

## **The complaint**

Mr A and Ms W have complained about the service provided by Haven Insurance Company Limited (Haven) after they were involved in an incident with a third-party vehicle.

## **What happened**

Mr A and Ms W say their parked car was struck by a third-party vehicle. They contacted Haven for assistance, but they say that Haven's actions have left them at a financial loss and caused them a lot of distress.

Mr A and Ms W complained to Haven about their experience. Haven upheld the complaint in part. Haven offered a cash-in-lieu settlement for the repairs based on Mr A and Ms W's repair estimate and £150 in compensation for the distress and inconvenience it had caused.

But Mr A and Ms W are unhappy with this and they complained to this service. An investigator reviewed the complaint and said that Haven had done enough to resolve the issues raised.

But Mr A and Ms W don't agree, and they've asked for an ombudsman to review the complaint.

I issued a provisional decision on this complaint on 14 January 2022. That provisional decision is below and forms part of my final decision.

## ***What I've provisionally 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'm planning on upholding this complaint. I'll explain why.*

*Mr A and Ms W were sitting in their car when a third party allegedly collided with them and drove off. Ms W took a photo of the alleged third-party vehicle as it drove away. They called the police to report the incident and they called their insurer Haven for advice. At this point Mr A and Ms W wanted to consider their next steps. They wanted to decide whether to claim directly from the third-party or through Haven on their own comprehensive policy.*

*A number of weeks later Mr A and Ms W received their annual renewal and they noticed their premium had increased substantially. So, Ms W rang Haven to ask why. It was during this call that a number of things were discussed. Haven told Ms W that the claim was open and recorded as fault. Haven said that it had contacted the third-party but hadn't received an admission of liability. No claim had actually been initiated against Mr A and Ms W's comprehensive policy at that stage as Mr A had asked Haven to wait for a response from the third party. So, Haven explained that at this stage, even though Mr A and Ms W said this was a non-fault claim, it was recorded as "fault" and would remain as a fault claim until the third-party accepted liability for the claim. Haven explained this was normal insurance industry practice.*

*When Ms W queried the lack of progress against the third-party, Haven explained as there was no claim actually initiated and it had no subrogated losses its hands were technically tied. So, in order to progress the claim Mr A and Ms W would have to start a claim. Haven would then have an outlay to chase. Ms W seems to have completely understood this and Haven explained the process very clearly.*

*Later that day Ms W called Haven back. She said that as they were being asked to pay an increased premium anyway, it would be better to start the claims process. Haven asked Ms W if the car is repairable or a total loss and what the damage was worth. Ms W rightly advised that she was no expert and she set out the cosmetic damage that was on the car. Haven ran a HPI check and advised that the car is worth "around £1,600". At this point excess was discussed. Ms W said the excess was £200 but Haven said the vehicle mileage and value meant there was an additional excess of £350 due and Haven contacted the broker to confirm.*

*The conversation then turns to where the car would be repaired. Ms W wanted to get an estimate from their own local garage. Haven explained that to have the car repaired at a garage of Ms W's choice, its likely the repairs would cost more (less favourable rates) so Mr A and Ms W would have to pay any difference or a further excess. Haven then correctly advised Ms W that it would request any excess payable back from the third-party insurer when it would be requesting the outlay from the third-party (if there was one). The conversation then turns to a courtesy car and Mr A's special adaptations on the damaged vehicle. Mr A has a disability and needs a specially positioned pedal placement on his car. Haven explains that it would only provide a standard courtesy car and Ms W explains that would be fine as her car is also adapted and they could swap. Haven explains how the process works from this point and Ms W agrees to start the claim.*

*However, in the following days and weeks the process is frustrated. The third-party insurer contests the claim and Haven decide the car isn't repairable and it writes the car off. But Mr A and Ms W don't want this to happen. In fact, the engineers report says that they plead with Haven not to write the car off. Mr A and Ms W say this will leave them in a worse financial position, because of an endorsement on the policy and the cost of the specific vehicle adaptations that would be required on another vehicle. But Haven says it can't reverse the total loss categorisation and after a long battle they return the car to the couple with the total loss categorisation in place, and Mr A and Ms W halt the claim. At this point Haven stop chasing the third-party as it has no outlay and the car is sold at a substantial loss as Mr A and Ms W can't afford the repairs and there is a category N salvage marker on the car.*

*When Mr A and Ms W bring their complaint to this service, they have at least 20 points of complaint. They have an issue with how the claim was recorded as fault and the impact of this on their no claims discount and a premium increase. They believe they were misinformed about the use of their own repairer and an additional excess in this situation. They have an issue with how salvage is calculated, the car being classed as a total loss and the battle to retain the vehicle. Mr A specifically says Haven's actions in writing off the vehicle and not allowing its retention in the event of a claim, is an indirect discrimination against a disabled driver and both Mr A and Ms W say the distress caused by this whole experience has been immense. They have also raised a discrepancy with the excess amount and the fact that their local garage says the car was repairable. They've provided an estimate to support this.*

*So, let's start at the beginning. I think, having listened to the calls Haven were very clear in explaining the process to Ms W. The claims handler is good and set everything out clearly. However, I think the process Haven used to determine the initial car valuation and the subsequent process to write the vehicle off isn't fair in this specific circumstance.*

