

complaint

Mr D complains about how Highway Insurance Company Limited (Highway) handled a motorcycle insurance claim for his stolen motorbike. He said further damage was caused by its salvage agent and wants compensation of £1,100 for this.

background

I issued a provisional decision on this complaint on 4 September 2019, an extract of which is attached and forms part of this final decision. In my provisional decision I explained why I thought this complaint should not be upheld. And I asked both parties to send me any further comments and information before I reached a final decision.

Highway confirmed that it had no further information to add and accepted the findings. Mr D however raised further points in response to my provisional decision, which I've considered and addressed below. I'm now in a position to issue my final decision.

my findings

I've re-considered all the available evidence and arguments, to decide what's fair and reasonable in the circumstances of this complaint.

In response to my provisional decision, Mr D raised the following points, some of which were raised in his initial complaint. He's said that:

- 1) as we've concluded highway is responsible for the bike being returned in its damaged state, he shouldn't be held responsible for the storage or alarm fees that followed, as he would never have agreed to keep the bike;
- 2) there was no need for the bike to be moved to assess the damage, and it should have been assessed at the garage where he had chosen to store it;
- 3) the calculations in the provisional decision are incorrect. He has calculated these as: bike value - £7,625; outstanding finance - £4,346; settlement already agreed - £2,144; remaining amount - £1,135. And the storage fees of £735 + alarm cost of £360 = £1,095, which suggests £40 is missing.

I'll address each point in turn.

I appreciate why Mr D feels he shouldn't be held responsible for any further costs associated with the storing or securing of his bike. And my provisional decision set out why I think it's more likely than not the additional damage present on Mr D's bike was caused while in Highway's (or its agent's) possession. So, whether or not Mr D should be held liable for the storage and alarm fees that followed, was something I thought about carefully.

When Mr D was informed his bike was a total loss, he seems to have made it clear he wanted to keep it – at which point it was returned (albeit in its damaged state) to his chosen repairer. And I accept Mr D's said he would never have agreed to accept the bike back, had he known the condition it was in. And he's explained that the reason he was unable to visit the garage to see the bike until much later was due to him being in hospital.

But I've listened to the initial call that Mr D made to our service regarding his complaint. And in this call, he explained that he'd been in and out of hospital and had work to juggle, and so

he hadn't had the chance to go and see the bike. Which is different to Mr D being *unable* to see the bike due to him being in hospital.

So, I think at the point the bike was returned to Mr D's garage, if he was able to attend work as he's indicated, it's reasonable to conclude he was well enough to have been able to visit the garage to see the bike, or at least arrange for someone else to inspect it – at which point it would've been clear its condition had deteriorated. Mr D would have then been able to notify Highway he no longer wanted to keep the bike, and therefore mitigate his losses for the storage costs and alarm fees that followed.

So, I think the subsequent costs accrued after the bike was returned to Mr D's chosen garage, were not as a result of the bike being returned, but as a result of the bike not being inspected by Mr D for a number of months. So, for the same reasons set out in my provisional decision, I don't think it's fair to hold Highway responsible for the storage or alarm costs Mr D has incurred. And therefore, I make no further award in that respect.

Regarding Mr D's second point – I appreciate he feels that his bike didn't need to be removed from his chosen garage for it to be assessed.

Highway's explained that the reason the vehicle was sent to be assessed at its salvage agents, was that the report it received from Mr D's garage, which included an estimated cost of repairs, suggested that the bike would be considered a total loss. So I think it was reasonable for the bike to be sent to its salvage agent to be assessed there. Because if the bike was deemed a total loss (which it was), this is where it would've ultimately been sent. So, I don't think Highway was wrong in doing this, and again, I won't be making any award to Mr D in that respect.

Mr D's third point is that he thinks the calculations made in my assessment were incorrect by around £40. I'll try and explain these calculations in a little further detail.

The bike was valued at £7,625, from which £4,346 was owing in outstanding finance, leaving £3,279 remaining. Mr D was required to pay the first £400 of his claim by way of an excess on his policy. As explained above, I'm satisfied Mr D is responsible for the storage fees of £735. And when these costs are deducted from the £3,279 that remained, this leaves an outstanding amount owed to Mr D of £2,144.

Highway has made two payments to Mr D – one for £879 and another for £1,265 – which totals the £2,144 owed. So, I'm satisfied Mr D has been awarded the correct amount in respect of his claim. So again, I won't be asking Highway to pay anything further to Mr D in settlement of his claim.

I accept Mr D's unhappy with the decision I've made. But having reviewed all the information afresh, including the new points raised by Mr D, I've reached the same conclusions I reached in my provisional decision, and for the same reasons.

my final decision

I understand Highway Insurance Company Limited has offered Mr D £2,744 in total settlement of his claim, which includes £600 in compensation. I conclude that's fair and reasonable in all the circumstances.

