

The complaint

Mr H complains that AWP P&C SA unfairly turned down a claim on his mechanical breakdown insurance policy.

What happened

Mr H bought a car which no longer covered by the manufacturer's guarantee. At the time he also chose to purchase the manufacturer's extended comprehensive warranty. The extended warranty is provided by AWP.

A few months later Mr H's car broke down, so he had it recovered to a manufacturing garage to be inspected and claimed on his policy with AWP. AWP liaised with the manufacturing garage and after extensive diagnostics it was decided the car needed a new engine. AWP then turned down the claim for a new engine and said the car hadn't been serviced in line with the manufacturer's recommendations.

Mr H didn't think this was fair and complained. He said he'd bought the car in good faith and had thought it had been serviced in line with the manufacturer's recommendations, so didn't think it was his fault a previous owner had the car serviced late. He also said AWP would have known this from the start as they work with the manufacturing garage and if they'd told him this he wouldn't have gone ahead with the diagnostics, which he said had now amount to around £4,000.

AWP reviewed the complaint and rejected it. They said the car had been overdue an oil service by around one year, during the time the car had travelled around 3,000 miles past its required service interval. Mr H didn't think this was fair and referred his complaint to our service, he said AWP could have checked the service history when he bought the car and let him know they wouldn't have covered it.

I issued a provisional decision on this complaint on 31 October 2022 where I said:

"The term AWP has relied upon to decline Mr H's claim says:

"1. a) Care of the vehicle - you must keep your vehicle in an efficient and road worthy condition and regularly service it in accordance with the manufacturer's recommendations and genuine parts, or parts of equivalent specification must be used."

I've looked at this term and I don't think it applies here, I say that because it refers to "you", which is defined in the policy as "The owner or user of the insured vehicle as specified on the confirmation of cover". This therefore refers to Mr H, and considering the overdue service occurred before he bought the car this term wouldn't apply in this case.

In any event the Insurance Conduct of Business Sourcebook (ICOBS) says it's unreasonable for an insurer to decline a claim unless the claim is connected to the breach. Our investigator asked AWP whether the engine failure was due to the overdue oil service and if it was, for an explanation on how the damage occurred as the car was only overdue

it's service by around 3,000 miles. AWP didn't respond and has previously just given generic reasons about how not servicing a car can affect an engine but hasn't given specifics about this failure and why going over the service interval by 3,000 miles would make a difference. I'm therefore not satisfied AWP has shown it's fair and reasonable to turn down Mr H's claim.

As I don't think AWP should have turned down Mr H's claim, I've thought about what needs to happen to put him back in the position he would have been in if AWP hadn't incorrectly declined his claim.

Mr H said his car had been with the manufacturing dealer and hasn't been repaired. As he couldn't store it with the garage any longer, he's had it recovered to his parents' house where it's been stored. Mr H said he's not paid insurance or tax on the car but has had to buy a cover to prevent it deteriorating. He's also said his partner's parents bought her a small car as they needed one to get around, so he's shared this car with his partner.

As I don't think AWP should have declined Mr H's claim, AWP should pay the claim for Mr H's replacement engine, in line with the remaining terms and conditions of the policy. Mr H has also paid for the diagnostics to his car and has provided an invoice for £4,053 for it. The policy terms say it will cover diagnostics if a claim is accepted, therefore it follows that AWP need to pay Mr H £4,053 as this is what he paid for diagnostics. Mr H also provided an invoice for the recovery of his car for £189. As he's only paid this as AWP declined his claim, AWP should also pay Mr H this amount. AWP should also add 8% simple interest to both payments to compensate Mr H for not having the money. It should be calculated from the date Mr H paid the invoices until the date of settlement.

Mr H hasn't had use of his car for around a year, and I think it's fair and reasonable for AWP to compensate him for this. I've noted that Mr H had shared use of his partner's car during this time, so I've taken this into account when considering how much to award for loss of use. Courts generally award £10 a day when someone doesn't have use of another car, as Mr H had shared use of his partner's car, I'm satisfied it would be fair and reasonable for AWP to pay 50% of this amount. So, AWP need to calculate Mr H's loss of use at £10 per day from the date of claim until the date it pays his claim, and then pay 50% of this amount to Mr H.

