

## The complaint

Mr S complains that Haven Insurance Company Limited is responsible for mishandling a claim on his motor insurance policy.

## What happened

The claim and the complaint involve a hatchback first registered in 2015.

For the year from July 2022, Mr S had a motor insurance policy with Haven.

On 22 November 2022, Mr S acquired that vehicle and insured it on the Haven policy.

Unfortunately, in mid-December 2022, Mr S reported that a third party driver had caused an accident that had damaged both vehicles.

Mr S complained to Haven about its valuation and about delay in settling the claim.

By a final response dated 20 March 2023, Haven turned down the first complaint.

Mr S asked us to investigate.

Mr S still had the damaged car, but he added a replacement car to the policy.

### *our investigators' opinions*

In late June 2023, our first investigator recommended that the first complaint should be upheld in part. She said that the car had been a total loss before Mr S bought it. She said that the average valuation minus 20% for the previous total loss was £8,570.00.

She said that on 2 February 2023, Haven had offered £6,350.00 for the car. The investigator said that, if Haven had offered the correct settlement, Mr S would've pursued the claim through Haven instead of trying to claim through the third party. She said that, in June 2023, Mr S was not pursuing a claim through Haven. She didn't think that Haven had caused any significant delays to the liability being settled.

The first investigator recommended that, if the claim is pursued through Haven, it should:

1. either repair the vehicle, or increase the settlement offer to £8,570.00;
2. offer £100.00 compensation for the trouble this has caused;
3. if settled, add 8% simple interest from 2 February 2023 to the date of settlement.

Mr S accepted the first investigator's opinion.

Mr S renewed the policy for the year from July 2023.

Haven accepted the first investigator's opinion, saying that it would treat the car as a total loss and it would deduct £850.00 excess. It said the third party was still disputing liability. On about 7 August 2023, Haven paid Mr S.

Mr S wanted to pursue the third party for recovery of the excess. He complained to Haven about (further) delay in resolving liability. On about 6 November 2023, Haven contacted Mr S about a proposal to split liability with the third party 50/50. Mr S complained about that conversation.

By a final response dated late December 2023, Haven apologised for any stress or inconvenience caused by that conversation.

Mr S asked us to investigate his second complaint.

Our second investigator didn't recommend that the complaint should be upheld. She didn't think that Haven failed to manage the claim appropriately or that it caused avoidable delays. She didn't think that Haven failed to properly assess the evidence before it.

### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to Haven on 1 July 2024. I summarise my findings:

I found some shortcomings in Haven's call-handling on 6 November 2023.

I found some shortcomings in the enquires that Haven made of the solicitors before the December 2023 final response.

Haven had made Mr S feel that it had prejudiced his chances of ever recovering his excess from the third party and of avoiding a fault claim. That had hung over Mr S from early November 2023 to late June 2024.

Subject to any further information either from Mr S or from Haven, my provisional decision was that I upheld this complaint in part. I intended to direct Haven Insurance Company Limited to:

1. write a letter to Mr S stating clearly the up to date position with Haven's attempts to recover its outlay from the third party's insurer and to defend the third party's claim; and
2. pay Mr S £200.00 compensation for distress and inconvenience.

Mr S accepted the provisional decision.

Haven hasn't responded to the provisional decision.

I see no reason to change my view.

### **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.

Haven's policy terms included the following:

*“Conduct of claims/subrogation*

*1. We are entitled to take over any third party claim against You... and to conduct the defence or settlement of any such third party claim in Your name...*

*4. Where We consider it appropriate, We may admit liability on Your behalf.... We have full control of all claims covered by this policy.”*

I consider that this meant that, on a question of liability involving a third party, Haven’s view would prevail over its policyholder’s view.

Haven took on board Mr S’s report of the accident. At first, Haven asserted to the third party’s insurer that the third party had been responsible. The third party’s insurer refused to accept liability. That caused the claim to remain unresolved.

