

The complaint

Mr U is complaining about the amount Haven Insurance Company Limited paid to settle a claim he made on his car insurance policy.

What happened

Mr U's car was damaged in an accident so he contacted Haven to claim for the damage on his car insurance policy. Haven declared Mr U's car a total loss and said it would settle the claim by paying him the car's market value, less his excess of £1,000. It initially valued the car at £35,605. It also said it would deduct the amount he still owed for the annual premium from this settlement.

Mr U thought this was unfair. He said he'd only bought the car a few weeks beforehand for around £43,000. And he thought it was unfair Haven was deducting the excess and premium. So he asked Haven to increase the value and waive the deductions. He also complained that it didn't give him a hire car during this time. Haven later increased the market value to £39,475. Mr U remained unhappy, so referred his complaint to this Service.

I issued a provisional decision upholding this complaint and I said the following:

"Car's market value

This service's role isn't to work out exactly what the value of an individual vehicle is. We look at whether the insurer has applied the terms of a policy correctly and valued the vehicle fairly. Under the terms of Mr U's policy, Haven has to pay him the market value of the car, less his excess.

The terms of the policy define market value as "The cost of replacing Your [Mr U's] Car with one of similar make, model and specification, taking into account the age, mileage and condition of Your Car."

Haven has valued Mr U's car at £39,475. It's said it's valued this by reviewing the main industry valuation guides. Mr U doesn't think this valuation is fair because he says it puts him in a worse position than he was in before the accident. He also highlighted he'd only bought the car a few weeks before the accident and paid a lot more than Haven's valuation.

It's standard practice for the industry to use valuation guides to work out the estimated market value of a car. And it's not unreasonable that it does so. The valuation the guides give are based on the advertised prices of similar cars with similar age and mileage for sale at the time of loss.

Where valuation guides provide a wide range of values, we'd compare the insurer's valuation against the highest values given by the guides, unless there is something to suggest these given aren't a fair reflection of the amount similar cars sell for on the open market. In this case, four valuation guides gave a valuation of Mr U's car and they provided values of £34,250, £38,700, £40,018 and £40,250 respectively.

As I said above, I would expect Haven to value Mr U's car against the highest values given by the guides so long as the guides have a narrow range. But where a valuation is inconsistent with the highest valuation, I'd expect Haven to disregard it unless it can provide evidence which supports that valuation provided a fairer valuation – i.e. industry evidence supports that Mr U's car wasn't worth as much as the highest valuation figures.

In this case, the top two valuations are virtually identical. So I think Haven should have disregarded the lower two valuations. And it hasn't given me anything to say that this is an unfair conclusion. However, in this case, Haven initially looked to value Mr U's car by using the lowest of the valuation guides. I don't think this was fair and Haven should have been aware that doing this could mean there was a high chance Mr U would struggle to replace the car for this amount with one of the same age, mileage and specification. And I think it's clear that this guide was certainly out of line with the other values and couldn't be considered a fair reflection of the car's market value.

The process of settling a claim should never be a negotiation. Haven should fairly assess a claim value in the first instance and offer to settle the claim in this way. Where an insurer looks to "negotiate" a settlement is likely to be contrary to its regulatory requirements to treat its customers fairly and, more recently, to deliver good outcomes for retail customers.

In this case, I think Haven should have valued Mr U's car by looking at the highest of the valuation guides and I think Mr U has lost out as a result of the way its valued Mr U's car. So I think the fairest way to settle this claim is that Haven pays Mr U the highest valuation figure of £40,250.

Deductions

Haven deducted both the excess of £1,000 and the amount Mr U still owed for the annual premium from the settlement figure. The terms of the insurance policy entitled Haven to do this, but I've thought about whether this was fair.

The requirement to pay an excess is a standard requirement in most, if not all, car insurance policies. I appreciate Mr U was unhappy to pay this, but if he wanted to claim for the damage on his insurance policy, he needed to comply with the terms of the policy – including paying the excess. I can't reasonably say it was unfair for Haven to require him to pay the excess.

However, while I recognise the terms of the policy allowed Haven to deduct the outstanding balance on the premium, I think doing so was unfair. I'll explain why. When Mr U took out the insurance policy, Haven required him to pay an annual premium which Mr U needed to pay at the start of the policy. Mr U wanted to pay for the policy in monthly instalments. To enable her to do so, I understood he took out a finance agreement. The finance agreement paid the annual premium on Mr U's behalf and Mr U agreed in return to repay this in line with the terms of the finance agreement. When Haven settled the claim there was still a balance on the finance which Mr U needed to pay and this is what Haven took off the settlement.

