

## **The complaint**

Mr W complains about the way UK Insurance Limited (UKI) handled a claim he made on his van insurance policy.

Any reference to UKI in this decision also includes its agents, unless otherwise set out in the decision.

## **What happened**

In June 2023 Mr W made a claim on his van insurance policy for a damaged windscreen. The windscreen was repaired, but afterwards Mr W experienced issues with water ingress. He took it for repairs on numerous occasions between June and November 2023.

In late 2023, UKI accepted it was its poor repair to the windscreen which had caused issues with Mr W's van. It said it would carry out the necessary repairs and offer to buy the car off Mr W if the repairs exceeded the value of the vehicle.

Mr W complained to UKI, he wanted the vehicle to be written off, rather than repaired. He said parts of his warranty would likely be invalidated given the works needed.

UKI didn't agree to change its position, so Mr W brought his complaint to the Financial Ombudsman Service for an independent review.

Our Investigator didn't think UKI had made a fair offer to resolve Mr W's complaint. She thought, based on the evidence, the fairest way to resolve things would be to deal with the car as a total loss. She said Mr W's policy entitles him to receive the pre-loss market value of the vehicle, so this is what UKI should offer. She said it should use June 2023 to ascertain the market value, as this is when the windscreen claim was made. She said UKI should also add 8% interest on that amount from June 2023 until the date of settlement.

She said whilst UKI had kept Mr W in hire whilst the car was being inspected, the hire vehicle hadn't allowed Mr W to carry on his usual business because the hire vehicle didn't have the tow bar needed for a trailer, which Mr W needed to carry work equipment. Our Investigator said, as a resolution to this complaint, UKI would need to assess his loss of earnings. She also said given the unnecessary distress and inconvenience UKI's poor repair had caused Mr W, and how he'd been impacted by it, UKI should also pay £750 compensation.

Mr W didn't accept that outcome. He said there isn't an equivalent to the van he had on the market. He also said the market value settlement he receives will be needed to pay off his finance agreement, and he'd be unlikely to receive the same favourable terms on a new finance agreement for a new van. As a resolution, he wanted UKI to pay for a new van, with the specification to match his old one.

UKI generally accepted the outcome of our Investigator. But it said it wasn't notified of a need for a hire vehicle until 7 February 2024, and it provided one, with a tow bar, on 1 March 2024. It said it would consider a claim for lost earnings within that period. It agreed to the

compensation and to offer Mr W the market value of his vehicle.

In July 2024 I issued a provisional decision on this complaint. I've copied what I wrote below

*As this is an informal service, I'm not going to respond to every point or piece of evidence provided by UKI or Mr W. Instead I've focussed on those I consider to be key to the outcome I've reached. But I'd like to reassure both parties that I've read and considered all points made.*

*Having done so, I mostly agree with the findings of our Investigator, in that UKI should treat the van as a total loss. However, I intend to set out what UKI should pay as the fair market value, to avoid further issues after this complaint has been resolved.*

#### *Market value*

*UKI accepts its poor repair has led to damage to Mr W's car that is likely irreparable, so his van should be treated as a total loss. So like our Investigator, the only thing for me to decide is what is a fair and reasonable way of putting matters right for Mr W.*

*Under the terms of Mr W's policy, where a car can't be repaired, UKI says it will pay the market value of the vehicle at the time of the loss, taking into account its make, model, mileage and condition. So, I think UKI agreeing to pay the market value is a fair starting point.*

*Mr W says receiving the market value isn't fair because any payment received from UKI would first need to pay off the finance, and he wouldn't be able to get a vehicle with the same specification, under a new finance agreement. He wants UKI to either source him a van with the same specification he had (which he's said he couldn't find) or pay him the cost of buying a new van, rather than a second-hand one.*

*I can understand Mr W's arguments, he has been left in an unfortunate position by UKI's error. Our position is that where a business has made a mistake, we'd expect it to put a consumer – so in this case Mr W – back in the position he would have been, but for the mistake.*

*The mistake here was not doing a proper repair to the windscreen, which has irreparably damaged his less than two-year-old vehicle. So the position UKI needs to return Mr W to would be him having a less than two-year-old van without damage. Paying him the market value as of the date of total loss, should enable him to do that.*

*However, to tie things up for Mr W as best as possible, I'm going to propose, as part of this provisional decision, what I think UKI should pay for the market value. This is to avoid any future issues that could arise if I were to make a decision directing UKI to make an offer for the market value. This Service might not be able to consider a further complaint on that, if Mr W doesn't accept UKI's market value amount. So I've assessed the valuation guides that UKI would use to establish the most likely market value, at the time of the loss, in line with this Service's usual approach.*

