

## **The complaint**

Mr G complains U K Insurance Limited mishandled his motor insurance claim.

## **What happened**

In mid-August 2022 Mr G's car was stolen. It was recovered in early September 2022. He claimed for the theft damage against his UKI motor insurance policy. In late September 2022 the car was taken to UKI's authorised repair (AR). In January 2023 Mr G complained to UKI about how long it was taking to repair the car.

In mid-March 2023, still without his car, Mr G asked UKI to write it off. In response UKI said repairs had been delayed by a nationwide shortage of parts. It said its AR was chasing the parts, but the issue was ultimately outside of its control. It didn't agree to write off the car.

In April 2023 UKI responded to a further complaint. It apologised for providing him with a smaller hire car than he was entitled to. It offered £150 compensation.

Mr G wasn't satisfied so referred his complaint to the Financial Ombudsman Service. He said he had been without his car for an unacceptable time. He had been making finance payments for it, but had been unable to use it. He said as there wasn't a time frame for its return, he would like the car written off and his claim cash settled.

In October 2023 Mr G's car was finally repaired and available for return. However, he refused to accept it.

In January 2024 our Investigator considered the complaint. He accepted the shortage of parts was outside of UKI's control. However, he felt it should have declared the car a total loss in April 2023. So he said it was now unreasonable for UKI to try to return the car to Mr G. He recommended it instead pay him the market value of his car - plus £750 compensation to recognise the distress and inconvenience UKI was responsible for.

Mr G accepted that outcome. As UKI didn't agree to treat the car as a total loss the complaint was passed to me.

I issued a provisional decision. In it I explained why I didn't intend to require UKI to treat Mr G's car as though it were a total loss. I also set out why I didn't intend to require the insurer to cover any financial loss claimed by Mr G, nor interfere with any attempt it may make to recover, from him, storage costs incurred after October 2023 - the date the car was made available for him to collect. Finally I said intended to require UKI to pay compensation for distress and inconvenience - £1,100 minus any it had already paid Mr G.

I invited Mr G and UKI to provide any comments or evidence they would like me to consider before I issued a final decision. UKI accepted my findings and had no further comments to make. Mr G didn't. He provided comments and evidence for me to consider.

### ***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 G and UKI 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've considered the key issue first – Mr G's request that the car be treated as though it were a write off (or total loss). When settling a theft claim the policy terms provide UKI with the choice to repair, replace or by making a payment. It decided to repair – as it considered the repair cost, when set against the car's market value, didn't justify a total loss. As it was UKI's decision to make, I can't say it failed to act in line with the terms of Mr G's policy.*

*However, where there is significant delay to repair, this Service sometimes considers, regardless of the policy terms, the fair and reasonable outcome to be for an insurer to treat the car as though it were a total loss. But it depends on the individual circumstances.*

*A key consideration is continued uncertainty around completion of repairs and availability of the car to the policyholder. The intention of treating the car as a total loss would be to allow the policyholder to purchase, and make use of, another of a similar make and model.*

*But in this case the car's been repaired. It had been by the time our Investigator considered the complaint. So there's no continuing uncertainty around repair. Instead the car's been available for Mr G to collect for around eight months. That means there's no need for the purchase of a replacement. So even if I did agree it would have been fair and reasonable for UKI to treat the car as a total loss earlier in the claim, I wouldn't consider doing so now to be the appropriate outcome.*

*Mr G highlighted this Service's general approach to complaints, alongside contract law. As he points out we do generally try to put consumers back in the position they would have been but for a business's mistake. But we are also required to consider what's fair and reasonable in all the circumstances. And I don't consider it reasonable, nor proportionate, to require UKI to write off a car that's been repaired and available to the policyholder for many months. So, whilst I realise this will be very disappointing for Mr G, I don't intend to require UKI to treat his car as though it were a total loss.*

*I've next considered Mr G's reasons for not accepting return of the car in October 2023 – including that doing so would result in him selling it for a significant loss. But I'm not persuaded he acted reasonably. By refusing the car's return he didn't take reasonable steps to minimise his loss. And so, regardless of UKI's earlier performance, it can't fairly be held at fault for him not having use of the car beyond October 2023.*

*So I'm not going to find UKI caused him any inconvenience, financial loss or loss of enjoyment beyond that date. Neither am I going to interfere with any attempt it may make to recover storage costs incurred after that date.*

*I accept UKI's explanation that there was an unavoidable delay, resulting from a shortage of parts, between September 2022 to April 2023. Unfortunately that's been a common experience in recent years. Mr G said UKI's choice of AR caused the*

