

The complaint

Mr N complains about how Mulsanne Insurance Company Limited (Mulsanne) dealt with a claim on his motor insurance. References to Mulsanne include other organisations and individuals acting on its behalf.

What happened

Mr N had motor insurance with Mulsanne. His car was involved in an accident and Mulsanne decided it couldn't be economically repaired.

Mr N disputed this and so Mulsanne's engineer assessed the damage and agreed that the car was a total loss.

Mulsanne made an offer to settle the claim, but Mr N wanted to keep the car and have the outstanding finance agreement paid off. Mulsanne provided two options - Mulsanne offered to settle the finance agreement and pay Mr N the remaining share of the market value of the car, or settle the finance agreement and allow him to keep the car if he paid Mulsanne £6,510.52.

Mr N said he'd been told he wouldn't have to pay anything to keep the car and so Mulsanne should honour this.

Mulsanne didn't agree.

Mr N wasn't happy about this and complained to Mulsanne about the settlement offer options, as well as the handling of the claim and lack of a courtesy car.

Mulsanne said:

"The car has been declared a write off due to the cost of repairs versus the value of the car, this point does not seem to be in dispute. The car has been written off at a Category S meaning you are legally allowed to retain the car if you want to, you have expressed a wish to retain the car.

The car has been valued at £26,373, you advised you were not happy with this valuation so further valuations were completed using Industry Tools which look at sold prices for cars of a similar spec, age and condition as your own.

[valuation 1] - £26,373

[valuation 2] - £24,750

[valuation 3] - £22,750

We also reviewed previous listings for your car which were sold at £27,495 and £22,912 respectively.

I therefore believe that as we have offered you the highest valuation of all guides available to

us that we have been fair in what has been offered and we are not in a position to increase this value.

We have established that you still have finance outstanding on the car and we are legally bound to pay the vehicle owner for the car, in this case that is the finance company. Any residual amount left from the pre-accident value is then paid to you.

In this case the outstanding finance on the car is £23,652.97 which we will pay directly to the finance company. The amount outstanding from the valuation after payment of this is £2702.03 which would be paid directly to you. In this case your policy excess has not been deducted as we have an admission of liability from [the third party insurer].

You have advised that you want to retain the car for personal reasons. When allowing a customer to retain their car after we have paid the value for it we would deduct the salvage amount that we would receive from our salvage agents if we were to sell the car on.

In this scenario we would receive £9230.55 from our salvage agents and therefore this is the amount that we will charge you for you to retain the car.

Due to the deduction for the outstanding finance, there is not enough money left for us to deduct the salvage amount from your settlement as there is a shortfall of £6510.52.

I understand that your options have already been explained to you, but for clarity I can confirm that the only options are:

We pay you £2702.03 and we retain the car and sell it on via our salvage agents.

You pay us £6510.52 as a result of us selling the car back to you so that you can retain the salvage.

I understand that you believe we should be able to recover the full amount of the valuation of your car back from [the third party insurer], however this is not how this process works. Whilst [the third party insurer] have provided an admission of liability they will only pay us back legitimate losses.

In simple terms [the third party insurer] will know that due to the salvage category of the car that we will receive a payment for the salvage of the car, if we just give you the car without making a deduction for salvage, [the third party insurer] will challenge us on the amount paid and make a salvage deduction of their own, only reimbursing us what they believe a fair claims cost to be in terms of the value of the car LESS a deduction for salvage.

I can see from the claim that this has been explained to you a number of times, given we have a legal obligation to settle the finance on the car, we have now raised a payment to the Finance Company for the outstanding finance.”

Mulsanne didn't address the other points Mr N raised.

Mr N wasn't happy with Mulsanne's response and complained to this service. Our investigator didn't uphold his complaint. He said he thought Mulsanne handled the claim fairly and provided reasonable options for settlement, and he was satisfied that Mulsanne acted in line with the terms and conditions of the policy.

Mr N didn't agree with what the investigator said and so his complaint has been passed to me. Mr N wants Mulsanne to pay the finance and to release the vehicle as he says the third party insurer are willing to pay the salvage costs and claim.

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 don't uphold Mr N's complaint. I'll explain why.

I understand that Mr N remains unhappy with the handling of his claim and delays he says were caused by Mulsanne.

Mr N's motor insurance policy documents said:

"Accidental damage...

Your insurer will choose to pay either (after deduction of your excess):

- the cost of the repairs.*
- the current market value of your vehicle, or the declared value, whichever is the lowest.*

Your vehicle will then belong to your insurer...

Where your insurer chooses to make a payment, the payment would be made to you; or the legal owner of your vehicle if owned by someone else

- If subject to a hire purchase agreement, where the amount owed exceeds the payment, you will remain liable to the legal owner for the outstanding amount. Where the amount owed is lower than the payment, your insurer will pay the remaining amount to you.*
- If subject to a lease agreement, your insurer will pay the amount due to the legal owner up to their liability. You will remain liable to the legal owner if there is an outstanding amount."*

Market value was defined as:

"The cost of replacing your vehicle with one of similar type, age, mileage and/or condition at the time of the loss as assessed by your insurer. Guides (such as [name] Guide) which refer to vehicle values are used to assess the market value and also engineers and any other relevant sources."

