

## **The complaint**

Mr S has complained that he was unaware any total loss marker had been applied to his classic car by his insurer in 2012 who was Society of Lloyd's (SOL).

## **What happened**

Mr S has owned his car from 2005. In December 2023 he had his car valued and was intending to sell it via auction.

However, the auctioneer advised him there was a total loss marker against his car since 2012. Mr S said he was unaware of this and there was no record of it with the DVLA. Initially Mr S thought it might be something to do with a mistake in detailing the registration number of his car.

His insurer then was SOL. It said given the passage of time it didn't have any file, but it did retain its payment record to Mr S which clearly showed he made a claim in 2012 which detailed that the payment made to Mr S was a total loss old Category C payment.

Mr S maintained he was never aware the payment of this claim by SOL was a Category C total loss. If he had known he would have cancelled his claim and paid for the repairs himself.

So, he brought his complaint to us. The investigator ultimately decided it should not be upheld. Mr S disagreed so his complaint has been passed to me to decide.

## **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, I'm not upholding this complaint. I do appreciate and understand Mr S will be very disappointed with my decision, but I'll now explain why.

This has been a very difficult case, given both parties now, have very little evidence at all given the passage of time. SOL has done nothing wrong either, as regards any regulations in not retaining its file about Mr S' claim in 2012. It's permitted and indeed often data protection regulations vigorously require an insurer like SOL to destroy the data it holds in relation to its previous policyholders after a period of time.

So essentially there is no evidence in existence which shows what SOL said in writing to Mr S about his claim in 2012. I'll discuss this point further below too.

What SOL has shown me is a system screenshot showing the payment it made to Mr S in 2012. SOL said in its final response letter to Mr S that his car was declared a total loss for storm/flood damage on 20 December 2012 and it paid him £2,710 on 13 February 2013.

That system screenshot noted the following:

- The market value of Mr S' car was £4,000, which is also confirmed in the insurance certificate Mr S produced.
- The excess was £250.
- It noted a salvage value of £1,040 which it deemed was 26% of the market value.
- The net payment to Mr S was therefore £2,710.
- Mr S' car was deemed a category C total loss. Simply meaning the damage to his car exceeded the car's value and was more than just cosmetic damage. However importantly that also meant Mr S could retain the car and indeed repair it too. From my research on the old category C total loss issue, which was changed in 2017, it appears there was no requirement either for Mr S to have told the DVLA about this. More since he was obviously going to and indeed did repair this car and successfully MOT-ed since.

SOL went on to explain that the cover on the policy would have then been downgraded to third party only cover for the remainder of the policy year or until such time it was provided with evidence that the car had been repaired with an engineer's report provided to confirm the car was now repaired to a roadworthy condition with an MOT certificate to verify this. It explained the policy lapsed on renewal in May 2013. It also explained that via the MOT history of Mr S' car the relevant MOT was not completed until 16 July 2013.

Mr S said given the water damage his car sustained causing his claim to SOL in 2012, his car needed an engine rebuild and he showed me the invoice for that. The completion invoice is dated 17 July 2013, and it shows the MOT on this car was not going to expire until 15 July 2014.

Mr S also showed us a further invoice for restoration work which was carried out on 23 May 2012 which clearly said the MOT would expire on 22 May 2013.

Mr S also showed us most of his MOT certificates for his car. The present MOT is from 21 March 2023 and will expire on 20 March 2024. For 2012, his MOT was issued on 23 May 2012 and would expire on 22 May 2013. And that his MOT was issued on 16 July 2013 and would expire on 15 July 2014.

Mr S showed us that he had a policy which started on 24 November 2024 and expired on 4 January 2025. His policy before that began on 5 January 2023 and expired on 5 January 2024. It's not clear to me why a policy began on 24 November 2024 unless there was some mid-term adjustment possibly. His present policy started on 5 January 2025 and will expire on 4 January 2026. It's not hugely relevant here in my view other than noting his policy date in any event changed from May to May each year as it was with SOL to January to January now.

And further the MOT dates changed from May to May, July to July and are now at March to March each year.

Not surprisingly, with an older becoming a cherished classic car, there are times when repairs or restoration were being done so there was a gap in the date of MOT's and indeed insurance policies too. But what is important here it clearly shows me that SOL's dates of such things like MOT's and policy start and end dates, does accord with the evidence that Mr S has shown me. So, in other words the information SOL has retained such that it is, appears to be accurate and in line with Mr S' own records. So, on the very limited evidence available nothing is pointing towards SOL's retained records being incorrect.

