

The complaint

N has complained about Mulsanne Insurance Company Limited's decision to avoid a van insurance policy Mr C took out to cover a van belonging to N and decline his claim under it following the theft of the van.

This complaint was originally set up in the name of Mr C, as the van he was claiming for was insured under a policy with Mulsanne in his sole name. But I established that the van belonged to N, which means N is the correct complainant.

Mr C is a director of N and is acting as its representative.

All references to Mulsanne include its agents.

What happened

Mr C took out a policy to cover a van belonging to N with Mulsanne through an insurance broker in February 2023 having gone through a comparison site. He has said when he did so the comparison site provided a value of £9,050 for the van. And Mr C confirmed over the telephone that this was correct. The van was stolen in April 2023 and Mr C put in a claim under the policy. After considering the claim and making an initial offer to settle it, Mulsanne eventually offered to settle the claim based on a market value for the van of around £18,000. Mr C accepted this offer. However, Mulsanne then wrote to him and said he had provided the wrong value for the van when he took out the policy; and if he'd provided the correct one, it would not have insured it. It said that as a result of this it was avoiding the policy, returning the premium and rejecting the claim for the van.

Mr C complained to Mulsanne, but it wouldn't alter its position. So, Mr C asked us to consider a complaint about Mulsanne's decision to avoid the policy and reject the claim. One of our investigators did this. He said the complaint should be upheld and that Mulsanne should reinstate the policy and settle the claim. He also said it should consider any loss of income Mr C had suffered as a result of Mulsanne turning down his claim.

Mulsanne did not agree with the investigator's view and asked for an ombudsman's decision. It said Mr C entered the value of the van provided by the comparison site. And when he was asked by the broker involved whether this value was correct he said it was. It thinks he should have realised it was wrong because the retail cost of a similar van at the time was around £20,000. And it believes that because he disputed the valuation when he made the claim, Mr C must have been aware of the market value of the van when he took the policy out.

I issued a provisional decision on 28 January 2025 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.

First of all, I should say that I am satisfied that the correct complainant in this case is N, as it

was the owner of the van insured under the policy Mulsanne provided.

I consider the relevant legislation in this case is The Insurance Act 2015 (the Act). This required Mr C to make a fair presentation of the risk when he took out the policy to cover N's van. This included providing the correct value for the van he wanted Mulsanne to insure. If Mulsanne could show Mr C failed to make a fair presentation, in order to be entitled to avoid the policy Mr C took out, it would then need to show this failure was what the Act describes as a 'qualifying breach'. To do this it would need to show it would have offered the policy on different terms or not at all if Mr C had not failed to make a fair presentation. Mulsanne would then only be entitled to avoid the policy if the breach was neither deliberate nor reckless if it could show it would not have provided the policy if Mr C had made a fair presentation.

I can of course understand why Mr C chose £9,050 as the value for the van and confirmed this was correct when he took out the policy. I say this because he has explained he had made a balloon payment of around this amount to clear the finance on the van. However, he could have checked this was the correct value of the van at this time, rather than just assuming it was correct. And the Act says that an insured person ought to know what should reasonably have been known by a reasonable search of information available to them. And I think if Mr C had checked, he'd have realised that the retail value of the van was around £20,000.

I'm also satisfied that if Mr C had made a fair presentation and provided the correct value for the van Mulsanne would not have provided the policy. This is because it has provided underwriting information to show it didn't insure vans with a value of over £15,000, which I have no reason to doubt the validity of.

However, while I have taken into account the law, i.e. the Act and Mulsanne's rights under it, I do not consider allowing Mulsanne to avoid the policy Mr C took and decline N's claim under it would produce a fair and reasonable outcome to this complaint. This is because when Mr C took out the policy it does seem he had no real idea of the value of the van. And, having been provided with a value automatically by the comparison site and having recently paid a balloon payment of around the same amount, I can understand why Mr C thought £9,050 was the correct value for the van. It does seem from the evidence provided by Mulsanne that the comparison site Mr C used produced a value of £8,850. So, I am not sure how the value of £9,050 came about. However, from what Mr C said to the broker when it asked him about the value it seems it was somehow based on the value provided by the comparison site.

