

complaint

Mr K has complained about U K Insurance Limited's (UKI) handling of a claim on his motor insurance policy.

It was Mr K's company, rather than Mr K himself, that leased the insured car. But it was Mr K who insured the car personally, so for ease I'll refer to Mr K as being the leaseholder.

Reference to UKI includes its agents.

background

Mr K insured a leased car with UKI. The car was stolen. While UKI was looking into Mr K's claim for the theft of the car it noted that Mr K hadn't told it about some penalty points he had on his license. So it charged him an additional premium of around £517, which Mr K paid.

UKI settled Mr K's claim by paying the lease company the outstanding finance on the car. And, after deducting Mr K's excess of £600 it refunded him around £2,323 of the deposit of £3,119.88 he'd put down on the car.

Mr K complained about a number of aspects of UKI's service. UKI acknowledged that not all its service was as good as it would wish to provide. So it paid Mr K a total of £450 compensation to address the impact of that.

Mr K didn't think that went far enough and brought his complaint to us. I issued a provisional decision on 18 February 2020. For ease I've copied my provisional findings below. I said:

"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, it's likely I'll partly uphold it."

In bringing this complaint Mr K's made a number of detailed points. I've considered everything he's said very carefully. But in this decision, I will focus on what I see as being the key outstanding issues.

settling Mr K's claim for the theft of his car

Mr K says that he's out of pocket because of the manner in which UKI settled the claim. So, I've looked very carefully at how UKI did that.

As the insured car was leased Mr K didn't own it the lease company did. And under the terms of the lease he didn't have any entitlement to own the car even after the lease came to an end. In fact, the lease documents are explicit on that point as they say:

"There is no option to own this vehicle during or at the end of contract."

And Mr K's policy says that in those circumstances if the car was a total loss then UKI would settle any claim with the car's legal owner - the lease company. The lease company told UKI it needed to pay £24,708 to pay off the outstanding finance, which UKI did.

I've listened to a call between Mr K and UKI's engineer in which they talked about how UKI would settle the claim. I think it's worth noting that UKI initially told Mr K that it hadn't

recorded that call because the engineer would have made the call from his mobile phone. That plainly wasn't the case and Mr K provided UKI with a screen-shot to show that he'd received the call from a landline number and UKI then found the call. While it wasn't helpful that UKI misadvised Mr K initially I note that it did – eventually – send Mr K a copy of that call, although I understand he had problems accessing it.

In the call UKI's engineer said UKI would settle the claim by paying the lease company the outstanding sum on the finance agreement. He said that if that figure was less than the car's market value - which it put at £30,320 (based on a well-known industry trade guide) - then it might also be able to "take into account" the fact that Mr K had paid a significant deposit. The engineer said that as Mr K had had the car for only 2 months from the 24 month term of his lease, UKI could reimburse him a proportion – up to 22 months' worth - of that deposit.

UKI later calculated the proportion of Mr K's deposit it was willing to pay to him – based on a deposit of £3,111.18 as being - £2,851. I've noted that figure is wrong. The deposit for the car was actually £3,119.88 not £3,111.18. So the accurate proportion of Mr K's deposit (before deducting his excess) should have been £2,859.89. And had it used that figure and deducted Mr K's £600 excess it would have paid him £2,259.89. But UKI didn't actually base its settlement on that figure. Instead it said that as the settlement to the lease company was less than the car's market value, there was scope to settle a larger proportion of Mr K's deposit. It calculated that as follows:

Market value of the car	£27,632.00
Less lease company settlement	£24,708.33
Less excess	£ 600.00
Payment to Mr K	£ 2,323.67

So, it paid roughly £2,323 to Mr K, which was slightly higher than the figure UKI would have paid if it had calculated its settlement based on a proportion of unused deposit. But I've noted that the figure UKI gave for the market value of the car in the calculation above is significantly less than its initial valuation based on the trade guide's value of £30,320. And there's no explanation in the papers that I've seen for that. It might be that this was a figure it agreed with the lease company. But if so, I don't think that was fair because, as long as the amount UKI was going to pay was above the lease company's settlement figure, then the lease company would have no interest in negotiating a higher sum. So, I don't think it was fair that UKI used a lower figure than that given by the trade guide. And if it had used the trade guide's valuation that would have allowed it to pay Mr K his full deposit of £3,119.88 less his excess of £600, which is £2,519.88. So that's the amount I think it should have based its settlement on. And as it's already paid Mr K £2,323.67, I think it should pay Mr K the balance of £196.21. It should add simple interest to that sum, at a rate of 8% a year from the date of Mr K's claim to the date it makes payment.