*delay. But I haven't been provided with enough to persuade me a different garage would most likely have been able to source the required parts at an earlier date.*

*However, I don't accept shortage of parts as an explanation for delay from April 2023 to completion in October 2023. UKI's records note almost all required parts had been sourced by April 2023. But I haven't been provided with a reasonable explanation for repairs taking a further six months. So I currently intend to find UKI was at fault for avoidable delays during this period.*

*Mr G said UKI's delay caused him around £27,000 in losses. So I've considered if it should cover any financial loss.*

*I'm not going to require UKI to reimburse finance payments made during any period of delay. I don't consider those payments to be a loss caused by UKI. Mr G would have had to make them regardless of the insurer's handling of the claim. The same applies to any depreciation in value. Instead the loss is Mr G's inability to use and enjoy his car.*

*So I've considered if UKI should reimburse Mr G any additional costs he incurred due to the loss of use of his car. The focus of his submissions has been losses caused by the car not being written off – rather than additional transport costs incurred as a result of being without it. So it's not clear if he did experience relevant additional costs.*

*However, even if Mr G did incur any, I'm unlikely to require UKI to cover them. He returned the hire car UKI provided him with. By doing so he failed to take reasonable steps to minimise his loss. Ultimately, I can't fairly require UKI to meet costs Mr G incurred, for taxis or alternative hire for example, when he declined to make use of an alternative car he was provided with.*

*I've considered if being provided with a smaller hire car than he was entitled to likely had a material impact on Mr G's decision to return it – and so the failure to minimise loss. The policy terms provide for a hire car of a similar size to his own. Although they also explain UKI can't guarantee the hire car will be the same in terms of size, type, value or status.*

*UKI accepts Mr G should have been provided with a slightly larger car. It's provided examples of models he should have been given. They are slightly larger and probably a bit more powerful than the model he was given. But I'm not persuaded the difference was so significant that Mr G would likely have retained the hire car, and so minimised his loss, had he been given an appropriate model.*

*Whilst I don't intend to require UKI to cover any financial loss I do intend to ask it to pay compensation for distress and inconvenience. I've set out a summary of my reasons.*

*First, where there's delay, regardless of the influence an insurer has on events, I'd expect the policyholder to be provided with regular informative updates. Considering the length of delay I'm not persuaded UKI was sufficiently proactive in keeping Mr G updated. In addition it provided him with incorrect information in April 2023 when it said the car would soon be repaired. This likely caused him upset, stress and disappointment. However, I'm not persuaded by Mr G's claims it deliberately misled him to minimise its outlay.*

*In addition the provision of a smaller hire will have caused further upset and loss of expectation.*

*However, the most significant consideration in my compensation award is the avoidable delay from April to October 2024. That stopped Mr G enjoying the use of his own car for an extended period – around five months at least. He was making significant monthly payments for a car with high power and specification. It's likely he expected to take considerable enjoyment or other pleasure from those features. A hire car, whilst providing a practical solution to transport needs, won't have been able to replicate that enjoyment or experience. So I'm satisfied that UKI caused Mr G substantial distress and frustration by its handling of the claim.*

*So for all the elements combined I intend to require UKI to pay Mr G a total of £1,100 compensation. UKI has said its already paid him £500 compensation. It's not clear to me that it has paid that amount. But it can deduct from the £1,100 any amount of compensation it can evidence having already paid Mr G.*

### **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've considered everything Mr G provided in response to the provisional decision. But as this is an informal service I'm not going to respond here to every point or piece of evidence. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure Mr G I have considered everything submitted both before and after my provisional decision - including various rules and regulations he referred to.

Mr G said I ignored previous outcomes and evidence collected by the Investigator. When a complaint isn't resolved for both parties, by an Investigator, it's my role to issue a final decision. That involves me looking at the complaint afresh by considering all the available evidence. I was fully aware of the background and events involved – including events in a timeline provided by Mr G. That included the Investigator's initial, November 2023, assessment (in that one he didn't require UKI to treat the car as a write off) and Mr G's challenge to it.

However, I didn't feel it necessary to set out every detail in the background or findings – just a summary of the key events. Having considered everything I didn't agree with the Investigator's January 2024 outcome. My provisional decision explained why I felt it wouldn't be reasonable to now treat Mr G's repaired car as a write off. Having considered his latest comments I'm still of that position – and for the same reasons as set out in my provisional decision.

