest on any payment its felt it should now pay.

My response – I appreciate that Mr and Mrs E have never been satisfied with the settlement offered to them. But AA did clarify, in January 2023, they could accept it and still complain. AA also asked for their bank details to be able to pay the settlement to them. Mr and Mrs E could have safely, therefore, provided their details and had the benefit of those funds with them whilst they progressed their complaint. I can't fairly require AA to pay interest to them for the period after January 2023 when they did not have the settlement funds. But, in my section entitled "Missing car" I explained provisionally why I felt some interest was due on the settlement sum, applicable against a different period.

DVLA records

In reply Mr and Mrs E said – they want relevant reports and repair confirmation details from AA so they can ensure the DVLA is appropriately advised of the total loss of the car. But they don't want to deal with AA further, so an "intermediary of the Ombudsman Process" should be appointed.

My response – usually once a total loss claim is settled, the car becomes the property of the insurer. In that circumstance it will be up to the insurer to make the requisite notifications to the DVLA. Here AA might be prepared, if asked by Mr and Mrs E, to share copies of that with them for their peace of mind. But the Financial Ombudsman Service can't be involved in assisting either party. As I explain elsewhere in this decision, this is my final decision and it marks the end of our complaint process. The Financial Ombudsman Service is not a claim handler or consumer advocate. As such, and with regret for any upset this causes Mr and Mrs E, we do not have an intermediary to appoint to assist them with any further communication they may need to have with AA.

Valuation – in conclusion of this issue, I can confirm I've reviewed everything regarding valuation. My views in respect of this aspect of the complaint have not changed from those stated provisionally.

Missing car

I said provisionally:

"AA were unable to find Mr and Mrs E's car for 46 days. This meant the claim was effectively on-hold until the car was found. Once the car was found AA was able to assess it and make an initial assessment of its valuation on 19 December 2023. That was later reviewed, agreed by AA to have been unreasonable and an amended offer was made. On 23 January 2023 AA confirmed Mr and Mrs E could accept that offer and still continue their complaint."

I understand that the hire car Mr and Mrs E had benefitted from following the accident was returned on 24 November 2022. But given the detail in my paragraph above, I think if AA had not lost the car and had made a fair and reasonable assessment of the car's market value in the first instance, a reasonable settlement offer could've been put forward to Mr and Mrs E within the period they had the hire car. And, as long as AA put that forward with the explanation it could be accepted as an interim payment, any period after the hire car had ended, during which they had not accepted the offer, where they were without a car, would not have been AA's fault. But as it was, they were without a car when the hire period ended, and until 23 January 2023, because AA lost their car and did not make a reasonable offer of settlement. I'm minded to require AA to pay Mr and Mrs E £600 as compensation for loss of use for 60 days. I know Mr and Mrs E have asked for the AA to compensate them by paying what the cost of a hire car would have been. But as they did not incur such a cost, it isn't reasonable to make a compensation award based on that figure. In similar situations this service often applies an award of £10 a day for having lost the use of a car, which is what I've proposed here. I'm satisfied that's fair and reasonable.

I'll also though require AA to make an interest payment to Mr and Mrs E. As I've noted, the settlement offer was delayed by around two months, and it's based on the market value of the car as at the date of loss. I'm going to require AA to pay an amount equivalent to interest applied to the sum of £5,470 over the same period as the loss of use payment. So from the 24 November 2022 until 23 January 2023."*

Whereabouts of stored vehicle

In reply Mr and Mrs E said – their car was 'deceptively lost' by AA, likely with the idea that if it stayed 'lost' it could be declared a total loss with a low value applied, perhaps treating it as stolen. AA never properly investigated when their car was missing. It was unprofessional which needs apologising for. In the end they found their car, not AA – it had lied throughout, it must always have known where it was, it didn't contact the police as it should have and their loss would have been grater if they had not acted to find it (because AA wouldn't have).

