

The complaint

Mr W complains about how Mulsanne Insurance Company Limited (Mulsanne) handled a claim he made under his motor insurance policy.

What happened

Mr W was involved in a road traffic accident in May 2024. He made a claim to Mulsanne but said despite the third-party insurer accepting liability – Mulsanne deducted his excess and remaining premiums from his claim settlement. Mr W said Mulsanne should have recovered his excess and remaining premium costs from the third-party insurer. And he said these deductions left him with a shortfall, so he was unable to purchase a replacement vehicle.

Mr W felt these deductions were unfair – so he raised a complaint to Mulsanne. They considered the complaint but didn't uphold it. They said Mr W had made a claim through his own policy, so his premiums and excess were correctly deducted. But as the third-party insurers hadn't responded to their correspondence, this meant they couldn't make a recovery of those costs. Mr W remained unhappy with Mulsanne's response to his complaint, so he brought it to this Service.

An Investigator looked at what happened but didn't think the complaint should be upheld. She said Mulsanne had made reasonable recovery efforts from the third-party insurer. But as they hadn't been successful – they'd deducted his excess and the remaining policy's premium from the total loss settlement in line with the terms of Mr W's policy which they felt was fair.

Mr W didn't agree with the Investigator's outcome. He said Mulsanne's actions caused him financial loss, and he wanted to recover his outstanding expenses. He asked for an Ombudsman to consider the complaint – so it was passed to me to decide. I issued a provisional decision on this complaint, and I said the following:

"The details of this claim are well known to Mr W and Mulsanne so I'm not going to outline each of these individually. This is not intended as a discourtesy to Mr W, but instead reflects the informal nature of this Service. This means I've focused on what I consider to be the key issues of the complaint – however I assure both parties I have read and considered everything submitted carefully.

In respect of Mr W's excess of £600 – it's not generally unreasonable for this to be deducted from a claim settlement. Most insurance policies include a policy excess, which is the amount the policyholder is contractually required to pay as a contribution towards the cost of any claim made under the policy. As the Investigator explained – Mr W made a claim under his policy and his excess is the first part of the claim he is responsible for. It is then up to the insurer to decide – if they think their policyholder isn't to blame for the accident – whether to pursue the third-party insurer to recover their claim outlay, which can include a policyholder's excess.

An insurer's decision to pursue a third-party insurer for recovery of an outlay is ultimately a decision for them to make. An insurer will generally weigh up the

commercial cost of doing so but is not under a contractual obligation to their policyholder to undertake a recovery; court proceedings can be long and costly, and there is no guarantee of success. I'm satisfied the policy terms allow Mulsanne to make a commercial decision about whether to pursue a recovery as they're not required to go to court at any cost and in every circumstance.

I've considered Mulsanne's recovery efforts, and from the evidence I've seen I'm satisfied that Mulsanne made reasonable attempts to pursue recovery. But when this proved unsuccessful, recovery wasn't pursued any further.

I've noted Mr W's comments that his personal injury solicitors obtained an admission of liability from the third party, and I know how strongly he feels that Mulsanne should be responsible for recovering his excess. But I can't fairly hold them responsible if the third-party didn't engage with them when contacted.

However, while I think Mulsanne fairly deducted Mr W's policy excess from the settlement - I don't agree it was fair for them to deduct any outstanding premium due. I say this because while the terms of Mr W's policy say they can do this, the agreement to pay the policy's premium monthly is separate to the insurance policy itself.

While I recognise the terms of the policy allow for this, I would consider it good industry practice for Mulsanne to have paid the total loss value to him, and then allowed him to continue to pay the finance provider for the insurance premiums monthly, until the conclusion of the agreement with them. Ultimately, the purpose of the total loss settlement is to enable Mr W to be able to replace his car. And I don't think a consumer can reasonably do that if an insurer decides to deduct the premium finance from the total loss settlement they pay, because this reduces the amount they receive.

This would also have allowed Mr W to potentially purchase a replacement vehicle and possibly add it on to his existing policy with Mulsanne. As Mr W was denied the opportunity to do this, I think Mulsanne acted unfairly. Their decision to deduct the outstanding premium finance from the total loss settlement forced Mr W to pay his premium in a lump sum where he had opted not to do this previously by taking out a finance agreement. As such, I think Mulsanne should pay compensation for the inconvenience caused.

What was the impact

I've thought about the experience Mr W had under this claim and I've considered everything he has said about the impact on him. I have sympathy for Mr W in having to find additional funds to purchase a replacement vehicle, as well as having to incur costs in hiring other vehicles when needed after the hire car was returned. And while Mr W would always have needed to pay his policy premiums, the impact of paying it all at once meant he was left without a car until March 2025 when he purchased a replacement.

Having thought about everything that's happened, I think £450 compensation is a suitable sum to recognise the impact Mulsanne's actions had on Mr W. And I'm satisfied this is in line with similar awards this Service would make and produces a fair and reasonable conclusion to this particular complaint.

Given Mr W's policy excess is an uninsured loss outside the policy cover, it wouldn't be fair or reasonable for me to ask Mulsanne to pay this, but Mr W may wish to pursue this loss through his appointed solicitors as part of his injury claim."

I concluded that I intended to uphold the complaint and to direct Mulsanne to pay Mr W £450 compensation for the distress and inconvenience caused. I invited both parties to respond to my provisional findings.

Mr W replied and said he agreed with my outcome.

Mulsanne also replied but they did not agree with my findings. They said they'd acted fairly under the terms and conditions which Mr W accepted when he took out the policy. Mulsanne said that while the agreement to pay monthly was separate to the insurance policy, it was standard practice for any outstanding policy premium to be deducted from a total loss settlement as this money is owed and they didn't agree it was uncommon or unfair to do so.

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.

I've thought about Mulsanne's comments on their decision to deduct the outstanding finance payments from the total loss settlement paid to Mr W. I do appreciate they feel this was fair given the policy's terms – but under DISP 3.6.1, my remit is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

The premium was paid upfront by taking out a finance agreement which exists separately to the policy itself. So, I would consider it fair and reasonable for him to retain the right to continue paying over that previously agreed period. And because the purpose of the total loss settlement is to enable Mr W to be able to replace his car, I don't think a consumer can reasonably do that if an insurer decides to deduct the premium finance from the total loss settlement they pay, because this reduces the amount they receive.

Mulsanne's decision to deduct the outstanding premium finance from the total loss settlement forces a customer to pay their premium in a lump sum where they had opted not to do this previously. This approach would also allow Mr W to potentially purchase a new vehicle and then add it on to his existing policy with Mulsanne, without having to end cover and take out a new policy and a new finance agreement.

Overall, while I take on board Mulsanne's comments on this point, I'm satisfied my decision produces a fair and reasonable outcome to this complaint. So, I'm not persuaded to come to a different conclusion than I did previously.

As neither party has provided any further information for me to consider in relation to the other findings I made in my provisional decision, I see no reason to depart from what I said previously on these points.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I direct Mulsanne Insurance Company Limited to:

- Pay £450 compensation for distress and inconvenience caused to Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 May 2025.

Stephen Howard
Ombudsman