I understand Mr H said his partner's parents bought this car so he and his partner could get around. However, Mr H didn't pay for this car so it's not something I'm able to compensate him for. Even if he had paid for it though I wouldn't award the full amount the car cost. This is because the car will have a re-sale value and so any compensation would need to be the difference between what Mr H paid for it and how much he sells it for, assuming a fair market rate at the point of sale is lower than what Mr H paid for the replacement car. Also, for the tax and insurance on the replacement car I wouldn't award those even if Mr H paid them. This is because Mr H would always need to pay for road tax and insurance and Mr H hasn't paid these for his car so he hasn't incurred a cost he wouldn't otherwise have had.

I've also considered that Mr H has bought a cover for his car while it's off the road to protect it while it was off the road. While I understand Mr H's reason's for buying the cover, I'm not persuaded it was essential. So, I won't be telling AWP to pay him what he paid for the cover. I have though considered the unnecessary distress and inconvenience AWP has caused by incorrectly declining Mr H's claim. And when taking into account I'm telling AWP to pay Mr H's loss of use, I'm satisfied £250 is a fair and reasonable amount for AWP to pay to compensate Mr H for having to arrange the recovery and storage of his car and for the distress of thinking he wouldn't be able to get it repaired. Therefore, AWP should also pay Mr H, £250 for the unnecessary distress and inconvenience caused."

Mr H responded to my provisional decision and said due to the car's service record being stored electronically he had no way of checking it in more detail than he had. He also said the warranty had been transferred to him from the previous owner and that AWP could have checked the service records. Mr H also said it was likely due to his car not being used for so long that it would have additional damage and said it would only be fair for AWP to cover this damage, along with the recovery of his car to repair it.

AWP responded and didn't accept my provisional decision. They said Mr H's car had suffered a bent conrod, had swarf in the engine and that it had a suspected injector failure, but this hadn't been proven.

I asked our investigator to let AWP know that following the additional information I was still inclined to uphold this complaint and that if Mr H's car had suffered additional damage from not being used then it would be fair and reasonable for AWP to cover this. I asked for any additional comments by 18 November 2022, but AWP hasn't responded.

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.

AWP has provided some notes from the repairing garage on Mr H's car from when it was trying to diagnose the fault, along with a picture of a bent conrod. From AWP's comments and the garage's notes it appears the garage suspect Mr H's car suffered hydraulic lock due to a faulty injector. While AWP has explained what the fault is most likely to be, they've not shown how the fault is connected to the car going over a service by 3,000 miles. I'm therefore not satisfied AWP has shown the breach of not servicing the car in line with the manufacturing guidelines is connected to the failure of the injector. It follows that I'm therefore not persuaded to change my decision that AWP shouldn't have turned down Mr H's claim.

Regarding Mr H's point about his car suffering additional damage due to not being repaired. While I let AWP know I thought it would be fair to cover the additional damage, having reviewed this it wouldn't be appropriate for me to make a finding in this decision. This is because if the car is repaired and it's deemed to have additional damage due to the delays in dealing with the claim, then it would be a new issue which AWP would need to have the opportunity to respond to first. Mr H also said he'll need to pay for recovery again to have the car repaired. If Mr H does need to pay for recovery to have his car repaired, then he would also need to raise that with AWP separately as well.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. I require AWP P&C SA to:

1. Pay Mr H's claim in line with the remaining terms and conditions
2. Pay Mr H £4,053 for the diagnostics for his car
3. Pay Mr H £189 for recovery of his car
4. Pay Mr H 50% of £10 per day loss of use, calculated from the date of claim until the date his claim is paid
5. Pay Mr H £250 for the distress and inconvenience caused

For 2 and 3 above AWP P&C SA also need to add 8% simple interest to the amount it pays, calculated from the date Mr H paid these until the date payment is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 January 2023.

Alex Newman
Ombudsman