My response – it remains unclear how the car came to be missing. But I've not seen anything which makes me think AA acted deliberately to pretend to 'lose' the car so it could either delay the claim or limit its outlay for it. Bearing in mind that Mr and Mrs E were hearing one thing from whomever they were talking to at the centre, whilst AA conversely was being told the centre did not have the car, I think an administration issue likely occurred. AA accepts, and I find, that it should and could have done more to locate the car, rather than letting the issue rumble on as long as it did. It has apologised, in the 23 January 2023 final response letter, for the poor service. It's good that the car was found when it was, that certainly resolved that situation and allowed the claim to progress. And I don't make findings about what might've happened if a problem which has actually been resolved, instead hadn't been and had continued. That's because that potential upset and/or loss was avoided. My focus is on putting things right where upset and/or loss have actually been caused.

Storage agents

In reply Mr and Mrs E said – their car was taken to an accident repair centre initially, not a storage depot. It was likely left in a public place, insecure, and vulnerable to theft and damage. Personal items from the car need to be returned to them.

My response – I think it's fair to say the accident repair centre was acting as storage agents for AA at the time Mr and Mrs E's car was missing. That's because the centre were not working on the car to repair it, they were holding it. And AA paid them storage fees. It's

unfortunate if the car was left in inappropriate conditions – but I haven't seen any evidence of any financial loss caused to Mr and Mrs E as a result of that. In an email dated 23 December 2022 Mr E said to AA: "The storage is not suitable and we hold the AA responsible for any negligence and any form of loss....or need we comment any personalisation's on or within our vehicle – including personal data/information held by our vehicle, hard drive etc". To me that isn't a clear request to return items, or a complaint about them not having been returned. I think that any worry Mr and Mrs E have over their personal items being in the car and which AA needs to return to them, hasn't reached a point of a complaint at deadlock – so I won't comment on this issue further.

Incurred costs

In reply Mr and Mrs E said – it is fair to make AA pay them an amount equivalent to the hire cost they would have incurred but didn't, including for the period of hire. Whilst they were in hire, the car was not a total loss. Also because AA has so far saved itself such a cost by acting unreasonably. And as AA lost their vehicle it should have paid out of its own pocket to provide a replacement car, based on usual hire rates, from the date of loss to the present.

My response – as I said in my above reply, my focus is on putting right loss which actually occurred. It would not be reasonable for me to make AA pay compensation to Mr and Mrs E for a loss – hire costs – they have not incurred. Whilst Mr and Mrs E had the benefit of the hire car they had access to, AA had not decided their car was a total loss – in which event their policy explains no courtesy car will be provided. But nor was their car undergoing repair – and the policy also explained that a courtesy car is provided whilst the car is undergoing repair. Unfortunately, here, the car went missing at a time before the likely course of the claim had been decided, but in a situation where Mr and Mrs E were already benefitting from the hire car afforded to them by their extra cover. I can't reasonably require AA to compensate them for loss of use of their car, when they had a car to keep them mobile.

Missing car – in conclusion of this issue, I can confirm I've reviewed everything regarding the missing car. My views in respect of this aspect of the complaint have not changed from those stated provisionally.

Liability

I said provisionally:

"I know Mr and Mrs E feel Mrs E was not to blame, or at least not wholly to blame for the incident. I understand that as at the date of complaint, liability had not been fully decided. Which meant that when the policy came due for renewal the claim was logged as fault and open. That is quite normal. I can see that in the weeks after the claim, AA had explained to Mr and Mrs E that it would try and argue settlement on the basis of split liability – but it was not hopeful and felt it was not possible to reasonably argue Mrs E had no fault at all.

I can understand why Mr and Mrs E feel frustrated by AA's view on liability. They clearly believe Mrs E has suffered due to the other driver. But AA has a duty when settling this type of claim to think about what would likely happen if the matter progressed to court – it wouldn't be fair for it to incur lots of costs by progressing something which had no reasonable prospects for success – no matter how strongly its policyholder feels about things. The question then really becomes one of did it fairly determine there were no reasonable prospects for success on the basis of Mrs E not being at fault, instead seeking, at most to settle on the basis of split liability?