Mr K's said that when previous leasing agreements have come to an end the lease company has given him the option to buy the car. So he thinks UKI should have paid him any difference between the car's full market value and the amount UKI settled the finance outstanding on the lease for. But while Mr K might have been given the opportunity to buy other cars at the end of previous leases, that wasn't something his lease agreement entitled him to do. Mr K didn't ever own the car and he didn't have any entitlement to own the car. That the lease company might have chosen to offer him the opportunity to buy the car was something that it might or might not have done at its discretion. But it wasn't an entitlement under the terms of the lease. So, I think UKI acted reasonably in treating Mr K as having no

ownership rights and settling his claim with the lease company in line with the terms and conditions of his policy.

Mr K's said that the lease company wrote to him to say that the outstanding balance of the lease was actually £27,266 – rather than the £24,708 figure it gave to UKI. It's not clear why the lease company gave UKI and Mr K different figures in order to settle the outstanding finance on his lease agreement. But as the higher figure was still less than the figure UKI valued the car for, if the lease company had asked for the higher sum it's likely that UKI would have paid that amount to the lease company. However, that would have reduced the amount it paid to Mr K for his deposit. But in any event the lease company said that it was happy to waive any sum Mr K owed above the amount it had received from UKI. So, it didn't ask Mr K to pay the difference between the amount it said was owed and the amount UKI settled the claim for and so Mr K isn't out of pocket.

Mr K seems to think that UKI should pay him the amount the lease company said he didn't need to pay to it. But I can see no rationale for that. As I've said above Mr K's policy says UKI will pay the legal owner for the total loss of his car. It paid what the legal owner - the lease company – asked for. So, any amount that the lease company decided not to collect from UKI or Mr K, for whatever reason, was simply not a "loss" to Mr K. And there was no reason for UKI to pay that sum to him.

charging an additional premium because of penalty points

Like all motor insurers I'm aware of UKI will ask potential policyholders for them to tell it about any penalty points that they have on their licence, regardless of how they acquired those. That's because most insurers will see drivers with penalty points as being a higher risk than drivers without such penalty points. And they'll reflect that increased risk in the premiums they charge.

Mr K didn't tell UKI about the penalty points he had on his licence from both 2015 and 2017. Mr K believes that UKI shouldn't have taken the 2015 points into account because he says they became spent in June 2018. But assuming that's correct then the points were on Mr K's licence when the policy renewed in March 2018. So they weren't spent at the time that his policy started. And he should have told UKI about them. But he didn't do so. And if he had told UKI about the points UKI would have charged him a higher premium from the outset.

It might help if I explain that where a policyholder makes a mistake when giving information to an insurer, and the mistake isn't deliberate or reckless, it's known in the insurance industry as a careless misrepresentation. And there's legislation: The Consumer Insurance (Disclosure and Misrepresentations) Act 2012 (CIDRA) that sets out what insurers may do when a policyholder has made a misrepresentation. CIDRA doesn't allow an insurer to simply impose an additional premium. But where as in Mr K's case, there's been a claim on the policy, CIDRA allows an insurer to settle any claim on a proportionate basis. By that I mean it could work out what percentage of the correct premium Mr K had actually paid and apply that percentage to any settlement amount for the claim.

In this case, by my calculations, had Mr K insured the lease car for the full year, the premium for his policy – before factoring in his penalty points – was £1,561.69. After adding the points Mr K's premium for the full year would have been £1,919.39. In other words, Mr K initially paid about 81% of the full cost of the premium. So had UKI followed the remedy allowed to it by CIDRA, it could have settled Mr K's claim by only paying 81% of its total costs. Using my figures above where UKI's settlement figure (before an excess) is [3119.88 + 24,708.33]

£27,828.21, then UKI could have settled the entire claim for 81% of that sum, which is £22,540.85. If that had happened then not only would UKI not have refunded any of Mr K's deposit but it would have left the amount it paid to the lease company £2,167.48 short. Had that happened I think the lease company would have asked Mr K to make up the shortfall. So, while UKI didn't act strictly in accordance with CIDRA, I think Mr K has benefitted from that, as charging him the additional premium left him in a better position than a proportional settlement would have done. So, I don't intend to instruct UKI to take any further action on that point.

Mr K's added that while UKI told him he needed to pay an additional £517, it actually deducted £732 from his account.

Mr K's provided a bank statement showing a number of payments totalling £710.15 going to UKI between 5 July and 20 July 2018. But not all of those payments were for the additional premium for this policy. For example three payments, for £41.61, £64.90 and £98.56 related to a second policy and a further £44 was from a third policy. Also £213.44 was an adjusted monthly premium for this policy. And UKI also took £113 for an adjusted premium for a different policy. Also, UKI's told me that it didn't collect all of the additional premium with one-off payments, but collected part of it by adding to Mr K's monthly premium payments from July 2018 onwards. So, I don't think it did overcharge Mr K.

customer service

UKI has accepted that it hasn't provided Mr K with the level of service it would wish to offer. And it's paid him £450 compensation for the impact of that. I think that's reasonable in the circumstances so I don't intend to make a further award."

developments

Neither Mr K nor UKI agreed with my provisional decision. Amongst other things Mr K said that he had other UKI policies including a home insurance policy. He said he didn't claim on his home policy when the keys for his car were stolen from it.

