

The complaint

Mr H and Ms W have complained about the amount MS Amlin Insurance SE offered in settlement of their claim under their commercial motor insurance policy and the length of time it took to make the offer that it did.

Any reference to MS Amlin includes its agents.

What happened

Mr H and Ms W's refrigerated van was damaged when it rolled backwards in gear in March 2023. MS Amlin asked Mr H to send images of the van, which he did on 19 April 2023. MS Amlin then asked Mr H to send more images, which it did. Then MS Amlin's motor engineer decided the van needed a physical inspection. This didn't happen until August 2023 and MS Amlin finally decided the van was a total loss (write-off) in September 2023. It made a settlement offer based on the cost of replacing the van at the point it was damaged (the market value) of £7,000.

Mr H complained with the help of Mr C. He said that they could not replace the van for £7,000, so didn't think MS Amlin's offer was fair. He also mentioned that he and Ms W had needed to hire a replacement van for two days per week due to the delay in MS Amlin making its offer. MS Amlin issued two final responses. One said that it was satisfied its settlement offer was correct. And it said it wouldn't pay anything towards the cost of hiring a van. In the other final response it acknowledged there had been some delays and it offered £275 in compensation in recognition of this.

Mr H wasn't happy and Mr C asked us to consider his and Ms W's complaint. One of our investigators did this. She said that MS Amlin's valuation was too low and that it should base its settlement on a market value of £16,100. She also said that MS Amlin should reimburse what Mr H and Ms W had paid to hire a van from June 2023, as well as any loss of earnings as a result of not having a refrigerated van from June 2023 onwards. She also said MS Amlin should cover the cost of the extra maintenance on Mr H and Ms W's other van, which she thought had resulted from them having to use it more due to only hiring a replacement van for two days per week.

MS Amlin didn't agree with the investigator's view. It disputed the market value and queried the need for Mr H and Ms W to hire a replacement van. It also challenged the investigator's view it should cover loss of earnings and the extra maintenance costs on the other van.

I issued a provisional decision on 6 November 2024 in which I set out what I'd provisionally decided and why as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr H and Ms W's policy requires MS Amlin to settle their claim for damage to their vehicle by paying up to its market value at the time it was damaged, less the £250 policy excess. Market value is defined as the cost of replacing the insured vehicle in an open and fair

market with one of the same make, model, mileage, specification and condition.

Having looked at all the evidence provided by both Mr H and MS Amlin and the evidence we have gathered as a service it is clear to me that establishing the market value of Mr H and Ms W's van is very difficult indeed. This is because the guides we and insurers use to value vehicles do not seem to pick up on the fact it is a refrigerated van. And most of the adverts for similar vehicles are not from the time when Mr H and Ms W's van was damaged. And, even if I ignore the date the adverts are from, the vast majority of vans are not the same either due to the year of manufacturer or mileage. In fact, the only van I have actually seen that matches in every respect was provided by Mr H very recently. And I think this is good evidence that in July 2024 the cost of replacing Mr H and Mrs W's van was likely to have been £14,250 excluding VAT.

I think the latest advert provided by Mr H is the best starting point for working out the market value of the insured vehicle at the point it was damaged. And, while second-hand vehicle values did go up in 2023, they also dropped slightly in 2024. So, I think it is fair to say it probably would have cost Mr H and Ms W £15,000 to replace their van in March 2023 when it was damaged. This means I think that MS Amlin should have offered them £15,000 in settlement of their claim, less the excess. It also means this is what I think MS Amlin now needs to pay them as part of the fair and reasonable outcome to this complaint. As this payment will be made much later than it should have been I consider it is fair and reasonable for interest to be added to it at our normal rate from one month after Mr H and Ms W made their claim to the date of payment. Interest should be at our usual rate of 8% per annum simple. This is to compensate them for being without these funds.

In view of what I have said it is very hard to understand how MS Amlin's engineer managed to come up with a valuation of only £7,000 in August 2023. After all, even if he had looked at the guide values for similar vans without a refrigeration unit, he'd have got to a value somewhere between £10,000 and £13,000. So, I do think it is right to say MS Amlin based its offer on a market value that was far too low and this really made it impossible for Mr H and Ms W to accept its offer and then try to find a replacement van.

I also think it took far too long for MS Amlin to come up with its offer. Bearing in mind the damage to Mr H and Ms W's van was mechanical, I can't really understand why MS Amlin didn't arrange a physical inspection straight away. And it seems this was mainly due to concerns about the cost of doing so due to the remote location. I think if it had done this, MS Amlin should have been able to come up with an offer within a month and no later than the end of April 2023. And, if it had made the right offer of £14,750 at this time, Mr H and Ms W could have accepted it and replaced their van at the beginning of May 2023. Instead, they had to wait until September 2023 to get what was a totally inadequate offer, which they couldn't be reasonably expected to accept anyway.

