

## **The complaint**

Mr S complains One Insurance Limited settled his motor insurance claim unfairly.

Mr S has been represented for the complaint. For simplicity I've referred to the representative's actions as being Mr S' own.

## **What happened**

In May 2023 Mr S' van was stolen. His motor insurer, One Insurance, offered a settlement based on the van having a market value of £8,769. It said it intended to pay a proportionate settlement – at 91% of the full claim.

In July 2023 One Insurance responded to a complaint from Mr S. He was unhappy with the market value and proportionate settlement. One Insurance said the settlement had been reduced by 9% as he had misrepresented ownership of the van. It said he had claimed to be the owner and registered keeper, but it was actually owned by his company. It said it was entitled, by legislation, to proportionality settled as Mr S had paid only 91% of the premium that would have been charged if the correct information had been given. But it did increase its valuation of the van to £11,755.

Mr S wasn't satisfied, so referred his complaint to the Financial Ombudsman Service. He said he wants One Insurance to pay him 100% of the valuation of the van - without the 9% deduction. He said he was the owner of the van as he is a sole trader. He also asked that One Insurance pay his claim for a hearing aid and tools in the van when it was stolen.

Our Investigator felt One Insurance's decision to settle the claim proportionally was fair. She was persuaded Mr S had made a misrepresentation and it was entitled to deduct 9%. But she felt its latest valuation wasn't reasonable. Based on the highest of three trade guide valuations she recommended the claim be settled based on a £12,687 valuation.

Mr S didn't say if he accepted the Investigator's proposed outcome on the 'misrepresentation issue'. Although he appeared to be happy with her proposed valuation. One Insurance raised concern at this Service having considered the market value. It didn't consider it to form part of Mr S' complaint. After some discussion, and him confirming he would like the valuation considered, One Insurance agreed to its inclusion. It then offered to settle the claim based on the market value proposed by the Investigator. As the complaint wasn't entirely resolved I've considered it.

I issued a provisional decision. In it I explained why I intended to find One Insurance's decision to settle the claim on a proportionate basis to be unfair and unreasonable. I said as a result I intended to require it to settle the claim in full – without any proportionate deduction – based on a market value of £12,687. The provisional decision's reasoning forms part of this final decision, so I've copied it in below. Finally I invited Mr S and One Insurance to provide any further comments or evidence they would like to me consider before issuing this final decision.

### ***what I've provisionally 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 this is an informal service I'm not going to respond here to every point or piece of evidence Mr S and One Insurance have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.*

*I'll first address the misrepresentation issue. One Insurance hasn't shown it can fairly settle the claim proportionally. So I intend to require it to pay the claim in full.*

*One Insurance has said the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) is the relevant legislation. However, that applies to consumer insurance contracts. CIDRA considers a consumer to be an individual who enters the contract wholly or mainly for purpose unrelated to their trade, business or profession.*

*Mr S' policy 'statement of fact' lists 50% of the insured mileage to be for business purposes. So I'm not persuaded the contract is a consumer one. That means the Insurance Act 2015 (IA15) is the relevant legislation. It applies to non-consumer insurance contracts. In any event it doesn't matter which legislation applies. The outcome, for me, would be the same either way. However, I will mainly refer to the IA15 here.*

*Policyholders are required by IA15 to give a fair presentation of the risk. When the insured breaches that requirement insurers have certain remedies available to them (including proportional settlement of claims). In this case One Insurance said the breach (or misrepresentation to use CIDRA terms) was incorrectly stating Mr S to be the registered keeper and legal owner of the van. It says the van was 'owned by the company'. I believe it is referring to a company owned or run by Mr S'.*

*In response Mr S said there wasn't a breach (or misrepresentation) as he is a sole trader. He said that means he is the legal owner and registered keeper of the vehicle. One Insurance didn't, as far as I'm aware, respond to that point when Mr S raised it sometime ago. I've no reason not to accept what he says about being a sole trader. One Insurance hasn't, in recent correspondence on the matter, disputed that status.*

*One Insurance has shown Mr S was asked, when taking out the policy, 'Is the driver (or will they be) the legal owner of the van?'. 'Yes' or 'no' are given as the two answers available. Mr S presumably answered 'yes' as policy documents show 'proposer' as the owner of the vehicle.*

*My understanding of 'sole trader' is that there is no separation between the individual and the business. There is no separate legal entity for the business. So that would mean the vehicle was legally owned by Mr S. There isn't another entity, for example a 'company' to own it. That would seem to be the case even though the V5 document shows Mr S' business trading name as the registered keeper.*

*So it seems the legal owner of the vehicle was Mr S - the proposer and driver. In that case he didn't fail to make a fair presentation of the risk when answering the question about the legal owner of the vehicle – he was the 'driver' for the policy and the 'legal owner'. There was no 'breach'.*

*I haven't considered if Mr S failed to make a fair presentation of the risk in regard to the registered keeper of the van. I currently don't feel it would make a difference to the outcome even if he had. I'll explain why.*

*The IA15 sets out the insurer has a remedy against the insured for a breach of duty of fair presentation only if the insurer shows that, but for the breach, the insurer – a) would not have entered into the contract of insurance at all or b) would have done so only on different terms.*

*One Insurance hasn't shown it wouldn't have offered cover or would have done so on different terms had it been told the registered keeper was Mr S' company (as it claims it to be) or his 'business'. If it does, I will consider if there was a 'breach' in regard to the registered keeper.*

*One Insurance has instead shown if it had been told a 'company' was the 'owner' of the van it would have charged a higher premium. That's the basis of the proportionate claim settlement. As I've said I don't currently accept there was a 'breach' regarding the ownership of the van. That means One Insurance hasn't shown there has been a 'qualifying breach' (CIDRA calls its equivalent a 'qualifying misrepresentation'). That means there is no remedy available to it under IA15. My position would be the same were CIDRA considered the relevant legislation.*

*That means I intend to find One Insurance's decision to settle the claim on a proportionate basis to be unfair and unreasonable. As a result I intend to require it to settle the claim in full – without any proportionate deduction.*

*One Insurance has offered to settle the claim based on a market value of £12,687. Mr S seemed to accept that valuation when the Investigator proposed it. So as that valuation appears to have been agreed by both parties, I'm not going to consider the issue any further.*

*So I intend to require One Insurance to settle Mr S' claim in full – with no proportionate settlement – on the basis of a market value of £12,687. It will need to add simple interest to the outstanding amount due – at 8% from November 2023 to the date of final settlement.*

*I don't intend to require One Insurance to pay any compensation for distress or inconvenience. The simple interest will make up for Mr S being unfairly without the additional funds. In addition I feel he, by not declaring his business trading name to be on the V5, contributed to the confusion. So I don't feel it would be fair to require One Insurance to pay any further compensation.*

*Finally Mr S raised concern at a lack of response to a personal possession claim – for a hearing aid and tools. One insurance explained he hadn't provided it with required details for settlement. So if Mr S would like to pursue this part of his claim, he should contact One Insurance to follow it up.*

### **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.

Mr S accepted my provisional decision. One Insurance didn't respond. So I don't have any reason to change the outcome I proposed in my provisional decision.

### **My final decision**

For the reasons given above, I require One Insurance Limited to settle Mr S' claim in full, with no proportionate deduction, on the basis of a market value of £12,687 – and add simple interest as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 August 2024.

Daniel Martin  
**Ombudsman**