Mr K added that I'd said that UKI's engineer had told him that its settlement would be based on the car's market value. And said I'd sidestepped:

"bringing UKI to account on this when they exploited an opportunity at my cost because the settlement was far less and are spoon feeding a value of £27,632, thats £2,688 eroded without justification or accountability".

Further Mr K said that UKI lied to him about listening to his call with its engineer and asked why *"UKI are not being challenged about this clear deception?"* He commented that I didn't think UKI had *"anything to answer for"* by using the lower market value for the car.

Also Mr K's said that I noted that UKI could make a further *"compensatory payment to me which almost covered my deposit"*. But said that UKI could have settled his claim for 81% of its value and in those circumstances I thought it had settled his claim favourably. Mr K asked *"isn't this taking sides"*. Mr K's gone on to ask about how long insurers may continue to refer to penalty points for as he understood they were only valid for three years.

Mr K's continued to argue that UKI had no right to take any sums above the £517 additional premium it had charged him and should return the balance.

Mr K's also said that he had to work extremely hard before receiving the £450 compensation and asked how I equated this sum with the "failures" I'd highlighted.

In addition Mr K's again referred to the lease company's goodwill gesture not to collect sums owing. It says that he was the intended recipient of that goodwill gesture but that I didn't agree. And he's added:

"UKI have not only eroded thousands from the vehicle value but taken these discounts from me too, on the one hand they managed to cover my deposit outlay but on the other Joe thinks despite their original assurances this would happen regardless, it was never guaranteed so I should be grateful."

Finally Mr K said that he's been out of pocket for two years and thinks that the £196 I said UKI should pay to him is "disgusting".

UKI said that Mr K's policy said that where a car is leased it will settle any claim by paying the legal owner. So there was no contractual basis to pay Mr K anything. But it added that in order to treat Mr K fairly it was reasonable that it returned an unused portion of his deposit, which it calculated as being £2,259.89 after deducting Mr K's excess. It said that it was a mistake to pay a higher sum. So it doesn't think it should have to pay anything extra.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't intend to amend my provisional decision.

Mr K said that he has other UKI policies and didn't bother to claim on his home insurance policy for the break-in that led to the theft of his car. But I don't see how that's relevant to the manner in which UKI settled the claim on this policy. If Mr K chooses not to claim on another policy that's a decision he's entitled to make but it's not something I think UKI needs to factor in when deciding how to settle a claim against this policy.

Mr K said that I'd commented that UKI's engineer told him that the claim settlement would be based on the car's market value. But, as can be seen above, what I actually said was:

UKI's engineer said UKI would settle the claim by paying the lease company the outstanding sum on the finance agreement. He said that if that figure was less than the car's market value - which it put at £30,320 (based on a well-known industry trade guide) - then it might also be able to "take into account" the fact that Mr K had paid a significant deposit. The engineer said that as Mr K had had the car for only 2 months from the 24 month term of his lease, UKI could reimburse him a proportion - up to 22 months' worth - of that deposit

In other words, I said that the engineer told Mr K that if the settlement to the lease company was less than the market value of the car, then there would be scope to reimburse him up to the unused portion of his deposit. I'm not sure what it is that UKI did that Mr K believes I've sidestepped. In fact it's plain that I said that I didn't think it was fair that UKI based its settlement on a market value lower than that it had discussed with Mr K. And that was why I said it should increase the amount of its settlement, to reflect the original figure. So I don't think I need to make any further award.

Mr K's added that UKI had lied to him about its recording of the engineer's call. And that I didn't think it had anything to answer for. But as I said in my provisional decision, while it clearly wasn't helpful that UKI said that the call recording wasn't available when it was, it did eventually send this to him. It might help if I explain that most motor insurers employ in-house engineers. And it's not unusual for it to be those engineers who are responsible for assessing the market value of cars. But often those engineers will be required to go off-site. So it's quite common for them to make their calls using mobile phones rather than landlines at their desks. And it's also quite common that calls from mobile phones aren't recorded. It seems in this case that when Mr K asked for the call recording UKI made an assumption that the engineer would have made the call from his mobile phone when that wasn't the case. That was wrong and it should have established whether it had the call before telling Mr K that it didn't have it.

