DRN-5657594

The complaint

A limited company, which I will refer to as N, complains about the settlement of its commercial motor insurance claim by U K Insurance Limited (UKI).

What happened

Both parties are aware of the circumstances, so the following is intended only as a summary. Additionally, even where other parties have been involved, I have largely just referred to N and UKI.

N operates a restaurant business and in early 2020 acquired a vehicle on finance. A commercial motor insurance policy was taken out to cover this vehicle, underwritten by UKI. In November 2023, the vehicle was stolen and a claim was made on the policy.

UKI valued the vehicle at that time at around £23,000. However, as the vehicle was on finance, it settled the claim by paying the finance company the sum outstanding on the finance agreement; around £9,000.

N was unhappy with this, referring to the terms of the finance agreement, which set out that N would be able to sell the vehicle at end of the finance term and retain around 95% of the sale price. So, it thought UKI should pay the remainder of the vehicle's value.

UKI didn't agree. But it did pay the policyholder £919.28 – which was a proportion of the deposit paid under the finance agreement. And £400 compensation for customer service issues experienced.

N brought its complaint to the Financial Ombudsman Service. Our Investigator thought that the terms of the finance agreement were definitive enough to say that, had the vehicle not been stolen and the end of the finance agreement been reached, N would've been able to sell the vehicle and retain the majority of the price achieved. She thought that the value of the vehicle would have gone down a bit between November 2023 and when the finance agreement was due to have ended in early 2025. And that N would've only been entitled to 95% of this.

However, our Investigator also thought that there were a number of uncertainties about how likely it would have been that this position would've been reached. It required not only N to take various actions – continue paying the agreement, arranging the sale, etc. But also it relied on a third party actually agreeing to buy the vehicle and at the price our Investigator thought it would have been worth. Taking this into account, she thought that this situation was, what is known as, a loss of chance. And applied a 25% reduction to the estimated value of the vehicle, to take this into account.

Also taking into account the fact that N would've had to continue to pay the finance agreement, a sum that UKI had already paid to the finance company, our Investigator said that UKI should pay N £4,674.54 to settle the remainder of the claim. And that interest should be added to this amount for the time taken to resolve matters.

UKI agreed with this outcome. However, N did not. As our Investigator was unable to resolve this complaint, it was passed to me for a decision.

I spoke with N. I appreciate its concerns over the policy insuring the vehicle as it is, and that N considers it should be entitled to the full residual amount after the remainder the finance agreement has been taken into account. I explained to N that my outcome differs slightly to our Investigator; I have explained this further below. N said it still wanted a final decision, so I have reached this and explained my reasoning for it below.

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 have reached the same conclusion as our Investigator. I've explained why below.

Both parties have provided detailed submissions. Whilst I have considered these in full, I do not intend to refer to each of these individually. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman Service. Instead, I will focus on what I consider to be the key issues.

The insured party

The first issue I will refer to is who the complainant is in the circumstances. The policy was taken out in the name of one of N's directors, rather than N itself.

However, not only was it N that was responsible for maintaining and paying for the vehicle under the finance agreement, it is clear the vehicle was being used by N for its own purposes. So, whilst the policy was set up in the name of the director, I consider it was taken out for the benefit of N itself.

As a result, I consider the complainant in this case to be N, rather than the director.

What this means is that I am considering the impact of the situation on N, rather than on its director(s). I am unable to consider a complaint brought by the director(s) directly, as a director would not be an eligible complainant in their own right; they would be acting for purposes not outside their trade, business or profession. As a result, they would not meet the definition of an eligible complainant as set out in the Dispute Resolution: Complaints part of the Financial Conduct Authority Handbook, specifically DISP 2.7.3 R.

This also means that I am unable to consider any distress caused by the circumstances. N, as a limited company, is unable to suffer distress. I can still consider the inconvenience caused and any financial loss though.

I should say that neither party has raised this as an issue to date. But I feel it is important to summarise this situation at this point.

The settlement of the claim

The vehicle was stolen and not recovered, so was considered as a total loss under the policy. The issue is how this was settled.

The policy says that, where there is a claim the relevant option for UKI is to pay the cost of the loss. The policy also says that in situations where there is a claim for total loss,

settlement is normally made to the legal owner. In terms of this complaint, this means I need to consider whether UKI paid N (either directly or indirectly) the cost of the loss.

Where a vehicle is taken out under a finance agreement, the owner will remain the finance company for the length of that agreement. What happens at the end of the finance term is then dictated, in part, by the terms of the finance agreement.

With a hire purchase agreement, ownership will often transfer to the customer. So, when considering a claim about a vehicle acquired under such an agreement, it is often reasonable to consider the customer already has an interest in the vehicle even before the end of the agreement. And that they lose this when the vehicle is lost – even though the legal owner at that point remains the finance company. So, we would normally consider it appropriate that an insurer takes this into account when settling the claim.