So, my final decision is that Highway Insurance Company Limited should pay Mr D this amount if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 January 2020.

Brad Mcilquham
Ombudsman

extract from provisional decision

background

Mr D's motorbike was stolen in August 2018 and was recovered shortly after and sent to a garage of his choosing. His bike needed to be assessed by the insurer, so it was collected by its salvage agent to be inspected and delivered to its approved repairer.

The repairer assessed the damage and said the bike should be written-off (known as a total loss) as the cost of repairs exceeded its value. And Highway agreed to settle Mr D's claim on this basis. It valued Mr D's bike at £7,500, and deducted the excess, outstanding finance and value of the salvage for him keeping the bike, and made payment to him for £879. It then returned the bike to his chosen garage as Mr D had wanted to keep it.

Mr D was in and out of hospital for some time, so it wasn't until March 2019 that he went to the garage to collect the bike. During this time he'd accrued storage costs of £735; and he'd had to pay £360 for a new alarm.

Upon arriving at the garage Mr D noticed additional damage to his bike and saw that parts were missing. He says, had he known his bike had been returned in this condition, he would never have agreed to keep it, and therefore wouldn't have incurred the storage or alarm costs he did. He was also unhappy with the £7,500 valuation, and believes it was worth more.

Highway said it looked at images of the bike before and after its salvage agent collected it but identified no changes to its condition. But it agreed to a further inspection in March 2018 to reassess its value, and instructed its engineer to provide a second report. The report came back setting out the level of damage present, and what its engineer thought was the cause - and it increased the bike's valuation from £7,500 to £7,625. But as the estimated repair costs were £7,628, this meant the bike was still a total loss.

Highway recalculated the settlement based on the new valuation and the fact Mr D no longer wanted to keep the bike, which took his settlement to £2,144. So it paid him a further £1,265. Mr D remained unhappy with Highway's offer and asked to see the before and after photos.

Highway said it had made a mistake and the only pictures available were from the date the bike was collected from the garage, and not from when it was returned. It also said no photos were available from Mr D's garage, and that no delivery note was left by its salvage agent. But because it thought the salvage agent should have completed a delivery note and taken pictures, it agreed to pay Mr D a further £600 as a gesture of goodwill. Mr D remained unhappy and brought his complaint to this service.

An investigator has looked into Mr D's complaint already. She thought that Highway had handled Mr D's claim reasonably, and she thought its offer to settle his claim was fair. So she didn't uphold the complaint.

Mr D remained unhappy and asked for an ombudsman's decision.

my provisional findings

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've currently reached the same conclusion as the investigator, but for slightly different reasons. I'll explain why.

Mr D had wanted to keep his bike. So to have realised this was no longer worthwhile due to the level of damage present must have been upsetting. Mr D's referenced external reviews which he feels supports his view that the salvage agent was responsible for the damage. And he's also provided further images of the bike at the point the salvage agent were selling it, suggesting its condition had changed further.

Mr D may have seen negative reviews about the salvage agent and its practices, and I can understand why he thinks this supports his claim. But my role is to consider what's happened in the individual circumstances of this complaint. And if something went wrong, then what Highway should do to put things right.

There's nothing to show for definite where the additional damage to Mr D's bike occurred, so I've thought about what's most likely. At the point Highway's salvage agent collected the bike, it took pictures of its condition. And it seems that further pictures should have also been taken at the point the bike was returned. A delivery note should have also been provided, so that it could evidence whether or not any further damage was caused while in its possession. But it seems this didn't happen.

While the sheer absence of this evidence doesn't necessarily mean Highway was responsible for the damage, the garage the vehicle was being held at had been given no authority to go ahead with repairs, and was only storing the bike. So I think it's unlikely that Mr D's bike was damaged while in storage with his chosen garage.

When an insurer considers a vehicle to be a total loss it's a general principle of insurance that the salvage becomes the insurer's property. It's usual for the insurer to then sell this to a salvage agent. I'm pleased to see Highway agreed to Mr D keeping the salvage himself when he asked, however it's unclear at exactly what point the salvage agent was made aware that Mr D wanted to keep the bike.

But given the capacity it was acting in, I think it's more likely that Highway's salvage agent assumed it would be keeping the bike once Highway deemed it a total loss. And that it wasn't until such time that it realised Mr D wanted his bike back that it was returned to his garage, in its present condition. So I think it's more likely than not, that the damage to Mr D's bike occurred, while it was in Highway's, or one of its agent's possession.