Mr G states I found it to be fair and reasonable for a consumer to wait 15 months for repairs. I haven't made that finding. My provisional decision considered responsibility for the delay. I found there to be an unavoidable delay between September 2022 and April 2023; something outside of UKI's control that I couldn't hold it responsible for. I found UKI responsible for avoidable delay from April 2023 to October 2023. There was no delay beyond October 2023 as repairs were completed. My position on these aspects hasn't changed. I then considered if any financial losses should be reimbursed, or compensation awarded for the relevant periods. I also awarded compensation for UKI providing misleading information about a likely repair completion date in April 2023.

My provisional decision explained why I didn't accept the finance payments or reduction in value as a loss – essentially those payments and reduction would always have occurred

regardless of how long a repair took. I said that instead I considered the loss to be the 'loss of use' of his car in the relevant period. Having considered Mr G's latest comments, my position on this hasn't changed either.

My provisional decision noted UKI had provided incorrect information, in April 2023, about progress of the claim. It said repairs would soon be completed, but that stage wasn't achieved until October 2023. Mr G feels UKI should reimburse him for all lease payments and any reduction in value during that period – because of the misleading information. I've explained I don't consider those aspects to be a loss – instead the loss is the loss of use of the car. And as I set out in my provisional decision, I also considered Mr G's related loss of enjoyment of the specific type of car during that period – and distress or other resulting from the incorrect information.

Mr G did say he intended to sell the car when it was repaired. I've considered that possibility as a potential financial loss resulting from the avoidable delay UKI's responsible for between April 2023 and October 2023.

However, I'm not persuaded, had the car been available for return around early Summer 2023, Mr G would have accepted it and gone on to make a sale. He failed to do so when presented with the opportunity in October 2023. He's explained his reasons for that decision. He said the question of whether the car should be written off was the subject of a dispute under consideration by this Service.

I accept the dispute was five or so months younger in early Summer 2023, but the situation was essentially the same at that point. This Service was considering a dispute about whether the car should be written off. So I can't say he likely would have taken the car back and sold it.

I considered additional transport costs as possible financial losses – but explained why I didn't intend to award any. Again, I've considered Mr G's latest comments about the need for the car for various family commitments. But Mr G chose to return the hire car. That could have been used for such activities. So Mr G hasn't provided anything to persuade me it would be reasonable to require UKI to cover any financial loss resulting from him being without the car.

Mr G said I'm punishing him for making use of his right to challenge the Investigator's November 2023 assessment. I'd like to reassure him that I'm not. Instead I've considered if he took reasonable steps to minimise his loss. Having considered his reasons for not taking back the car in October 2023, I don't feel he did. I'm not persuaded by his argument that the possibility of this Service later finding the car should be returned to UKI – in order for it to write it off - provides reasonable justification of his decision.

Three acceptable outcomes were outlined by Mr G. All involve UKI paying him significant amounts for financial loss or writing off the car. For the reasons set out above, including in my provisional decision, I'm not going to require UKI to meet those.

Mr G requested that, if the car must be returned to him, certain conditions should be met – including a pre-delivery inspection and service. However, I'm not going to place any specific requirements on UKI. I'd expect UKI to have made lasting and effective repairs. I've no reason to suspect it hasn't. If he has specific requirements Mr G can speak to UKI. I don't feel it's necessary for me to get involved at this stage. If he's dissatisfied with the outcome of the repairs, he could consider a further complaint.

Mr G said there should be no order that he should pay UKI any storage charges. I didn't, in my provisional decision, say I intended to make such an order. Instead I said I wouldn't

interfere with any attempt UKI may make to recover storage costs incurred after October 2023. I haven't changed my position on that. I'm not ordering he pay them. Instead I'm not finding it would be unfair or unreasonable for UKI, if it chooses to, seek to recover from him storage charges incurred beyond October 2023.

Finally Mr G referred to the time taken by this Service to consider his complaint. He feels had the complaint been assessed in line with alternative dispute resolution time requirements an Ombudsman would undoubtedly come to a different outcome to the one I've proposed. It's not appropriate or beneficial for me to speculate on the outcome I or a different Ombudsman may have reached at a different time. I'm considering the complaint at this point.

I understand Mr G doesn't accept my position on his complaint as being fair and reasonable – and that it doesn't follow relevant rules and regulations. However, I've considered the timeline of events, the available evidence and relevant rules. I'm satisfied the outcome I proposed in my provisional decision is fair and reasonable. So I'm not going to require UKI to treat the car as a write off, nor am I going to require it to pay anything for financial loss. I will require it to pay Mr G £1,100 compensation – subject to any compensation already paid during the claim and complaint process.

### **My final decision**

For the reasons given above, I require U K Insurance Limited to pay Mr G a total of £1,100 compensation – subject to any compensation already paid.

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

Daniel Martin  
**Ombudsman**