*As UKI is aware, the approach this Service uses is to use valuation guides to assess a fair market value. And our position is insurers should pay the highest value from the guides available, unless it can fairly rely on other evidence to support that a lower market value would be more appropriate. UKI hasn't provided any evidence in this case, as it has only agreed to offer the market value on receipt of our investigator's opinion.*

*However, I think it's important to set out to UKI that in the circumstances of this complaint, I don't consider any evidence it could produce – to support a lower valuation – would*

*persuade me it was fair to do so. I say this because I consider Mr W finds himself in this unfortunate position solely because of UKI's mistake in carrying out a poor repair, which has led to the total loss. I also consider UKI could have agreed to treat Mr W's vehicle as a total loss, before his complaint was referred to this Service.*

*In order to calculate the pre-market value, I've chosen a date of 20 November 2023. This is around the date UKI seems to have accepted that it was its poor repair that had caused the water ingress damage to Mr W's vehicle. And this has ultimately made the vehicle a total loss. Our Investigator said the date should be June 2023 as that was the windscreen claim, but I think November is more appropriate, as the van didn't need to be a total loss in June 2023, had a proper repair been carried out.*

*So, having reviewed the three valuation guides that have a listed pre-loss market value for Mr W's type of vehicle, I'm minded to decide UKI should pay £31,765 as a total loss payment – the highest retail value returned from the guides. Assuming Mr W isn't VAT registered, it will also need to pay the VAT on this amount. UKI It should also add 8% interest on that amount, from November 2023, until the date of settlement, to reflect the time he's been without it. As Mr W has a finance agreement, UKI will settle this first, before paying any surplus to Mr W.*

*Mr W has said he worries that once UKI pays the market value, it will end his hire, before a new van will be available. And given that he uses the van for work, he'd have to hire a replacement, at his own cost, which would cause financial strain.*

*Under Mr W's policy, when UKI makes payment for a total loss it will stop providing any hire vehicle. But I don't think the usual policy terms should apply in relation to this claim, given what I've said about him being in this position solely because of UKI's error. So I'm minded to decide that UKI, once it has paid the market value, should also extend the hire for Mr W for a further two months, or until Mr W takes possession of a new van, whichever is the shorter. It is possible Mr W might be able to secure a van in this time, its also possible he might not. However, in order to provide a quick resolution to the complaint, I think it is a fair proposal that allows Mr W the time to make arrangements for a new van and means if he does need a further hire period, at his own cost, he will need that for a shorter amount of time. I don't think it would be reasonable for UKI to keep Mr W in hire for however long it would take for a new van to be available because it's not responsible for the lead times of whichever manufacturer Mr W decides to purchase a van from. So I consider this compromise to be the fair one to resolve matters.*

#### *Other losses*

*In response to our Investigator's opinion, Mr W said he wouldn't be able to secure a new finance agreement, on the same favourable terms he had for his current van, so he'd suffer further financially as a result of UKI. However since the complaint has come to me to decide, Mr W has said the finance terms he previously had would be available to him if he placed an order by September 2024. So this should no longer be an issue. As a result, I don't intend to make any findings in relation to this.*

#### *Loss of earnings*

*UKI has said it will consider Mr W's claim for lost earnings, between 7 February 2024 – when it says it first became aware of a need for hire – and 1 March 2024, when a hire car with a tow was provided.*

*I'm not satisfied UKI only became aware of a need for hire on 7 February. I've seen emails from Mr W relating to hire as early as 3 January 2024. I also consider that whilst Mr W had*

*the van until January 2024, it was intermittently not working – due to electrical issues affecting the battery - from around 20 November 2023. Whilst this didn't stop Mr W working entirely, he's said it did often mean he had to cancel days of work when the car had these issues. So UKI should consider a claim from Mr W for lost earnings from 20 November 2023, until 1 March 2024, when a hire van with a tow bar – enabling Mr W to carry out his full duties – was provided.*

### *Compensation*

*I've no doubt this experience has caused Mr W a great deal of distress and inconvenience, over a number of months. Most of which would have been avoided if the initial windscreen repair had been carried out correctly. He's told this Service the impact it has had and how it's affected his work and wellbeing. Having considered matters, I think UKI should pay £750 to reflect the unnecessary worry caused.*

