

The complaint

J, a limited company, complains about the way Haven Insurance Company Limited has settled a claim made on its commercial vehicle policy.

J is being represented in bringing this complaint by Mr I, its sole director. So for ease I've referred to Mr I, rather than J, in most of the decision.

What happened

Mr I bought a van through his limited company and insured it with Haven. The purchase was funded by a finance agreement. Around two months later, the vehicle was stolen. Mr I made a claim on the Haven insurance policy taken out to cover the van.

Haven assessed the claim and agreed to settle it. It said to do so, it would pay the market value of the vehicle, which it said was around £26,000. Mr I didn't accept that and made a complaint, he said to settle the finance agreement it would cost him around £38,000, so Haven's offer wasn't enough.

Haven issued a complaint final response letter (FRL) in May 2024. It said its specialist engineers had reviewed the claim further using multiple guides and increased the pre-accident market value of the van to £31,178.88. It said this amount was less VAT (Value-Added Tax) because the VAT would be claimed back by Mr I's company.

Unsatisfied with Haven's increased offer, Mr I referred the complaint to the Financial Ombudsman Service for an independent review. Our Investigator didn't think Haven had settled the claim fairly. She noted that Mr I had 'new for old' cover if the van was less than six months old when stolen, which it was. So she thought under the terms, Haven should find a replacement van and agree with the contract hire company to replace the van on the lease agreement as per the policy terms and conditions. She also thought Haven should reimburse Mr I's hire costs until the date of settlement and pay £500 compensation.

Haven didn't agree it needed to provide 'new for old' cover. It said:

"it is at our discretion to offer to purchase a new vehicle IF they meet requirements and IF this would be a quick turnaround which it is not in most cases."

It agreed communication at the start of the claim could have been better, it said it would agree to pay £100 compensation for that. It also said Mr I hasn't mitigated his loss in continuing to hire a vehicle whilst he knew Haven had made an offer to settle, so it shouldn't be responsible for his hire car losses.

Our Investigator said it isn't at Haven's discretion how to settle matters. The 'new for old' part of the policy says, if certain conditions are met, then a new vehicle should be purchased. She said Haven doesn't then have the option to pay the market value instead.

In response Haven said it had reviewed its policy further, and it didn't think Mr I met all of the conditions of the 'new for old' section of the policy. It said:

"the terms require that the vehicle was 'purchased under an agreement where ownership was passed to You'. 'You' is defined by the policy as 'The policyholder or policyholders named in the Schedule.'"

Haven said the finance agreement Mr I has is a leasing agreement, and so ownership will not pass to Mr I, and so the 'new for old' section doesn't apply.

Our Investigator thought the presence of a balloon payment, after a period of hire, meant that Haven hadn't shown ownership wouldn't transfer to Mr I.

Haven said it wanted an Ombudsman to decide on matters, it said the approach of the Investigator was impractical. It said it had offered a generous settlement less VAT, and Mr I had never said he wanted a replacement van as an option. It said it is up to it to decide how best to settle the claim.

In November 2024 I issued a provisional decision on this complaint. I said the type of finance agreement held by Mr I meant that he wouldn't benefit from the 'new for old' section of the policy. I said instead that Haven should pay the market value of Mr I's vehicle to resolve matters. As my provisional findings form part of my final decision, I've copied them below:

Does the 'new for old' policy apply to Mr I's claim?

The 'new for old' section of the policy applies to vehicles under six months old at the time of theft (there are other scenarios it applies to as well, but only theft is relevant in the context of this complaint).

There seems no dispute the van was less than six months old at the time of the theft. However, whilst Mr I satisfies some of the conditions needed to benefit from this section, the one I don't think he meets is the following:

"We will replace Your Vehicle with one of the same model and specification subject to the applicable Excess(es), provided that...

d) it was purchased under an agreement where ownership was passed to You..."

Having reviewed the type of finance agreement Mr I has; it says the following will happen at the end of the hiring agreement:

"...we will appoint You as Our sale agent for the Equipment on the following terms:

(a) The equipment shall be sold at not less than the open market value to a person who is not a connected person for a price first approved by Us in writing;

(b) Title shall pass on full payment of the purchase price to us"

I don't think this means that title will pass to Mr I at the end of the agreement, as you might see in a PCP (personal contract purchase) agreement, for example. And so I don't intend to find that Mr I purchased the van under an agreement where ownership was (or would be) passed to him.

As I'm not satisfied that ownership of the van would ever transfer to Mr I, so I don't intend to find that Haven should replace Mr I's van with a new one. Haven should, instead, settle the claim in line with its policy terms relating to the fair market value, I've assessed if I think it has done that, below.

Has Haven offered a fair market value for Mr I's vehicle?

The terms of Mr I's insurance say if the vehicle is stolen and not recovered, Haven will pay the market value of the vehicle in settlement of the claim. It defines market value as the cost of replacing the vehicle with one of a similar make, model and specification, taking into account the age, mileage and condition of the vehicle.

As a starting point, to ensure a consumer gets a fair value for their vehicle, our service's approach is to start with the highest available valuations, based on the available valuation guides. The guides provided by the business and those looked at by this service returned valuations of £26,700, £30,310, £23,800 and £21,000. I think it's likely most of these guides exclude VAT when calculating these valuations. However, it seems to me from reviewing the

guides and the information provided by Haven, that is has offered a market value both in line with the terms of its policy, and in line with the approach this Service takes. So I'm minded to say it has, on the face of it, made a fair offer for the pre-accident market value of Mr I's van.

