

The complaint

Mr M complains that Zurich Insurance Company Limited mishandled his claim on a commercial vehicle insurance policy.

What happened

Mr M is self-employed, fitting items in customers' homes. So he had a van to transport tools and materials.

For the year from mid-August 2023, Mr M had the van insured on a comprehensive policy with Zurich. The policy schedule included "Operative Endorsements" including "Courtesy Van".

Any claim for malicious damage was subject to an excess totalling £300.00.

Unfortunately, Mr M reported that on 4 September 2023, someone had damaged a door of the van, making it impossible to lock.

Much of the complaint is about acts or omissions of other companies acting on behalf of Zurich. Insofar as I hold Zurich responsible for them, I may refer to them as acts or omissions of Zurich.

Zurich arranged for the van to be collected.

Mr M asked Zurich and its repairer to provide a hire van.

For 6 and 7 September 2023, Mr M hired a vehicle at a cost to him of £197.84.

On 15 September 2023, Zurich made a courtesy car available for Mr M but told him he couldn't use it for his work.

After he complained to Zurich, it provided a van from 23 September 2023 to 6 October 2023.

By a final response dated 23 October 2023, Zurich said it had waived the excess. It asked Mr M for his bank details so that it could send him £300.00.

Unhappy with that response, Mr M brought his complaint to us in late October 2023.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. She thought that it was reasonable that Mr M could expect a replacement hire van within 1-2 days of reporting the damage. She recommended that Zurich should pay:

1. £197.84 van hire for two days; and
2. loss of earnings for 9 days (profit lost) £350.00 x 9 less £66.00 fuel; and

3. apprentice wages that still needed to be paid; and
4. interest at our recommended interest rate of 8% simple per annum; and
5. £300.00 for the distress and inconvenience caused (if already not paid).

After considering all the evidence, I issued a provisional decision on this complaint to Mr M and to Zurich on 4 April 2024. I summarise my findings:

M's evidence of the number of lost working days was exaggerated and contradictory. I was minded that this meant that it wouldn't be fair to rely on any version of that evidence in support of a claim for loss of earnings (or loss of contribution to overheads such as the apprentice's wages).

So – unlike the investigator – I wasn't minded to find it fair and reasonable to direct Zurich to pay Mr M any compensation for such losses.

Nevertheless, I was still minded that it would be fair and reasonable to direct Zurich to reimburse Mr M the hire invoice of £197.84 for 6 and 7 September 2023, with interest.

Also, I was minded that the lack of clarity about the provision of a courtesy van caused Mr M inconvenience and distress in September 2023. That included having to juggle work and to spend time on more telephone calls than should've been necessary.

Zurich tried to put things right for Mr M by waiving the £300.00 excess. However, its communication of that was inadequate, such that Mr M considered that Zurich was trying to stifle his complaint.

I was minded that – in addition to the waiver of the £300.00 excess – it would be fair and reasonable to direct Zurich to pay Mr M £300.00 compensation for distress and inconvenience.

Subject to any further information either from Mr M or from Zurich, my provisional decision was that I upheld this complaint in part. I intended to direct Zurich Insurance Company Limited - in addition to the waiver of the £300.00 excess - to pay Mr M:

1. £197.84 in reimbursement of the hire invoice for 6 and 7 September 2023; and
2. simple interest on £197.84 at the yearly rate of 8% from 7 September 2023 to the date of reimbursement. If Zurich considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr M how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
3. £300.00 compensation for distress and inconvenience.

Mr M disagreed with the provisional decision. He says, in summary, the following:

"I want to reiterate that this claim is not about my 'Loss of Earnings', but about the 'Business Losses' that resulted from Zurich's breach of contract. I am not seeking to

recoup my personal earnings, but rather the earnings that my business would have made during the period when I was unable to operate due to the absence of the van.

I have consistently worked weekends to keep projects on schedule, and therefore the assertion that I would not have been working during the period of the van's unavailability is fundamentally flawed. The invoices and contracts I have provided evidence the jobs that were scheduled and the rates at which my company charges. These documents should be more than sufficient to establish the likely earnings during the period in question.

Moreover, while it is true that the jobs that could not be completed during the van's downtime were rebooked to a later slot, this had a snowball effect, delaying all subsequent jobs and causing further loss to the business. This is not merely a loss of earnings for a defined period, but a disruption to my business operations with long-term implications.

I have provided all necessary evidence to substantiate my claims and it is perplexing why this evidence is being viewed as insufficient. My tax returns are a private matter and are not relevant to the losses suffered by my business due to Zurich's failure to provide the replacement van in a timely manner.

In light of these points, I strongly believe that a fair and reasonable settlement should take into account the losses suffered by my business, rather than focusing on my personal earnings.

As a gesture of goodwill, and to expedite the resolution of this matter, I am willing to consider a reduced settlement figure of £4,000.00. This represents a compromise on my part, but I believe it fairly reflects the disruption and losses suffered by my business due to the lack of a replacement van.

I truly hope that this matter can be resolved without further litigation, but I am prepared to take this matter to court if necessary."

Zurich accepted the 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.

I accept that Zurich was responsible for an unclear policy schedule. It included "Operative Endorsements" including "Courtesy Van". Although there were brief detail of other operative endorsements, the policy schedule contained no details about a courtesy van. Also, the policy booklet contained no such details.

The incident and the need to make a claim were bound to cause Mr M some distress and inconvenience including the need to deal with Zurich and its agents.