*The claims handler does a HPI check and tells Ms W in this call that the car is worth around £1,600. Ms W is no expert, as she admits herself, so she doesn't know either way. After inspection and desktop assessment the car is deemed to worth £1,642. This is based on the policy definition of "market value" which is defined as "The value of your car at the date loss according to the Glass's Guide mid book value".*

*But if Haven wants to give the term 'market value' a different meaning, we'd expect this to be highlighted in the policy documents so that when Mr A and Ms W are taking out the policy, they would know from the outset that they were likely to get a lower settlement, if the car was a total loss. This would give them the option of finding a policy where 'market value' means just that. I can see nothing in the policy documents, or schedule that flags up Haven's definition of 'market value'. So, in this particular instance I don't think it's fair or reasonable for Haven to rely on the policy terms and conditions to limit the amount it's willing to pay.*

*And in any event the terms and conditions make it clear that the mid-book value is only a starting point and the valuation will be adjusted to take into account the condition of the car, mileage etc. It isn't clear to me how Haven's engineer got to a valuation of £1,642. The report says the vehicle is in fair condition as per the photos provided to the engineer, there are no pre-existing conditions noted and the total deductions is noted as £0. The lack of any explanation of the final valuation the engineer came up with shows the difficulty of this approach.*

*So, in this particular case I think using the retail value provided by the trade guides is more straightforward, accurate and fair, being based more closely on the features of the individual vehicle in question. So, I've ran our own valuations, using our established approach. Given the date of loss I could only find two valuations and they are as follows:*

*Motor valuation 1 - £2,360*

*Motor valuation 2 - £2,650*

*As such I think a fairer valuation for this vehicle in this particular instance is £2,500.*

*I appreciate that the third party may never have accepted this claim, and the fault claim may have remained on record impacting the premium and no claims discount. But we'll never know now as the claim has been discontinued. And the approach Haven has used started a chain of events that led to disputes over the cost of salvage, salvage categorisation, the retention of a vehicle, excess dispute and a potential additional excess for using a separate repairer.*

*But I'm not going to go into any of the above. I'm upholding the complaint because Haven's definition of market value is significantly different to what we'd normally see, and this wasn't appropriately highlighted to Mr A and Ms W. As such the definition of market value that should be used is the normal industry definition of market value.*

*Our established approach tells us that the market value of this vehicle at the time of loss was approximately £2,500. And if this valuation had been used, the car would never have been deemed a total loss, no matter which repair estimate was used, the claim process would never have ended without determining liability either way, and it's unlikely Mr A and Ms W would've encountered any of the above issues or be in the situation they're in now. Using this amended valuation, I'm going to try and put Mr A and Ms W back in the position they would've most likely found themselves in.*

*I note that Haven in its final response and in an effort to resolve the complaint has actually recorded the claim as notification only, and it has offered to pay the claim as a cash in lieu based on the lower repair estimate. I'm unsure why it has chosen to pay the lower estimate,*

*given its earlier reluctance to allow Mr A and Ms W use that repairer. But I think Haven has at least approached this with a view to resolving the complaint.*

*However, I just don't think Haven has gone far enough. The vehicle has been now been sold at a substantial loss to Mr A and Ms W. And because of what happened Mr A and Ms W had to take a charitable loan to buy a new car and I'm assuming they had to have it adapted too, at their own cost.*

*So, what I'm going to recommend is that Haven pays Mr A and Ms W the cost of what its garage estimated the repairs should be less the excess and less anything Haven has already paid following its final response. So that's £1,804.38 less an excess of £500 (as clarified by Haven) and less any cash in lieu already paid. 8% simple interest should also be paid on the differential amount to be paid from date of claim to date of settlement. As the claim was halted, the record on all databases both internal and external should remain as notification only.*

*I'm also very conscious of the considerable distress and inconvenience caused to Mr A and Ms W throughout this whole process. Not only have they had to endure a very stressful situation, they've had to approach a charity to get themselves back on the road in a car suitably adapted for Mr A, and this can't have been easy. So, on top of the £150 Haven has already offered I'm going to recommend a further £500 in compensation (£650 in total) for the impact this whole experience has had on Mr A and Ms W.*

*Finally, I want to deal with the issue Mr A and Ms W has raised about indirect discrimination against a disabled driver, specifically in relation to the adaptations Mr A has on his vehicle, and Haven's reluctance to take these into account. My understanding from looking at the schedule of insurance and from listening to the calls provided is that the specific endorsement excluding modification costs in the event of a total loss, and the endorsement about additional excess if using a repairer of your choice, are endorsements added by Mr A and Ms W's broker, and not Haven. I've read and understood this points of complaint, but I won't be dealing with either issue as this is a complaint against Haven solely and not the broker.*

### **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 sent my provisional decision on 14 January 2022 as set out above. Both parties have replied and both parties have now agreed to my provisional decision. As such I see no reason to depart from my findings as set out above.

Please note Mr A and Ms W have asked for us not to include an interest payment as part of any award.

### **My final decision**

My final decision is that I uphold this complaint. I require Haven Insurance Company Limited to:

- pay £1,804.38 (less any cash in lieu that's already been paid if any, and £500 excess). Please note, as requested, an interest payment is not to be included with this amount.
- Incident remains recorded as notification only on all internal and external databases.

- pay a further £500 in compensation (£650 in total) for the distress and inconvenience suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Ms W to accept or reject my decision before 11 March 2022.

Derek Dunne  
**Ombudsman**