

complaint

Mr L has complained about the way Southern Rock Insurance Company Limited dealt with a claim he made on his motor insurance policy which he says left him in a very difficult financial situation.

All references to Southern Rock include its agents.

background

I issued a provisional decision regarding this complaint last month. An extract from that decision follows:

Mr L was involved in an accident which resulted in his car being a total loss. Mr L had got his car on finance and he still owed the finance company £16,910.53.

Southern Rock inspected the car and said it was uneconomical to repair. It initially said the car was worth £12,345 and it would cost just over £10,000 to repair. It said it was a category D total loss which meant it was repairable but couldn't make financial sense to do this.

As the finance outstanding was more than the value of the car, Southern Rock made all the payments to the finance company after deducting the £425 excess. This meant that there was still around £5,000 for Mr L to pay under the finance agreement.

Mr L complained to us and we referred the matter to Southern Rock. He said his car was since purchased by someone else who got in touch with him and mentioned he'd paid £200 to repair the car. Mr L said he was never given the option to buy back the salvage and that this left him in a worse position than he would've been had he been given the opportunity to repair the car privately.

Southern Rock rejected the complaint. It said because the car was on finance it was obliged to firstly pay back the finance company. It also said it wouldn't offer to sell a customer back the salvage unless they asked to buy it back. It said if Mr L had bought back the salvage he would've been even worse off. This is because the salvage was worth around £4,000 and this would've meant that it would've only paid the finance company back around £7,000; and this would've left Mr L owing £9,558.18 to the finance company in addition to being responsible for the cost of the repairs.

Our investigator didn't think the complaint should be upheld for the reasons Southern Rock gave. Mr L wasn't happy and asked for an ombudsman's decision.

We asked Southern Rock to explain why it had decided the car was a category D write off and queried why Mr L had only been offered £12,345, when its engineer had valued the car at £13,140. It has now accepted that the settlement should have been calculated on the basis of the market value the engineer gave the vehicle. It said the car was a total loss probably based on an assessment of the cost of repair.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The policy includes a term which says the most Southern Rock will pay in the event the car is a total loss is the market value. It says the market value will be calculated using a particular motor trade guide (G) but if that's not possible it will use two other guides (C and P).

The policy also says that if the car is subject to a leasing agreement or hire purchase, Southern Rock will pay the owner named in that agreement and it will pay any balance of the agreed settlement to its insured. Under the policy, Southern Rock will retain the rights to the salvage of the car for disposal.

The policy doesn't define what constitutes a total loss. My understanding is that a car may be a total loss if it is uneconomical to repair. Our approach when it comes to a car being declared a total loss is that insurers may proceed on that basis even if the cost of repairs is less than the value of the car. This is because if the cost of repairs is high there may be a risk that the car may be liable to subsequent break downs.

In this case the engineer's report says it would cost £10,189.66 to repair the car. Southern Rock valued the car at £12,345 at the time. So this means the repairs would've been around 83% of the market value. Southern Rock now says it should've valued the car at £13,140 instead as was recorded by the engineer, using guide G. This would've still meant the repairs would be around 78% of the value of the car. Based on these figures I don't think Southern Rock's decision to scrap the car was unreasonable.

Our approach when it comes to determining whether an insurer made a fair offer towards the market value of a car is to look at four motor-trade guides which provide valuations based on extensive nationwide research of likely selling prices. The guides we use include the guides mentioned in Southern Rock's policy. Guide G showed the value as £13,140. Two of the other guides valued the car at £11,550 and £12,927 and one guide didn't return any results. Looking at these valuations it seems Southern Rock's original valuation wasn't unreasonable as it is within the range provided by the guides. But as it has since said it should've offered £13,140 instead, I think this would be fair and that it should pay the difference to Mr L. And this is also in accordance with its policy terms which say that it will primarily rely on guide G. I don't think it has to pay it to the finance company as it's no longer the owner of the car.

Mr L complained that he wasn't told he could keep the salvage. Southern Rock said it wouldn't offer him the option of keeping the salvage and from what I can see this is in line with the policy. So I don't think Southern Rock treated Mr L unfairly in relation to this. In any event the owner of the car at the time was the finance company not Mr L. So it would've been up to the finance company whether he got to keep the salvage or not.