In the circumstances, I don't think Mr H and Ms W had any option other than to hire another large van to keep their business going. They have explained that they couldn't get a refrigerated one, so did the next best thing and hired a standard van the same size. They have also very clearly explained why they had to do this for two days a week all year, as opposed to just using their other van instead. So, I'm satisfied that it is reasonable for MS Amlin to reimburse what Mr H and Ms W paid to hire another van from the beginning of May 2023 when they should have got the right settlement offer to two weeks after the date they receive the settlement amount on their claim from MS Amlin. The extra two weeks is to allow Mr H and Ms W time to find a replacement van and complete its purchase. This is subject to Mr H and Ms W providing evidence of the amounts they've paid. I also think Mr H and Ms W should get interest on these amounts at 8% per annum simple from the dates they paid them to the date they are reimbursed to compensate them for being without these funds.

The amount payable for hire charges is nothing to do with the policy cover, which does not allow for this, it is a consequential loss, which I'm satisfied flows from MS Amlin's failure to make a reasonable offer to settle Mr H and Ms W's claim when it should have done. And this is why I consider it to be fair and reasonable for MS Amlin to reimburse this cost.

I have noted Mr H's point that he and Ms W lost orders due to not having a refrigerated van. And I do think this is something that flowed directly from Ms Amlin's failure to make a reasonable offer on their claim. So, I think as part of the fair and reasonable outcome to their complaint it is appropriate for me to make MS Amlin cover this loss up to two weeks after Mr H and Ms W receive the settlement for their claim, provided Mr H and Ms W can evidence it. How they do this will need to be discussed with MS Amlin, but it is likely to involve provision of some accounting information and details of the orders they actually lost with evidence from the wholesalers that they cancelled them.

I do not however think it is fair and reasonable to award anything for the extra costs to Mr H and Ms W of maintaining their other van. This is because it is impossible to know whether maintenance was down to extra use and wouldn't have been needed anyway. So, I think a general award for inconvenience is more appropriate to compensate Mr H and Ms W for the inconvenience they experienced of having to use their other van and generally because of MS Amlin's poor handling of their claim.

MS Amlin has suggested it has already paid £550 in compensation for distress and inconvenience in two amounts of £275. However, I can only see it offered £275 in its final response about the delay; so I am not convinced it offered £550. And it is not clear what it has actually paid. I actually think an overall payment of £500 is fair for the overall inconvenience Mr H and Ms W have experienced. So, if MS Amlin has already paid £550 it won't need to pay any more. However, if it has paid less than £500 it will need to pay the difference between what it has paid and £500 to Mr H and Ms W.

My provisional decision

For the reasons set out above, I've provisionally decided to uphold Mr H and Ms W's complaint about MS Amlin Insurance SE and require it to do the following:

- Pay Mr H and Ms W £14,750 in settlement of their claim for their van. This reflects the fact a £250 policy excess needs to be deducted. It should also add interest to this amount at 8% per annum simple from one month after Mr H and Ms W made their claim to the date of payment.*
- Reimburse what Mr H and Ms W have paid to hire another van from May 2023 to two weeks after the date they receive the settlement amount due to them on their claim. Interest should be added at 8% per annum simple from the dates they paid the hire costs to the date of payment.*
- Compensate Mr H and Ms W for any loss of income as a result of them not having a refrigerated van from May 2023 to two weeks after they receive the settlement amount due on their claim. This is subject to Mr H and Ms W providing the necessary evidence to demonstrate this loss.*
- Pay Mr H and Ms W £500 in compensation for inconvenience, less anything it has already paid them in compensation for this.*

I gave both parties until 20 November 2024 to provide further comments and evidence in response to my provisional decision.

Both parties have come back to say they accept my provisional decision and have no further

comments or evidence.

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.

As both parties have accepted my provisional decision I see no reason to alter the view I set out in it on the fair and reasonable outcome to Mr J and Ms W's complaint.

Putting things right

For the reasons set out in my provisional decision I've decided to uphold Mr J and Ms W's complaint and make MS Amlin do the following:

- Pay Mr H and Ms W £14,750 in settlement of their claim for their van. This reflects the fact a £250 policy excess needs to be deducted. It should also add interest to this amount at 8% per annum simple from one month after Mr H and Ms W made their claim to the date of payment.
- Reimburse what Mr H and Ms W have paid to hire another van from May 2023 to two weeks after the date they receive the settlement amount due to them on their claim. Interest should be added at 8% per annum simple from the dates they paid the hire costs to the date of payment.
- Compensate Mr H and Ms W for any loss of income as a result of them not having a refrigerated van from May 2023 to two weeks after they receive the settlement amount due on their claim. This is subject to Mr H and Ms W providing the necessary evidence to demonstrate this loss.
- Pay Mr H and Ms W £500 in compensation for inconvenience, less anything it has already paid them in compensation for this.

My final decision

I uphold Mr J and Ms W's complaint about MS Amlin Insurance SE and require it to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and X to accept or reject my decision before 10 December 2024.

Robert Short
Ombudsman