The key issue in this respect seems to be one of speed. Mr and Mrs E argue that the other driver must have been speeding. AA though says that even if speed could be shown, that might only mitigate some personal injury costs. AA has said that as the accident occurred at a junction, where Mrs E was meant to give right of way, but a crash occurred, she will always bear some liability for the loss. I bear in mind AA has experience of how claims like this progress and on which it can draw from. I think that is a reasonable view from AA, that it fairly determined liability (albeit that has not yet been settled)."

Fault record

In reply Mr and Mrs E said – AA had accepted it had been wrong to initially record this as fault – it then agreed to restart things and move to argue liability on a split basis.

My response – I've not seen anything that makes me think AA felt its initial decision was wrong. Rather I think it initially recorded this as a fault claim, which was not unreasonable given the account of the accident – which occurred when Mrs E was exiting a junction. But when Mr and Mrs E raised points of concern about that – the other driver's speed and the location of damage, AA agreed to review matters. I think that was fair and reasonable of it because in doing so it was listening and responding to its policyholder's concerns.

Driving history

In reply Mr and Mrs E said – their 24 years of non-fault driving needs fairly taking into account and all drivers have an equal duty of care to avoid collisions. Here, given Mrs E's driving history and that the other driver could have avoided her, Mrs E was likely less at fault. They'd also received legal advice which suggested Mrs E was not at fault. This bears more weight than AA's view. Also that AA should have completed damage assessments and the like before concluding fault. Even in respect of split liability it hasn't undertaken any of these correct procedures. They believe the courts would rule in their favour.

My response – it's up to an insurer what it does to satisfy itself on liability. What's needed in each claim it sees might vary. If a complaint comes to the Financial Ombudsman Service we'll consider, based on the specific circumstances, whether it acted fairly and reasonably to determine liability. Sometimes it might be appropriate for an insurer to obtain legal advice, or complete damage assessments – but the fact it sometimes doesn't do so, won't necessarily mean it's been unfair and unreasonable in reaching that claim determination. This doesn't seem to have been an unusual type of accident or to have comprised any complex mode of damage or legal positioning. I'm satisfied that, as at the point of its final response letter in January 2023 – which I am considering matters to and at which point no final view on liability had been reached – AA had handled and decided, the liability issue fairly and reasonably.

Legal cover

In reply Mr and Mrs E said – they have legal cover which AA has denied them access to. They are still due cover in this respect. If they had access to legal advice they'd be looking to claim various costs back from AA in respect of its failings.

My response – I haven't seen anything which makes me think AA, the respondent business for the purpose of this complaint, which underwrites their car insurance policy, has blocked Mr and Mrs E from claiming on their separate Motor Legal Assistance policy. Often a claim on such a policy is linked to a non-fault accident claim. As at the point my decision considers

matters up to, January 2023, liability for the claim had not been fully settled – but AA did think it would likely not be possible to settle it on a non-fault basis.

Liability – in conclusion of this issue, I can confirm I've reviewed everything regarding liability. My views in respect of this aspect of the complaint have not changed from those stated provisionally.

Compensation

I said provisionally:

"The claim, along with all the pressures and stresses that went with such for Mr and Mrs E, was undoubtedly prolonged by a couple of months by AA's failures. It was also clearly frustrating and worrying for Mr and Mrs E to find out their car was missing. And when it was found and assessed an unreasonably low market value was determined for it. I can see this caused them further upset, with them taking action to challenge that value. I'm satisfied that £300 compensation fairly and reasonably makes up for the upset AA has caused."

Impact of the claim

In reply Mr and Mrs E said – they experienced more than worry and frustration, their health has been affected and they've been unable to care for their extended family. They haven't been able to live life as expected. They need their essential transport.

My response – I can assure Mr and Mrs E that I am fully aware of how this whole situation, and what they perceive as AA's role in it, has affected them. But it's my job to determine what I think AA did wrong, how it, in my view, failed them. Then to decide, taking into account our guidelines and other awards made in similar cases, what is fair and reasonable compensation for distress and inconvenience caused by those failings (including any impact on health). I remain of the view that £300 compensation is fair and reasonable in the circumstances here.