With a standard lease agreement, the customer is merely paying to hire the vehicle. They are not gaining any interest of their own in the vehicle, and the vehicle remains fully the property of the finance company. At the end of the agreement, the vehicle would have been returned to the finance company, and the customer would have no residual rights. So, where there is a loss of the vehicle during the lease agreement, all the customer loses is the ability to continue to hire that vehicle. If the insurer pays off the remainder of the lease though, the customer doesn't have to make those payments – and can instead hire a different vehicle. But, significantly, no payment is due to the customer as they have not lost their vehicle or any interest in that vehicle. (There are some side issues to this relating to, for example, the deposit paid – but it isn't necessary to set these out here.)

The finance agreement N had was less common a lease agreement that contained clauses which set out that, at the end of the lease period, N would have the right to sell the vehicle and to retain 95% of the price achieved. This would not result in N having ownership of the vehicle (at least not without buying it subsequently from the third party it would have been initially sold to). So, this agreement cannot be accurately described as a hire purchase agreement. However, the fact that a customer would be entitled to 95% of the sale price, would have effectively allowed N to obtain a beneficial interest in the vehicle. And I consider that it is fair and reasonable that UKI take this into account when settling a claim relating to such a vehicle. This potential beneficial interest forms part of the "cost of the loss". UKI has agreed with this.

However, in reaching the appropriate settlement figure it is necessary to take into account a number of points.

Firstly, in order to reach the point where the finance agreement has come to an end, N would have had to continue to make the payments under the agreement. The finance company has said that there was around £9,000 remaining under the agreement. And this would need to be paid before there was any opportunity to sell the vehicle, etc. Had there not been a theft, N would've had to pay this sum. As there has been a theft, UKI has settled this amount with the finance company.

Secondly, it is necessary to think about what the value of the vehicle would have been at the end of the finance agreement. N's potential beneficial interest in the vehicle would only be realised at the end of the finance term. So, it is the value of the vehicle at that point that would lead to the sale price and ultimately to the rebate N might get.

The theft took place around a year and half prior to the end of the term. So, whilst the market value in November 2023 was assessed by UKI to be around £23,000, it would have been less than this in early 2025.

Our Investigator used the market value in 2025 when coming to her opinion. However, it is also necessary to think about whether the value that could be achieved, should N have been given the opportunity to sell the vehicle, was full market value from selling to potentially everyone, or the trade value. The terms of the finance agreement say that the vehicle must be sold for business use. The trade value of a vehicle is the price that would be expected from selling to the wholesale market – often dealerships or businesses. Given the requirement in the finance agreement to sell for business use, I consider that the 2025 trade value of the vehicle more accurately reflects what N would have been able to market the vehicle at.

Taking into account the passage of time, estimating the additional mileage that would have accrued, and using various industry guides, I consider that the trade value of the vehicle at the end of the finance agreement would likely have been £18,795. This is less than the £20,798 used by our Investigator.

The third point it is necessary to consider is that achieving a sale at this price would have been dependent on third parties not involved in this complaint. This includes both the finance company and the ultimate purchaser of the vehicle. The sales process would also likely have included some cost to N.

Given the uncertainties in what would have happened in any sale process, and the involvement of third parties, I consider the fair and reasonable outcome is to consider N's beneficial interest in the vehicle amounted to around 75% of the 95% return it was like to have received on the vehicle's trade market value. This takes into account the fact that the loss to N is a loss of chance. I consider the loss to N to be the loss of the chance of selling the vehicle at a value of £18,795, and then retaining 95% of this.

Calculating this loss of chance with any certainty is difficult. But I consider this loss of chance to be more likely than not, but less than certain. So, I do not consider it is fair or reasonable to award the full sum that might have been due to N. And I consider that 75% of this is a fair and reasonable award.

I consider if a sale had been achieved, the vehicle would have been sold for £18,795. N would've been provided with 95% of this (£17,855). 75% of this (taking into account the loss of chance) is £13.391.44. UKI has settled the outstanding finance to the sum of £9,224.76, after the deduction of the relevant excess. So, I think it is fair and reasonable that UKI pay N the remainder of its beneficial interest in the vehicle. This works out as £4,166.78.

Taking into account the timeline, I also think this should have been paid to N on 29 November 2023. N has therefore been without funds that it ought reasonably to have had since this date. And I consider it is reasonable that UKI pay N interest on this sum until the date of settlement. The rate of interest ought to be calculated as 8% simple per annum.

Putting things right

U K Insurance Limited should put things right by paying N £4,166.78, less any sum it has already paid N to settle the claim. U K Insurance Limited should add interest, at a rate of 8% simple per annum, on this additional sum from 29 November 2023 to the date of settlement.

I note that U K Insurance Limited agreed to our Investigator's recommendation that a total of £5,593.80 was payable to N to settle the claim. U K Insurance Limited may decide to base the settlement on this figure, but I am unable to direct it to do so.

My final decision

My final decision is that I uphold this complaint. U K Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 11 August 2025.

Sam Thomas
Ombudsman