Mr K seems to think that I should be bringing UKI to book for its mistakes. But we're not the insurance industry regulator, the FCA is. So it's not our role to fine or punish a business for any mistakes it's made. Instead my role is to decide if a business has dealt with a consumer fairly and reasonably and to decide if redress is required. That's what I've done in this case.

Mr K said that I'd noted that UKI could make "*compensatory payments*" to him that almost covered his deposit. But I had also found that it could have settled his claim for 81% of its value. He said "*isn't this taking sides?*". I think Mr K is conflating two issues. I agreed that there was scope for UKI to settle his claim for a higher sum. I then separately considered whether or not it was fair for UKI to charge an additional premium because he hadn't told it about the points on his licence. I pointed out that while UKI didn't follow the remedies that CIDRA sets out for it, if it had done so then it could have reduced its total settlement by around £5,288. And I think if UKI had offered Mr K the choice to either pay an additional premium of £517 or have his claim payment reduced by £5,288 he'd have chosen the former. I'm not sure whose "*side*" Mr K thinks I'm taking. But given that UKI's decision not to make a proportionate settlement was in his favour I don't think he's been treated unfairly.

Mr K's raised some questions about how long insurers can continue to consider penalty points for. But I don't think that's relevant to my decision. At the time that Mr K took out the policies the points were less than three years old and still on his licence. So I think he should have told UKI about them. But he didn't, and at what time the points would come off his licence wasn't relevant to whether or not he took reasonable care to tell UKI about the points.

Mr K repeated that he believes UKI took too much from his bank accounts for the additional premiums. But for the reasons I set out in my provisional decision I don't believe that's the case. If Mr R remains unhappy then he might want to ask UKI to provide him with a full reconciliation of the amounts he's paid towards his various policies and from which accounts it took those sums. That should enable him to clearly see how much UKI charged him and how much he paid. But I haven't seen evidence, beyond Mr K's comments, that UKI took too much from him.

It's clear that Mr K isn't happy with UKI's handling of his concerns. And he said that he's had to work hard to pursue those. I agree that's the case but I think the compensation of £450 that UKI's already paid to him is enough to address his distress and inconvenience arising from its actions. Mr K doesn't agree. But when considering whether to award compensation - and if so how much - I consider the level of inconvenience that a consumer's been put to by a business' errors and omissions. It's not a case that each individual issue will bring with it a

tariff or default amount of compensation. And not all errors will warrant compensation. And In this case I'm satisfied that the sums UKI has already paid is sufficient in the circumstances as it's in line with awards we make in cases of similar seriousness.

Mr K's again referred to the lease company's goodwill gesture not to collect sums owing. He thinks that I didn't agree that he was the intended recipient of that goodwill gesture. I'm not sure where Mr K believes that I said that. I simply said that this wasn't a loss covered by his policy so UKI didn't need to pay it. Mr K hasn't said anything that changes that view. Mr K says that UKI took these discounts from him. But I don't see how he's arrived at that point. UKI paid what the lease company asked it to. That's what his policy entitles him to. The policy doesn't say that he'd be entitled to any contribution towards his deposit. But I do agree that it's fair that insurers pay towards the unused portion of such a deposit. And I've re-read my provisional decision very carefully but I can't see anywhere in it where I said or implied that Mr K should be grateful.

Mr K's again said that he's been out of pocket for two years. But aside from the additional £196 I said UKI should pay, and his policy excess, I don't think Mr K is out of pocket. And for the reason I gave in my provisional decision I'm satisfied that the additional £196 is a fair outcome to Mr K's complaint. While it's plain that Mr K doesn't agree I didn't think he's provided any credible rationale for his view.

Turning to UKI's comments. As I've said above I agree that Mr K's policy doesn't automatically entitle him to any payment. But I do think it's fair that UKI should pay him for the unused portion of his deposit. And in this case, at the time that UKI settled Mr K's claim, it said that the fair way to do so was to consider the settlement value against the market value and if there was scope between the two it could consider whether or not to reimburse any of Mr K's deposit. UKI's since said the way it did so was a mistake. But given it thought that was the fair way to settle the claim at the time, in the specific circumstances of this complaint, I don't think it's reasonable that it should now say that it should apply another approach because I've found the market value figure it used to be unfair. It follows that I think UKI should pay Mr K the balance of £196.21 it hadn't paid previously. It should add simple interest to that sum, at a rate of 8% a year from the date of Mr K's claim to the date it makes payment.

my final decision

For the reasons set out above, I uphold this complaint and I require U K Insurance Limited to pay Mr K the £196.21 shortfall from its claim settlement. It should add simple interest to that sum, at a rate of 8% a year from the date of Mr K's claim to the date it makes payment¹.

Under the rules of the Financial Ombudsman Service, I'm required to Mr K to accept or reject my decision before 10 April 2020.

Joe Scott
ombudsman

¹ If UKI considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.