Mr C is not an expert in vehicle valuations. Therefore, I think the right way to consider whether he acted reasonably is to assess whether a reasonable customer would have provided the value Mr C did in the circumstances, as opposed to actually checking the information available to properly establish what the value was. And I think most reasonable customers like Mr C would have done what he did and accepted the value generated by the comparison site. In view of this, I am satisfied Mr C genuinely believed the value of N's van when he took out the policy was around £9,050. And this is why I do not consider it would be fair and reasonable in this particular case for me to allow Mulsanne to rely on the fact it was not to avoid the policy and refuse N's claim under it.

I have noted Mulsanne's comment that Mr C should have known the value of the van when he insured it because he did when he made the claim for it. But he clearly knew this when he was communicating with Mulsanne about the settlement of the claim because he had checked at this point what it would cost to replace the van. But, for the reasons already explained, I'm satisfied he gave the same answer a reasonable person would have done when he took out the policy.

I also think it could be argued that by making a formal offer to Mr C in settlement of the claim when it knew or ought to have known Mr C had provided the wrong value for the van when he took out the policy, Mulsanne affirmed the contract it had to cover the van and waived its right to avoid the policy.

It therefore follows that I consider the fair and reasonable outcome to N's complaint is to make Mulsanne settle N's claim in accordance with the claim settlement terms in the policy Mr C took out to cover N's van. And, bearing in mind that Mulsanne made an offer to Mr C, I also consider it is fair and reasonable to require Mulsanne to pay what it offered to Mr C to N in settlement of the claim. The amount Mulsanne offered, and Mr C accepted, was £18,012.07 less the £750 policy excess, i.e. £17,262.07. Mulsanne can also deduct the premium refund it provided of £582.02, as this was only provided due to its inappropriate avoidance of the policy. This makes the final amount it should pay £16,759.25.

I also think Mulsanne should pay interest on this amount to compensate N for being without these funds. Interest should be from 4 July 2023 when Mr C accepted its final offer to the date of payment.

Also, because I consider Mulsanne's decision to avoid the policy Mr C took out was inappropriate, I consider it is fair and reasonable for it to remove any record of the avoidance.

I do not consider it is appropriate for me to award anything to N for any loss of profit due to being without its van, as I cannot ignore the fact that part of the reason for Mulsanne turning down the claim was that Mr C didn't check the value for N's van when taking out the policy. And I have also considered that the policy was taken out in the wrong name, which could have had some impact on the premium and N's right to claim under it. Therefore, while I consider overall it is fair and reasonable for me to require Mulsanne to settle N's claim, I do not consider it is appropriate for me to go beyond this.

My provisional decision

For the reasons set out above, I've provisionally decided to make Mulsanne Insurance Company Limited pay N £16,759.25, plus interest at 8% simple from 4 July 2023 to the date of payment.

I've also provisionally decided to make Mulsanne remove any record of the avoidance of the policy Mr C took out to cover N's van.

I gave both parties until 11 February 2025 to provide further comments and evidence in response to my provisional decision.

Mr C responded on behalf of N to say N is happy with the provisional decision. Mulsanne has not provided any 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 N is happy with my provisional decision and Mulsanne has not provided any further comments or evidence, I see no reason to decide on a different outcome to N's complaint to the one I set out in my provisional decision.

Putting things right

For the reasons set out in my provisional decision, I've decided to uphold N's complaint and make Mulsanne Insurance Company Limited do the following:

- Pay N £16,759.25 in settlement of the claim made by Mr C on its behalf for its van, plus interest at 8% per annum simple from 4 July 2023 to the date of payment.*
- Remove any record of the avoidance of the policy Mr C took out to cover N's van.

* Mulsanne must tell N if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for N if asked to do so. This will allow N to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

My final decision

I uphold N's complaint about Mulsanne Insurance Company Limited 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 N to accept or reject my decision before 14 March 2025.

Robert Short
Ombudsman