I recognise that the terms of the insurance policy entitled Haven to do this, but it doesn't mean it was fair to do so. It needs to be remembered that the purpose of the insurance policy is to enable a consumer to replace the car with the same age, mileage and specification. If Haven takes off the balance of the premium finance from this amount, then a consumer can't do this with the settlement. So I would generally consider it unfair to deduct the balance on finance agreement for the premium as this is a separate contract to the insurance policy. It's also generally a 12 month contract – i.e. all parties agreed at the start that the consumer would have 12 months to repay this.

If an insurer wishes to end the finance early and deduct any amount still owed, I think it

should seek consent from the consumer to do so in the first instance. Haven didn't do so in this case. Had it done so, I don't think Mr U would have agreed to have £2,281.26 deducted from the settlement as I think it's most likely he would have wanted to continue to pay this over the remaining term. He would always have had to pay this amount, so Haven doesn't have to refund this amount. But it did mean it was harder for Mr U to replace the car.

Putting things right

As I said above, I don't think Haven carried out a fair valuation process. So I intend to say it should increase the valuation to £40,250 and pay Mr U the difference between this and what it's paid. I also intend to say it should also pay 8% on this from the date of loss until it pays this settlement.

Ultimately Mr U received around £3,000 less than he should have done at the start and Haven initially offered a settlement around £6,000 below what the car was worth and nearly £8,000 less than what he'd paid for the car a few months before this. I think this has caused Mr U a lot of distress and inconvenience and I think Haven should pay him £350 in compensation for the distress and inconvenience this matter has caused him."

Mr U didn't agree with my provisional decision and raised the following:

- The Insurance Act 2015 sets out that the insured party should be put back in the same position as they were before the incident. And he doesn't believe Haven has done that.
- He reiterated he paid £43,500 for the car plus interest only a few months before the incident.
- He said he owed his finance company around £44,300 at the time of the accident, but after deducting the excess and premium, Haven only paid around £36,000.
- He said case law sets out that, once an object the insurance policy is covering has been destroyed the case, then the contract is frustrated. He thinks it's wrong that Haven paid the excess and insurance premium to itself before settling the claim. And he thinks it's akin to robbery.
- He wanted me to award the maximum award available for pain and suffering and said he has evidence to show the impact on his mental health and thinks £7,000 is a fair award.
- He highlighted the cost of finance has increased by 15% since the event, making it harder for him to replace the car.

Haven accepted my provisional decision.

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.

Firstly, I need to make clear that this Service is not a court of law, nor are we the industry regulator. We do not award punitive damages, nor fine and punish a business which is essentially what Mr U is seeking with an award of £7,000. We award compensation for distress and inconvenience that a business has unreasonably caused. I remain of the opinion that £350 is fair compensation for the reasons I set out in my provisional decision.

Mr U has made a number of submissions surrounding the purpose of the insurance policy. But I don't entirely agree with them. Firstly, the insurance policy doesn't cover Mr U's car, but it covers the risk that Mr U may suffer loss or damage during the policy term. And part of that loss could be the damage to his car, but it also covers other losses or liabilities he may incur – such as liabilities to a third party. So, Haven writing the car off doesn't frustrate the

contract as Mr U has set out, as he had the right to insure another car under the policy and the risk would continue.

Ultimately, as I said, the insurance policy covers the risk that Mr U would suffer a loss and Haven would cover that loss. Mr U has asked Haven to cover his loss by paying out the claim. So he is equally bound by all the terms of the policy – including paying the annual premium. And it's not unfair Haven required Mr U to pay the full annual premium as it's fulfilled its responsibility, so it's only fair that Mr U does the same. But I've set out why I thought it was unfair for Haven to deduct the outstanding balance of the premium finance agreement and neither party has given any further submissions on this. So I make no further comment on this, other than to reiterate it shouldn't have done so.

I should make clear that the purpose of the policy isn't to put Mr U in the position he was in before the accident, but to compensate him for the loss. The terms of the policy required Haven to pay the market value of the car, less his excess. It's not required to replace the car, but compensate the loss. I set out in my provisional decision why I thought Haven should pay what I think it should pay. And I've not been given anything to say this was unfair.

I appreciate Mr U is unhappy the cost of finance has increased and he's had to pay his excess. But these are uninsured losses, so Haven isn't liable to pay or compensate him for this.

Ultimately, while I note and appreciate Mr U's additional comments, I've not seen anything to make me conclude that the decision I reached in my provisional decision was unfair.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and require Haven Insurance Company Limited to do the following to put things right:

1. Increase the valuation to £40,250 and pay Mr U the difference between this and what it's paid. It should pay 8% on this from the date of loss until it pays this settlement. If Haven thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr U how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.
2. Pay £350 in compensation for the distress and inconvenience this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 17 April 2024.

Guy Mitchell

Ombudsman