Mr D had bought this bike and it was a limited edition, so the fact it was no longer worth keeping would understandably have caused him some distress, for which I think Highway should compensate him. But Highway's already agreed to pay Mr D £600 due to the fact no delivery note or photos were provided by its salvage agent. And this is the same sort of amount I'd be suggesting if it hadn't already offered to pay this. I think this fairly recognises the upset Highway's failings would have caused Mr D. So I think this offer of compensation is fair and reasonable in the circumstances.

The next thing to consider is whether or not Highway's offer to settle Mr D's claim was reasonable. So the first thing I've looked at is the valuation.

When a bike is damaged as a result of theft, the policy says Highway will either repair or replace it, or will give the legal owner a cash payment of up to, or the same as, the market value or agreed value of the motorcycle at the time it was damaged.

It doesn't seem that Mr D had an agreed value policy, so it's the market value that applies here. The policy defines market value as – *“The cost of replacing **your motorcycle** with one of the same make, model, specification, mileage and age, and which is in the same condition **your motorcycle** was in immediately before the loss or damage **you** are claiming for”*.

When looking at complaints of this nature, we don't carry out our own valuations. But we look to see whether the insurer has made a fair and reasonable offer in settling a claim. To do this, we use relevant trade guides which we generally find persuasive, as they're based on nationwide research of likely selling prices.

Highway initially valued Mr D's bike at £7,500, and this was further increased to £7,625 after a second inspection. Having looked at relevant trade guides, they suggest the retail price of a bike in the same condition as Mr D's prior to the theft, would have been around £7,437. Highway also provided adverts to show similar bikes being sold for that amount. Given that Highway's offer is higher than the trade guides suggest, I'm satisfied the valuation Highway placed on the bike was fair in the circumstances.

I appreciate Mr D wants a higher figure than this for the extra parts of his bike he said were damaged or had gone missing. But this settlement is based on the pre-damaged condition of the bike. So the sum offered already takes into account the cost of these parts. So to agree to reimburse these costs further would be to indemnify Mr D for his claim twice, which I don't think is fair to do. So I'm not asking Highway to increase its offer here.

As I think Highway's valuation of Mr D's bike is fair, I then need to consider the deductions it's made before settling his claim, and whether these were reasonable.

The first deduction was for the excess on Mr D's policy. This is the agreed amount of money a policy holder will first pay towards a claim. So in practice, this is the amount an insurer will usually deduct initially from any claim payment due. I'm satisfied Mr D's policy had an excess on it of £400, and that this excess was due to be paid in respect of Mr D's claim. So I think it was fair of Highway to have deducted this amount at the time of settlement.

The next deduction was for the outstanding hire purchase finance owed. When financing a vehicle on hire purchase, monthly repayments are usually made with the loan secured against the vehicle. This means a customer doesn't own the vehicle until the last payment is made. In the event the vehicle is written-off and outstanding finance is still owed, then any money due to the customer needs to be used to clear the outstanding finance first.

The figure provided by Mr D's finance provider suggests the outstanding finance owing on Mr D's bike was £4,346. So I think it was right for Highway to have paid this amount to the finance provider upon settling Mr D's claim. So I'm satisfied it's acted fairly in this regard.

The final deduction from Mr D's settlement was £735 for storage costs. Mr D's bike had been stored at the garage for a considerable amount of time, and I'm satisfied the above costs were due to be paid. I appreciate Mr D's health at the time meant he wasn't able to visit the garage as soon as he otherwise may have been able to, which might have allowed him to potentially mitigate some of his costs. And I think it's likely that had Mr D seen the damage present on his bike in October 2018, he would have made the same choice as he did some five months later not to keep it.

But equally, while I accept the delays were largely outside of Mr D's control, his bike was returned to the garage by Highway's salvage agent the month after it was collected. So the fact he didn't visit the garage for a further five months, which ultimately led to the storage costs being incurred, was not Highway's fault either. So as I don't think these delays were caused by Highway, this isn't something I hold it responsible for. So I'm not telling it to do any more regarding his storage or alarm costs.

The above amounts when deducted from the value of Mr D's bike left £2,144 remaining. And Highway's told us it sent Mr D two cheques; one for £879 and another for £1,265. So I'm satisfied Highway has settled Mr D's claim as I would have expected, and that he's been paid the correct amount.

Mr D is understandably unhappy he was unable to have his bike returned, and I appreciate he wants to be compensated further. But for the reasons I've set out above, I currently think Highway's already done enough to resolve this issue and settle Mr D's claim. So in the circumstances, I won't be asking it do any more. I know this isn't the answer Mr D was hoping for, but I hope I've been able to explain clearly why I've reached this conclusion.

Mr D's also complained about his number plate not being returned, but he's since confirmed this issue has now been resolved, so I haven't addressed this in my decision.