However, I accept that Mr M had a reasonable expectation that Zurich would provide a courtesy van within a day or two.

As it didn't do so, Mr M hired a van for 6 and 7 September 2023. So I find that it would be fair and reasonable to direct Zurich to reimburse Mr M the hire invoice of £197.84 for 6 and 7 September 2023. As he's been out of pocket since that time, I find it fair and reasonable to direct Zurich to add interest at our usual rate.

Mr M's complaint dated 18 September 2023 included the following:

"on 15/09 at 9.00am (11 days after requesting a courtesy van), I arrived to pick up the car and load my tools. To my dismay, upon arrival, I was informed by an employee ... that I categorically could not use the car for commercial purposes or carry any tools inside. They further revealed that they had already informed the insurance company about this restriction but were instructed to provide me with the car regardless. Left with no viable alternative, I had no choice but to take my van back to enable me to continue working"

From that, I find that Mr M was saying that he'd taken back his damaged van on 15 September 2023 and continued working.

Mr M's complaint dated 18 September 2023 also included the following:

*"... it is reasonable to assume that I should have received a replacement van within 1- 2 days of making the claim.
On this basis, I am seeking compensation for the financial losses incurred due to the unavailability of a courtesy van. I request the amount of £350.00 per day for the 9 days during which I was unable to work, which I can substantiate with copies of my earnings estimate, totalling £3,150.00. Additionally, I request reimbursement for the 2 days of van hire, amounting to £200.00."*

On 18 September 2023, Mr M was saying that, having hired a van for two days (6 and 7 September), he'd been unable to work for nine days. So he was saying that, but for the lack of a courtesy van he would've worked from about 6 September to about 15 September 2023 consecutively. That would've included the weekend of 9 and 10 September 2023.

I find it unlikely that he would've worked for so many days without a break.

Mr M's complaint dated 18 September 2023 also included the following:

"I also reserve the right to claim further expenses if I have not received a replacement van by 20/09/23."

As he was writing on 18 September 2023, I infer that he still had the use of his van that day and probably also 19 September 2023.

Mr M got a courtesy van on 23 September 2023.

In late November 2023 Mr M's solicitors wrote that he'd been unable to work for three weeks and was claiming for sixteen days loss of earnings. That was saying that, having hired a van for two days (6 and 7 September), he'd been unable to work for sixteen days.

So the solicitors were saying that, but for the lack of a courtesy van, Mr M would've worked for a total of eighteen days in three weeks.

However, the van was damaged on 4 September and Mr M got a courtesy van on 23 September 2023. That was slightly less than three weeks or 21 days later. I find it unlikely that Mr M would've worked with so few days off.

Also, the solicitors were overlooking what Mr M had said about getting his van back on 15 September to enable him to continue working. Mr M could've corrected that. Instead, after

the investigator's opinion, Mr M wrote to her enclosing a copy of the solicitors' letter and saying as follows:

"I sent a copy of your letter to my solicitor to keep him updated and he's asked me to point out that it was a total of 16 days not 9 as you have stated. This was my fault for not checking your letter properly. When I first made the complaint we were at 9 days."

I accept that when he complained on 18 September 2023, Mr M claimed for nine days. However, I consider that the last of those nine days must've been no later than 15 September 2023 when he got his van back.

I've inferred that Mr M still had the use of his van on 18 September and probably also 19 September 2023.

In any event, I don't accept that the number of lost working days could've increased from nine days on 18 September by a further seven days by 23 September 2023 when Mr M got a courtesy van.

Response to the provisional decision

Mr M's response to the provisional decision is quoted above. Unfortunately, Mr M hasn't responded in any detail on the question of what working days he (or his business) actually lost.

So I still consider that Mr M's evidence of the number of lost working days is exaggerated and contradictory. I conclude that this means that it wouldn't be fair to rely on any version of that evidence in support of a claim for business losses or loss of earnings.

So I don't find it fair and reasonable to direct Zurich to pay Mr M any compensation for such losses.

Putting things right

Nevertheless, I still consider that it would be fair and reasonable to direct Zurich to reimburse Mr M the hire invoice of £197.84 for 6 and 7 September 2023, with interest.

Also, I consider that the lack of clarity about the provision of a courtesy van caused Mr M inconvenience and distress in September 2023. That included having to juggle work and to spend time on more telephone calls than should've been necessary.

Zurich tried to put things right for Mr M by waiving the £300.00 excess. However, its communication of that was inadequate, such that Mr M considered that Zurich was trying to stifle his complaint.

I conclude that – in addition to the waiver of the £300.00 excess – it would be fair and reasonable to direct Zurich to pay Mr M £300.00 compensation for distress and inconvenience.

My final decision

Nevertheless, I still consider that it would be fair and reasonable to direct Zurich to reimburse Mr M the hire invoice of £197.84 for 6 and 7 September 2023, with interest.

Also, I consider that the lack of clarity about the provision of a courtesy van caused Mr M inconvenience and distress in September 2023. That included having to juggle work and to spend time on more telephone calls than should've been necessary.

Zurich tried to put things right for Mr M by waiving the £300.00 excess. However, its communication of that was inadequate, such that Mr M considered that Zurich was trying to stifle his complaint.

I conclude that – in addition to the waiver of the £300.00 excess – it would be fair and reasonable to direct Zurich to pay Mr M £300.00 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 May 2024.

Christopher Gilbert

Ombudsman