The policy documents also said:

"General Conditions...

c) Your insurer may take over, defend or settle the claim (admitting liability on your behalf), or take up any claim in your name for their own benefit."

So having decided that the car was a total loss based on its engineer's opinion, it was within the terms of Mr N's policy for Mulsanne to decide how to settle the claim, and to settle it by paying the market value.

This service assesses market value as the price a consumer would have had to pay for a comparable vehicle across the various markets, immediately before the time of the damage or loss. What this value is will depend on the most likely market for the particular age and model of vehicle.

Assessing the value of a used vehicle isn't an exact science. We generally find the

valuations given in motor-trade guides most persuasive and we have online access to a number of these guides.

Our investigator obtained four valuations for Mr N's car using the trade guides. These were £24,750, £22,750, £26,007 and £26,324.

Mulsanne valued the car at £26,373 which is higher than any of the valuations this service obtained. Mulsanne also provided adverts for similar cars with lower prices than the valuation it offered. Mr N hasn't provided any adverts or other information which might suggest this valuation is wrong.

I therefore think that Mulsanne's valuation of the car was fair and reasonable.

Under normal circumstances when a business settles a total loss claim under a motor policy it retains the salvage (which means it takes possession of the vehicle in its damaged state), as set out in Mr N's policy terms above. The business will often have some sort of arrangement with a salvage dealer for disposing of the vehicle and will receive an amount in accordance with the contract agreed. This is sometimes a percentage of the vehicle's pre-accident market value and sometimes the amount the salvage dealer sells it for at auction.

However, there are occasions when the consumer wishes to keep the vehicle and most businesses will agree to this. When an insurer allows a consumer to keep the vehicle it will usually deduct what it would have received when disposing of it.

I have seen Mulsanne's salvage calculation of £9,230.55 which I accept was fair and reasonable. This is the amount Mulsanne reasonably expected it could sell the car for in its damaged condition.

Mr N had outstanding finance on his car of £23,632.97. This is the sum Mulsanne would have paid to the finance company, the owner of the car, in settlement of the claim. As Mulsanne had decided the market value of the car was £26,373, this would have left £2,720.03 available to be paid to Mr N.

However, Mr N wanted to keep the car, which had a salvage value to Mulsanne of £9,230.55. If Mr N kept the car, it would be fair and reasonable for him to pay Mulsanne the salvage value of £9,230.55 less the remaining £2,720.03 available to be paid to him to settle the claim, otherwise Mulsanne would be out of pocket due to not being able to sell the car.

Mr N believes that he was told on the phone that Mulsanne would settle the finance agreement and allow him to also keep the car without having to pay anything. However having listened to the call recording I don't agree that this is what the agent said. The agent just said that there were still figures to be reviewed before anyone could be paid.

In relation to other points Mr N has raised:

- Mr N says he incurred recovery and storage costs for the car and Mulsanne should pay. However Mulsanne says that he hasn't raised this or provided evidence such as invoices, so I don't think it's fair and reasonable to expect Mulsanne to pay for this. It is open to Mr N to contact Mulsanne about this if he wishes.
- Mr N said Mulsanne was obstructive and incorrectly deemed his car a total loss. Mr N hasn't said in what way he thinks Mulsanne was obstructive but having reviewed all the information sent to this service I can see no evidence of this. When Mr N challenged Mulsanne's decision to declare his car a total loss, Mulsanne asked an engineer to review the decision. The engineer agreed the car was a total loss. Mr N

hasn't provided any expert evidence to contradict this, so I think Mulsanne's decision was fair and reasonable.

- Mr N says Mulsanne's staff were rude to him. I've listened to the only recording of a phone call that Mulsanne was able to provide to this service. Although Mr N strongly disagreed with what the agent said I don't think that they were rude or belittled him or talked down to him.
- Mr N's policy documents with Mulsanne said the following about the provision of a courtesy car:

"You are not covered: where your vehicle is declared a total loss, or your vehicle is stolen and not recovered." A courtesy car is defined as: *"A small hatchback provided by the approved repairer while they are repairing your vehicle."* As Mr N's car could not be repaired and was not being repaired, he wasn't entitled to a courtesy car under the terms of his policy.

- I don't think it's the case that the third party insurer agreed to pay the salvage and the claim. As it was decided that the other driver was at fault, their insurer would reimburse Mulsanne for what Mulsanne paid to settle the claim, provided the third party insurer thought this was reasonable. It would be highly unusual for a third party insurer to offer to pay more than this, and I've seen no evidence that this was the case here.
- Mr N says that Mulsanne caused delays in the handling of his claim. Whilst I can see that there was a short period when it appeared that nothing was happening with the claim, I don't accept that this caused unnecessary delay, as Mr N hadn't accepted either of Mulsanne's suggestions for settling the claim.

Taking all of the above into account, I think that Mulsanne has acted fairly and reasonably, and in line with the terms of Mr N's policy and with the approach this service would expect.

My final decision

For the reasons given above I don't uphold Mr N's complaint. So I won't be asking Mulsanne Insurance Company Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 30 July 2024.

Sarah Baalham
Ombudsman