The first investigator didn’t find Haven responsible for delay up to the final response in March 2023. Mr S accepted that. So I can’t re-investigate the complaint about delay up to that time.

From the claim file, I haven’t seen enough evidence to show that Haven was responsible for unreasonable delay between March and November 2023.

On 6 November 2023, Haven made a file note as follows:

*“PH called to add to the complaint, he wants to add further complaint in relation to [named handler] following the call this morning. He stated that he was told on the call that if he does not accept the 50/50 offer his premiums will go up next year. He was told that he should accept 50/50 as there were no road markings and that TP had provisional licence plate on the car”*

So I accept that part of Mr S’s complaint was that Haven had said that, if he didn’t accept 50/50, then his premium would go up the next year. As Haven hasn’t provided any call recording, I accept Mr S’s recollection that Haven did say that. And I consider that it was not fair, not least because Haven would’ve treated split liability as a fault claim which would’ve tended to increase Mr S’s premium on renewal.

Also, Haven’s file contains some notes dated 21 November 2023. They include a note that Haven called Mr S’s solicitors and each of them agreed that he could do better than 50/50. So Haven sent details of its outlay to the solicitors so that they could include that when issuing proceedings against the third party.

In December 2023, Haven’s final response said the following:

*“...the Third-Party Insurer proposed a 50/50 settlement and our agent contacted you to discuss this, suggesting that this would be in your best interest.  
As you have a personal injury claim ongoing with your own solicitors, accepting a 50/50 settlement would have prejudiced your injury claim. We have therefore instead provided your solicitors with our outlay to include in their proceedings.  
Our recoveries team contacted you to discuss this, and I am satisfied that this is the correct outcome. I am sorry for any stress or inconvenience caused by the telephone conversation with our agent, feedback has been provided in order to improve our service going forward.”*

From the last sentence quoted above, (and in the absence of call recordings) I infer that Haven had reviewed the recordings of the 6 November calls, and found some shortcomings that had caused Mr S stress.

Also from the final response, I consider that Haven was saying that the correct outcome was for Mr S's solicitors to issue proceedings against the third party. In writing that final response, Haven knew that its claim was for over £7,000.00. However, it hadn't asked Mr S or his solicitors the nature of his injury or the extent of any loss of earnings.

In mid-January 2024, the file shows that the solicitors told Haven that the injury claim was valued at only about £260.00. The solicitors knew that Haven's claim was larger, and they asked Haven if it would pay the court fee. I haven't seen any answer to that. The file Haven provided to us ends in early March 2024, with Haven asking Mr S's solicitors for an update.

So I've found some shortcomings in Haven's call-handling on 6 November 2023. And I've found some shortcomings in the enquires that Haven made of the solicitors before the December 2023 final response.

### **Putting things right**

I've thought about the impact of those shortcomings on Mr S – and what it would be fair to direct Haven to do to put things right.

From what I've seen, Haven hadn't settled with the third party at the time of the December 2023 final response. Haven still had the benefit of the policy term allowing it to decide how best to deal with the claim involving the third party. And Haven still had the evidence including Mr S's version of events and the available video footage.

However, Haven had made Mr S feel that it had prejudiced his chances of ever recovering his excess from the third party and of avoiding a fault claim. That has hung over Mr S from early November 2023 to July 2024.

All things considered, I find it fair and reasonable to direct Haven to:

1. write a letter to Mr S stating clearly the up to date position with Haven's attempts to recover its outlay from the third party's insurer and to defend the third party's claim; and
2. pay Mr S £200.00 compensation for distress and inconvenience.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Haven Insurance Company Limited to:

1. write a letter to Mr S stating clearly the up to date position with Haven's attempts to recover its outlay from the third party's insurer and to defend the third party's claim; and
2. pay Mr S £200.00 compensation for distress and inconvenience.

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.

Christopher Gilbert  
**Ombudsman**