I note that Southern Rock deducted the £425 excess from the payment it made to the finance company. I think Southern Rock should've paid the finance company the market value and asked Mr L to pay the excess directly to it rather than deduct it from that amount. This meant that Mr L owed the finance company more than he should and this may have affected the repayments he has to make to it. I think this added to Mr L's inconvenience which I'll deal with below.

I can see that Mr L found the whole situation distressing. I appreciate he was unhappy to find out that a new buyer repaired his car for such a low amount however I don't think this was down to Southern Rock. But I appreciate that there was a delay in making the payment to the finance company and that one of Southern Rock's agents lost Mr L's V5C (vehicle registration document) which also caused some delay. And I understand that the finance

company was threatening to substantially increase Mr L's instalments due to the delays. Also Southern Rock didn't follow its own policy by failing to offer the market value indicated by guide G until after we became involved. So I think Southern Rock could've handled some aspects of the claim better including the issue of the excess as I explained above. For these reasons I think it should pay Mr L £200 for the unnecessary distress and inconvenience it caused him.

my provisional decision

For the reasons above I'm considering upholding the complaint and requiring Southern Rock Insurance Company Limited to:

- Pay Mr L £795 which is the difference between the original and subsequent valuation for his car and add simple interest of 8% per year from the date it made the total loss payment to the date it pays him;*
- Pay Mr L £200 for the distress and inconvenience caused."*

developments

Southern Rock agreed with my provisional decision. It asked whether the 8% interest would be added to the £795 or on the entire £13,140.

Mr L didn't agree with my provisional decision. He made the following points:

- He's unhappy he couldn't keep the car. He says he would've paid £250 to move it to the dealer who sold him the car who would've repaired it for him.
- The engineer overestimated the cost of repairs. The new owner told him he paid under £1,000 to repair the car.
- He wasn't offered guaranteed asset protection (GAP) insurance.
- The recovery agent lost the log book.
- Because he couldn't afford to repay the finance company his mother in law had to take out a loan to pay it which he is paying back to her. He still has £3,800 to pay back. He thinks it would be fair for Southern Rock to pay him the £3,800 he still owes.

my findings

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've decided not to change any of the findings I made in my provisional decision.

In relation to Southern Rock's query, the 8% interest should be added to the £795. This is because this is the amount outstanding in relation to the market value.

As Mr L is aware he will need to complain to those who sold him the policy about the lack of GAP insurance. As far as I'm aware the policy wasn't sold by Southern Rock.

Mr L has made it clear he would've liked to have kept the car. But as I said in my provisional decision Southern Rock's policy says it will retain the right to the salvage. Also, as there was finance outstanding on the car, it still belonged to the finance company so it wouldn't have been Mr L's to keep in any event.

In relation to the repairs, the only expert evidence I've seen is that of Southern Rock's engineers who said the repairs would cost around £10,000. I haven't seen any expert

evidence to contradict this. I appreciate Mr L says the new owner told him he paid a lot less but I haven't seen any evidence of that, other than what Mr L has said. But even if I had, this would've still had to be supported by expert evidence to say, for example, that the repairs were done to a standard that didn't mean the car was unsafe and that all the repairs were carried out etc.

I addressed the issue of the log book in my provisional decision so I don't think I need to repeat my findings here.

I appreciate that Mr L has been left out of pocket but for the reasons I gave above, I don't think Southern Rock has to pay him anything further to what I awarded in my provisional decision.

my final decision

For the reasons above I'm upholding the complaint and requiring Southern Rock Insurance Company Limited to:

- Pay Mr L £795 which is the difference between the original and subsequent valuation for his car and add simple interest at a rate of 8% per year from the date it made the total loss payment to the date it pays him*;
- Pay Mr L £200 for the distress and inconvenience caused.

Southern Rock Insurance Company Limited must pay the above within 28 days from the date we tell it Mr L has accepted my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a rate of 8% a year simple*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 7 April 2019.

Anastasia Serdari
ombudsman

*If Southern Rock Insurance Company Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.