AA's compensation offer of £300

In reply Mr and Mrs E said – the £300 offered by AA has not been paid to them. They are unsure if I intend this to be a separate amount to the £600 awarded regarding the car.

My response – I've found the £300 offered by AA is fair and reasonable compensation for the distress and inconvenience they've suffered due to what I've found to be AA's failings. I'm aware AA sent them a cheque for this sum in January 2023. It can check its records to see if this has been cashed. It is separate to my award of £600 for their loss of use of their car that should be paid in addition to the £300 previously sent to Mr and Mrs E.

Compensation – in conclusion of this issue, I can confirm I've reviewed everything regarding compensation for distress and inconvenience. My views in respect of this aspect of the complaint have not changed from those stated provisionally.

Data rights

I said provisionally:

"I know Mr and Mrs E told our Investigator they think AA hasn't complied with relevant legislation in this respect. They asked that we disregard any submissions from AA which they did not specifically consent to it sharing with us. If Mr and Mrs E have concerns about how AA used their data, they should contact the Information Commissioner's Office (ICO). But the rules which apply to this service allow us to ask respondent businesses for case file details, and the resultant submissions can/should be taken into account in the consideration of the complaint. I haven't disregarded the detail AA submitted, and its trade guide valuations, along with a copy of its claim notes, have previously been shared by our Investigator with Mr and Mrs E. We've shared that in line with our commitments to ensuring natural justice, not to assist AA in fulfilling any obligations it may have to share any data."

Deception as well as miss-use of personal data

In reply Mr and Mrs E said – their point about the data AA shared with us is not just regarding it misusing their data – but also about how it has acted in a deceptive manner to share incorrect details as part of this complaint. They've not had a chance to correct the invalid data AA has submitted.

My reply – I've answered Mr and Mrs E's concerns in my section above entitled "Valuation" about the policy schedule. Key documents supplied by AA to the Financial Ombudsman Service have, as I said provisionally, been shared with Mr and Mrs E. And they've had and considered a copy of my provisional findings. As can be seen from this final decision document, they've responded extensively. I'm satisfied they've had chance to consider the important documents and my findings.

Data rights – in conclusion of this issue, I can confirm I've reviewed everything regarding data rights. My views in respect of this aspect of the complaint have not changed from those stated provisionally.

What does all this mean and what happens now

Above I've gone through the important aspects of the complaint. I've set out any provisional findings I made, Mr and Mrs E's replies made following my provisional decision and my further responses having considered their replies and reconsidered matters. My view on the complaint, as stated, along with the reasons for my findings set out provisionally, have not changed. As such this is the last section of the findings of this, my final decision.

Below my final decision document concludes with my sections entitled "Putting things right" and "My final decision". This decision marks the end of our process. As mentioned above (in my section entitled "Our process and our decisions"), it is now up to Mr and Mrs E to decide whether or not to accept my final decision. Should they wish to accept it, and I'm aware they may not, they need to be aware of the important deadline that applies to accepting this final decision. That deadline is detailed at the very end of this document above my signature and in the accompanying covering letter.

Putting things right

AA has previously offered to pay Mr and Mrs E:

- £5,470 less the policy excess, as a total loss settlement for their damaged car.
- £300 compensation for distress and inconvenience (a cheque for this having been sent).

I've explained, provisionally and now finally, that I'm satisfied that those sums are fair and reasonable. AA should now pay these sums – regarding the £300, should Mr and Mrs E have cashed the cheque for this, this sum won't need to be paid again.

I require AA to pay Mr and Mrs E:

- £600 compensation for loss of use for the period after the hire car was returned until 23 January 2023.
- An amount equivalent to interest* applied to the sum of £5,470 from 24 November 2022 until 23 January 2023.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require AA to take off tax from this interest. If asked, it must give Mr and Mrs E a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require AA Underwriting Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 20 December 2023.

Fiona Robinson
Ombudsman