

## **The complaint**

Mr H has complained about the settlement offer made by Haven Insurance Company Limited ('Haven') under his motor insurance policy. Mr H is represented in his complaint, but for ease I'll refer to him throughout.

## **What happened**

Mr H's car was involved in an accident in March 2023. He used the car for part-time work as a private hire driver.

Haven said his car was beyond economic repair and declared it a write-off. It said it would pay Mr H £7,000 which it said was what Mr H was entitled to under this clause in its wording:

*"If We consider Your Taxi is Beyond Economic Repair as a result of an accident or incident covered by this insurance, subject to clause 9 below We will provide the owner of Your Taxi with settlement of its Market Value up to the Limit of Coverage after deducting the Excess. You should be aware that We are entitled to provide settlement up to the Limit of Coverage after deducting the applicable Excess(es) in full and final settlement of Your claim for damage to Your Taxi, even if that value is under-stated."*

Mr H complained about this amount he'd receive. Haven said it would increase this amount by 10% as a gesture of goodwill. It made an interim payment to Mr H.

Mr H remained unhappy and brought his complaint to this service. An investigator looked into Mr H's complaint and upheld it. He said he didn't think it was made clear to Mr H that the value he gave when he'd bought the car and taken out his policy originally should be used to limit the payout under the policy.

He thought Haven should pay the car's market value of £10,270, which Haven calculated from market guide values. He thought Haven should pay interest at 8% simple on the difference between £7,700 and £10,270 from the date the initial payment was made, to the date this final payment was made.

He also thought Haven should pay for Mr H's loss of earnings for a period one month after the accident to early June 2023 when he'd replaced the car.

Mr H accepted the view. Haven accepted that the market value of the car should be £10,270 plus interest, but it didn't think it should pay for three months' loss of earnings. It said it had made an interim payment to Mr H so he could have bought another car and mitigated his losses, which he's required to do by the policy.

It asked that the decision was reviewed by an ombudsman, so it has been passed to me to make a final decision.

I issued a provisional decision to change the outcome from our investigator's.

## ***"Policy terms***

*I can see Haven has a clear term in its policy wording about the amount it'll payout following a claim and I've included this above.*

*But I can't see any evidence that this term was brought specifically to Mr H's attention as part of the sales process. I think it's fair I say that I'd expect a term like this to be explained to a customer as I think it's significant enough to mean a customer might change their mind about whether to choose one particular policy over another.*

*Mr H's policy is one that would give "market value" at the time the car was stolen. So the use of the term saying "settlement of its Market Value up to the Limit of Coverage" wasn't fair as it only benefitted the insurer. I don't think the use of this term is fair and I don't reasonably think it was brought to Mr H's attention.*

### **Vehicle value**

*I've mentioned above that I don't think Haven's use of the term limiting its payment is fair and I don't think it wasn't explained to Mr H adequately. So I think it's fair and reasonable to expect Haven to settle Mr H's claim without applying that part of the term, meaning it should pay a "market value" figure.*

*At the time the vehicle was stolen, various trade guides showed the following values for the same make and model a Mr H's:*

*Company A £10,270*

*Company B £11,348*

*Company C £10,550*

*Company D £11,804*

*I can see from the file that Haven agreed to pay Mr H £10,270, but I don't think its offer is fair. The approach of this service is that Haven should settle a claim at the highest of the trade guides, unless it can provide evidence why this amount isn't correct. Haven's revised offer is at the lowest end of the trade guide market value range and I haven't seen evidence about why this is fair.*

*I don't regard any of the values in the trade guides shown above to be an outlier (so I don't think any of them can be disregarded) and I think Haven should pay Mr H £11,804 for his car.*

*Haven also need to pay interest at 8% simple on the difference between its interim payment of £7,700 and this valuation of £11,804 from the date it made its interim payment to the date payment is made.*

*The figures used above don't take into account the deduction of Mr H's excess so Haven should account for this in its settlement as appropriate.*

### **Loss of earnings**

*Mr H has also asked Haven to pay for his loss of earnings during the period he didn't have a car. Haven has refused to pay for this as it says Mr H had received an interim payment and has a duty to mitigate his losses.*

*But Mr H is a part-time driver. This isn't his main job. And the interim payment made by*

*Haven was substantially lower than the new valuation I've decided on above. So I don't think it's fair of Haven to say that Mr H should have bought a replacement car as it hadn't given him the necessary funds to do this. Mr H has also said the amount of money he'd typically earn from his role wouldn't be enough to rent a car.*

*I asked Mr H to provide evidence that he lost income. I asked him for his 2022 figures and proof he hadn't worked in 2023. I can see that the difference between the two figures (for April, May, to 3 June) was about £596. Mr H would have had some costs in running his car during this time so I think it's fair to deduct a reasonable amount in respect of his fuel.*

*I asked Mr H for some information about this and he gave me a figure that doesn't fit within the income he's suggested. So I've thought further about this and I'd propose to deduct costs of £300 from the above figure, so Mr H would be entitled to receive £296 from Haven for his loss of earnings.*

*He's been put in a position by Haven that he reasonably didn't have a vehicle to work in, so I think it's fair to require Haven to pay him this amount which represents his earnings from the period he wasn't able to carry out his private hire work."*

### **Responses to my provisional decision**

Both parties accepted my provisional 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.

As both parties agreed with my provisional decision, my final decision and reasoning remain the same.

### **My final decision**

It's my final decision that I uphold this complaint. I direct Haven Insurance Company Limited to:

- Settle Mr H's claim for the loss of his car at a market value of £11,804 subject to the terms and conditions of his policy. Interest at 8% simple should be added to on the difference between the interim payment and this figure, from the date the interim payment was made to the date this payment is made.
- If Haven considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr H how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.
- Pay Mr H £296 in respect of his loss of earnings.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 January 2024.

Richard Sowden  
**Ombudsman**