This service will take into account other evidence in support of higher valuations, such as adverts provided, but I haven't seen Mr I provide those to Haven. Instead, it seems to me his argument is that the settlement offered by Haven isn't sufficient to repay the finance agreement he has. I've seen one finance settlement offer of around £37,000 in April 2024, for example.

However, the terms of Mr I's policy don't say it will pay him what he owes under any finance agreement. So that settlement figure being higher than Haven's offer isn't evidence that Haven has acted unfairly or should pay more to settle the claim. So as I think Haven's offer is in line with our approach, it follows that I'm not going to ask it to increase the pre-accident market value.

When making its offer, Haven has said the following to Mr I:

"We are happy to increase the pre-accident value to £31,178.88 subject your deductions as your vehicle is a commercial vehicle registered to a limited company this would not include VAT as this is claimed back.

Your deductions are as follows:

Policy Excess £600.00

Leaving the amount payable of £30,578.88 towards your finance company — you will need to contact them to settle any difference."

Whilst this service will often allow a business to deduct VAT where the complainant is VAT registered, in this case, Mr I has said his limited company, J, isn't VAT registered. So it can't reclaim any VAT. Our Investigator asked Haven for evidence of J being VAT registered before the complaint was referred to me to decide. It didn't respond to her question about that or provide any evidence of J's VAT status. So I intend to require Haven to pay Mr I the market value of his van without deducting any VAT. So if Haven has deducted VAT in order to make its offer of £30,578.88, net of the excess, then it will need to pay Mr I the VAT in addition to this amount.

Delays in the claim and hire vehicle

I've first set out my thoughts on delays in the claim, as that informs the award I intend to make in relation to Mr I's hire costs.

Mr I reported the claim on 20 December 2023. Haven carried out some reasonable enquiries and its notes say on 8 January 2024, the claim had been validated. Given the bank holidays in between the notification and the claim validation decision, I don't intend to find Haven delayed matters here.

However, it doesn't appear Haven took any steps to settle the claim following its decision on 8 January. Its notes on 30 January 2024 say Mr I called for an update and the handler said they'd email the relevant people to make an offer in settlement in his van. On 5 February 2024, when Mr I called for a further update, he was made the initial offer of £26,000. It's not clear to me why this wasn't made to him earlier, and why it took for Mr I to chase to receive this. It seems at this point Mr I was asked to provide further documents relating to his finance agreement for Haven to review. I consider it should have done that on 8 January when the claim was validated. So I think it delayed matters here.

It wasn't then until 29 April 2024 that the offer was increased to £31,178.88. Between February and the end of April 2024 I'm not satisfied the claim was progressed as it should have been, Mr I was asked for information he'd already provided, and was being asked to provide information he likely had no way of obtaining — such as evidence of how much the leasing company had paid to purchase the vehicle he was now leasing. Even with some

reasonable enquiries at the start and allowing time for Mr I to provide documents, and dispute Haven's initial figure, I can't see why the offer of £31,178.88 shouldn't have been made by the end of January 2024.

So I intend to say that, in not making an offer until the end of April 2024, Haven delayed the fair settlement of the claim by around three months. So I've considered what that means for Mr I's hire costs, as well as compensation.

The terms of Mr I's policy says if the vehicle is stolen, Haven will provide a courtesy car for up to seven days. I don't know if that happened or not. However, Mr I says he's been paying for a hire vehicle since December 2023 in order to continue his work.

This service can require an insurer to pay costs, above what the policy allows for, if we're satisfied that the costs were reasonably incurred due a failure of the business. As set out above, I think Haven's failure was not making a fair offer for three months. So I intend to say Haven should reimburse Mr I for his hire costs until 29 April 2024 – the date it made its increased offer. I'd expect Mr I to be able to provide Haven with evidence of his hire costs during this time for it to do so. It will also need to add 8% simple interest on any hire payments made, from the date Mr I paid them until the date of settlement.

However, as I've set out above that I intend to find Haven made a fair offer on 29 April 2024 to settle the claim, I don't think I can fairly require it to pay Mr I's hire costs beyond that point. From what I can see, Haven offered this as an interim payment to Mr I, even though it noted he intended to dispute the amount and bring the complaint to this service. I consider that was reasonable for it to do in order for Mr I to mitigate any further losses he might have incurred from that point.

I also consider Haven's delays in the claim caused Mr I unnecessary distress and inconvenience, I've seen his numerous calls for updates, and I think it's clear he was frustrated in having to provide the same information on several occasions. So I also intend to find that Haven should pay £300 compensation to Mr I.

I realise Mr I will be disappointed to receive this decision, I don't doubt this has been a difficult time for him in having his van stolen, but for the reasons set out above I don't think I can require Haven to replace his van for him.

Responses to my provisional decision

Both Mr I and Haven responded and accepting the findings set out in my provisional decision.

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 neither party has provided any more points for me to consider, I see no reason to depart from the findings set out in my provisional decision. So my provisional findings are now that of this, my final decision.

Putting things right

To put matters right I direct Haven Insurance Company Limited to:

- Settle J's claim for the market value of his vehicle at £30,578.88 (which is net of the excess).
- If Haven has deducted VAT from the settlement, Haven will need to add VAT onto the settlement amount, before the excess is removed. Haven will then need to pay J that additional amount.

- Pay J's hire costs it incurred until 29 April 2024, on receipt of Mr I providing evidence of these costs. It will also need to pay 8% simple interest onto each hire payment J made, from the date Mr I made it, to the date of settlement.
- Pay J £300 compensation.

My final decision

My final decision is that I uphold this complaint and I direct Haven Insurance Company Limited to settle in line with the “putting things right” section.

Haven Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it J 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 Haven Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell J how much it's taken off. It should also give J a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 30 December 2024.

Michelle Henderson
Ombudsman