### *Further issues*

*Mr W said there has been further issues, since his initial complaint. He's said he's been charged an excess for having a chipped windscreen on the hire van, but this excess is substantially higher than the one he had under his motor insurance policy.*

*I don't know if UKI has had an opportunity to respond to a complaint about the hire car excess, but I'm not going to consider this as part of this complaint, in order to draw this complaint to a close swiftly. I also consider investigating these further issues would unfairly delay the outcome of this case.*

*He's also said he's recently taken possession of the van, to retrieve personal belongings and a personalised number plate. If Mr W accepts a decision on receiving the market value for his van, he will need to return it to UKI (unless he agrees with it to retain the salvage).*

### *My provisional decision*

- *Settle the claim in line with the terms of the policy and on the basis a fair market value for Mr W's van is £31,765. And add VAT onto this amount, assuming Mr W isn't VAT registered.*
- *Add 8% interest onto that amount from the date of loss, until the date of settlement.*
- *Continue Mr W's hire for two months following the date I issue my final decision.*
- *Consider a claim for Mr W's loss of earnings from 20 November 2023 until 1 March 2024.*
- *Pay Mr W £750 compensation.*

### *Responses to the provisional decision*

*Mr W accepted the provisional decision. But wanted reassurance that only a windscreen claim would be logged against him, rather than a total loss claim.*

*UKI also accepted the provisional decision. But it asked that I include a requirement that Mr W provide a settlement quote from his finance provider within two weeks of me issuing my final decision, to expedite the settlement of the claim. It said to properly calculate the settlement it also required confirmation of Mr W's VAT status.*

*It also said whilst it would remove any reference to a total loss claim, one might temporarily appear on the claims database whilst it was issuing the payment and recovering some losses from an agent.*

## **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.

Having done so and bearing in mind I haven't received any further comments in relation to how this complaint should ultimately be resolved and what needs to be paid by UKI, my provisional findings are now that of this, my final decision.

UKI has asked that Mr W provide a settlement statement from his finance provider, within two weeks of my final decision being issued. I understand UKI's concern, given it needs to first pay the finance provider before it can provide any surplus to Mr W. And doing this promptly means Mr W can start looking for a new vehicle in the very near future, which is important given the hire vehicle will be provided for two months post this decision being accepted. However, I don't think it's appropriate to direct Mr W to this strict timeline, when he can't necessarily guarantee the finance provider will respond to him in two weeks.

UKI has also said it requires confirmation of Mr W's VAT status to work out the correct settlement. So to prevent any delays, I think Mr W should be able to provide confirmation of this promptly after me issuing this final decision.

I also note UKI's comments in relation to how the claim will be recorded. Mr W has said having a claim recorded as a total loss would cause him detriment, as he has motor insurance policies due to renew in the next eight weeks. He feels he shouldn't be impacted by UKI's recovery of costs from an agent.

I've thought about the best way to conclude matters here; UKI could provide Mr W with an email explaining the temporary total loss claim, but then Mr W would be put to more trouble and upset of contacting new insurance providers to potentially re-rate policies. UKI also hasn't given a timeframe for how long any temporary total loss claim would show for. So I think the fairest way to resolve matters is for UKI to seek recovery of its funds without having any record of a total loss claim on Mr W's policy. It's reasons for recording it seem more to be due to its internal processes, I don't consider it would be fair for Mr W to be disadvantaged by those. So it will need to find a way around this to avoid the total loss being recorded, even temporarily, on the policy. The only thing it should record is a windscreen claim - which is the only thing Mr W would need to declare in future – in relation to this incident.

## **Putting things right**

To put matters right, I require UKI to do the following:

- Settle the claim in line with the terms of the policy and on the basis a fair market value for Mr W's van is £31,765. And add VAT onto this amount, – subject to Mr W providing UKI with a settlement figure from his finance provider and evidence of his VAT status.
- Add 8% interest onto that amount from the date of loss (20 November 2023), until the date of settlement.
- Continue Mr W's hire for two months following the date I issue my final decision.
- Consider a claim for Mr W's loss of earnings from 20 November 2023 until 1 March 2024.
- Pay Mr W £750 compensation.\*
- Ensure that the claim is only ever recorded as a windscreen claim on any internal or external databases.

## **My final decision**

My final decision is that I uphold this complaint and I direct U K Insurance Company Limited to settle the complaint as set out in the 'putting things right' section.

\*U K Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr W accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If U K Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 September 2024.

Michelle Henderson

**Ombudsman**