DRN-4462923

The complaint

Mrs P complains that Leasys UK Ltd charged her for the cost of her hired car when it was written off in an accident.

What happened

In November 2019 Mrs P hired a car from Leasys for three years. In October 2022, she made her last monthly payment, and she arranged to return the car in November. But three days later the car was involved in an accident, and as a result it was written off. After her insurance company paid out, in February 2023, there was a shortfall of £2,266.67, which Leasys held her liable for.

In June 2023 Mrs P complained to our service about being held liable; she is represented by Mrs J. Since she had not yet complained to Leasys, her complaint was referred to them. Leasys did not uphold her complaint, and told her that the shortfall consisted of no more than her contractual balance, less what the insurance company had paid out. Mrs P did not accept that explanation. She said that the lease terms and conditions only said that if the car was written off, then she would be liable for her outstanding payments, but she had had no outstanding payments left. She pursued her complaint with this service.

Our investigator did not uphold this complaint. She said that Leasys had calculated that the settlement figure calculated at the date of the accident was £11,800, which Mrs P was liable for. As the insurance company had only paid out £9,533.33, Mrs P remained liable for the shortfall of £2,266.67.

Mrs J, on behalf of Mrs P, did not accept that decision. She said that Leasys should have challenged the insurer's valuation of the car. The investigator put that to Leasys, who argued that as Mrs P had been the insurer's client, it would have been her responsibility to negotiate their valuation of the car; furthermore, there was no evidence that the valuation was wrong or that the insurer would have increased it. Mrs J replied to say that as Leasys was the owner of the car, not Mrs P, the insurance company had communicated directly with Leasys and not with Mrs P, and she provided a copy of an email from the insurance company which confirmed this.

The investigator did not change her mind. She thought that as the policy holder, it would have been Mrs P's responsibility to challenge the insurer's valuation if she disagreed with it; if the insurer had not written to Mrs P then it should have done. Even if that was not the case, Leasys had been under no contractual obligation to negotiate a larger insurance pay-out; nor was there evidence to prove that such a negotiation would have succeeded. So the investigator did not agree that Leasys had done anything wrong.

Mrs J asked for an ombudsman's decision.

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 do not uphold it. I will explain why.

The lease agreement states that the taxable list price, that is, the car's original value, was £14,590. Cars depreciate in value, and after three years, a new valuation by Leasys of £11,800 does not seem to be unreasonable. Clearly the insurance company took a different view about that, but I cannot evaluate their own valuation as part of this complaint, as they are not a party to this case. I can't hold Leasys responsible for the fact that the insurance company did not give Mrs J the opportunity to challenge its valuation before settling the claim. And as Leasys was not the policy holder, it had to accept the insurance company's valuation.

The lease agreement says, next to Mrs J's signature:

> "If you … do not return the vehicle in good condition, our loss on resale and/or the costs of reinstatement/repair will be recharged to you (see condition 20)."

Condition 20 is titled "Return of Vehicle(s)". The relevant parts of clauses 20.2 and 20.3 read as follows:

> "20.2 The Hirer shall ensure that the Vehicle is in good order, repair and condition (fair wear and tear only excepted)…
>
> 20.3 If the Hirer is in breach of its conditions under clause 20.2 the Lessor shall be entitled to have all such works of repair, replacement or otherwise carried out to the Vehicle as may be necessary to restore the Vehicle to a state of good order, repair or condition (fair wear and tear only excepted) and any cost incurred by the Lessor in so doing shall be charged to the account of the Hirer and shall be paid by the Hirer to the Lessor forthwith on demand."

I think that is enough for Leasys to fairly hold Mrs J liable for the cost of the car. The clauses Mrs J relies on, which she has argued only make her liable for any outstanding monthly payments, appear to be Conditions 18 and 19, which are about termination of the agreement. While those clauses do technically apply when a car is a total loss, I don't think they override Condition 20, or that they set out Mrs J's entire liability. They only supplement Condition 20; they do not replace it.

My final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 15 May 2024.

Apart from that, this final decision brings to an end our service's involvement in this case.

Richard Wood
Ombudsman