What remains missing however is how SOL communicated the claim outcome to Mr S in late 2012 and early 2013, a point Mr S raised in his reasons for asking an ombudsman to decide his complaint. I am sorry to tell him but it's not reasonable to expect an insurer retain this sort of letter or communication evidence from 2012 or 2013, around 11 or 12 years ago.

Such data is required not to be kept for extended lengths of time in order to actually protect policyholders and individuals such as Mr S, given it is data about them such as addresses, named drivers and possibly even those people's date of birth. This service however is not the Information Commissioner or indeed at all under any jurisdiction to decide such breaches of any retention regulations either. But in my view every insurer will have specific regulations on how long it can only retain such personal information on its policyholders so it's reasonable here in view of those onerous regulations, in my opinion, and given the passage of time, that SOL has told us that such documentary evidence is now no longer available.

I appreciate Mr S' strength of certainty that if he knew his car was a category C loss then, he would have withdrawn the claim. However, I can't see here why SOL wouldn't have told him in the normal course of claims communication given how its screenshot recorded the information it now explained to me above. So, in my opinion, I consider it remains, the evidence shows on balance it did make such a total loss payment, borne out of the fact also that it was noted as regards a HPI search and clearly labelled as such on its screenshot which it has retained.

Turning to Mr S' issues over the valuation of his car, I made further enquiries about that as his policy with SOL showed it was possible to get an agreed value policy instead of a market value policy. The eligibility conditions back in 2012 when Mr S took out this policy was that the agreed value would have been requested by the customer when taking out the policy. That would have been assessed by the broker and indeed agreed before the broker placed the business with an insurer. Then an appropriate premium would have been based on that agreed valuation. Agreed valued policies are very common with classic cars too.

Mr S took out a market value policy and his premium was based on that, and it was clearly written on all the documentation Mr S kept that the value of his car at that time was £4,000. And further that Mr S knew that too, it wasn't something he was unaware of at that time as it's clearly written on the documents, he showed us himself, namely in the policy schedule for the policy from 24 May 2012 which expired on 24 May 2013.

Again, I appreciate what Mr S has said about the value of his type of car was increasing all the time given it was growing in rarity and so becoming more cherished too. But the fact remains he insured this car at a value of £4,000 and indeed paid a premium which would have taken into account the value as being £4,000 too. And it's clear from SOL's explanation of the figures in the screenshot its salvage value was listed as £1,040. So as the value of the car was £4,000, taking off the excess of £250, plus taking off the salvage of £1,040, leaves Mr S with a payment from SOL for his claim of £2,710.

The policy wording also says the following:

*"Section 3 – Damage To Your Vehicle  
What Is Covered*

*If your vehicle is damaged as a result of an accident, malicious damage or is vandalised during the period of insurance, we will either repair or replace your vehicle or pay you an amount of cash. The most we will pay will be the market value of your vehicle immediately before the loss or damage or the agreed value of your vehicle if your vehicle is insured on that basis.*

*We can choose which of these actions we will take for any claim we agree to. Where your vehicle is beyond economical repair, we will pay you the market or agreed value if your vehicle is insured on that basis, including accessories and spare parts at the time they are lost or damaged.*

*However, we will not pay more than the amount for which you insured them. Accessories and spare parts of your vehicle, which are in your private garage at the time of the loss or damage, will also be covered.*

*If your vehicle is insured on an agreed value basis (as stated in your Policy Schedule) in the event of a total loss you may be able to purchase the remaining salvage at the amount your vehicle will attract in the open market in its damaged condition. This will be decided on an individual basis."*

This is said to be the policy wording in being when SOL insured Mr S' car. Even today, it's a common enough clause in all motor policies. No insurer pays more than the market value of the car. Why would they, when all they are insuring is the market value of the car too, and it's a large proportion of how the premium amount is made up, also, which Mr S agreed to pay.

So, in conclusion, what information SOL has retained and indeed most likely was only permitted to retain on Mr S' claim, accords with the information Mr S has. But its screenshot crucially says it had deemed the car a category C total loss. Mr S was aware at the time his car was being valued for insurance purposes at £4,000 on a market value policy. And the policy wording is clear that SOL would not pay more than the market value of the car.

Therefore, I simply can't find any evidence at all to show SOL did anything wrong here.

### **My final decision**

So, for these reasons, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 February 2025.

Rona Doyle  
**Ombudsman**