

complaint

Mrs A has raised a complaint about how Eldon Insurance Service Ltd has dealt with a claim made under her motor insurance policy.

background

Mrs A had a road traffic accident in August 2016 where she collided with a motorcyclist. Mrs A said the motor cycle was wedged under the front bumper of her car. She didn't feel able to drive the car after the collision, so the car was towed to her house and collected by a garage of Mrs A's choice. After assessing the car the garage said a number of repairs were required including a new gear box.

Eldon said Mr A, who was a passenger at the time of the incident, gave a slightly different version of events to Mrs A. He said the motorcycle went all the way under the car and came out the other end. He also said the car hit a wall causing damage to the nearside door mirror, rear door, side step, and rear wheel arch.

Eldon refused to pay for the damage to the gear box as it says the damage isn't accident related. It based its findings on the independent engineer's report who investigated the car.

The engineer first inspected the car on 18 August 2016. He said the car had suffered light impact to the near side front bumper and he said there were no visible signs of damage to the underside of the car. He also said the damage on the nearside of the car showed signs of it being historic due to visible rusting.

Mrs A disagreed with Eldon. She said Mr A had to pull the motorcycle out from under the car. And when the engineer investigated the car, he didn't use a ramp. And because of this she doesn't think the car was inspected properly.

In February 2017 the engineer completed a second inspection on a ramp. He said there was a single point puncture to the gearbox slump which appeared to be impacted with a small narrow implement such as a flat ended screwdriver. He said there wasn't any other visible sign of damage to the underside of the car. He also noticed fluid continuously leaking from the gearbox. And as the car had been at the garage since September, he would've expected the oil to have leaked out over the five month period. Eldon said there hadn't previously been any mention of oil leaking from the car by Mrs A.

Again, Mrs A disagreed with this. The garage says it topped the oil up to ensure the engineer could locate the puncture. And she says she told Eldon that Mr A's version of events wasn't correct. The motorcycle didn't go all the way under the car and the damage to the nearside door, mirror, rear door, side step and rear wheel arch which Mr A has said was accident related actually happened before the accident. But she felt it had been made worse after the accident. However she said she was unsure where Eldon had got this information from, as Mr A didn't sign a witness statement.

An investigator at our service looked into the complaint and recommended that it be upheld. She said that Eldon should pay for the repairs to the gear box as there wasn't enough evidence to conclude the damage wasn't accident related. Eldon didn't agree with the investigator's opinion. So it asked for the complaint to be passed to me to consider.

my provisional findings

In my provisional decision I explained why I didn't propose to uphold the complaint. In summary I said:

After the collision Mrs A provided her witness statement. She said the motorcycle was wedged under the car and her husband removed it before the police arrived. And I'm aware at the first inspection the engineer didn't use a ramp to investigate the underside of the car. So I agree with Mrs A's point that it would've been helpful for the engineer at the first inspection to have used a ramp to fully investigate the underside of the car. But this wasn't completed.

In the second inspection a ramp was used. The engineer found damage to the gearbox and said it wasn't accident related. It said the puncture seemed to be caused by a sharp object such as a flat ended screwdriver. During this inspection he also noticed oil continuously leaking from the gear box.

So while I appreciate Mrs A's frustration that a full inspection wasn't completed first time round using a ramp, I think it's likely the engineer would've noticed oil leaking from the car. I've also considered the fact that Mrs A hadn't reported oil leaking from the car. I agree that it's unlikely the motorcycle went all the way under the car or became wedged under the car to the extent it caused damage to the gearbox. I say this because it's reasonable to suggest if this was the case more damage would've been caused to the underside of the car.

The engineer said that the damage caused to the gearbox wasn't consistent with the collision and therefore it wasn't accident related. I appreciate that Mrs A was told by Eldon that it would cover the damage to the gear box if the police report supported her testimony. But unfortunately this report hasn't been provided. So I'm satisfied Eldon has acted reasonably by relying on the engineer's report to reach its conclusion.

Mr A said further damaged was caused to the car as a result of the accident. But Mrs A has said the damage to these areas of the car was pre-existing, but could've been made worse from the collision. But there isn't enough evidence to suggest the collision impacted the damage. The engineer's finding has suggested that due to rust it's likely this was historic damage, which I think is reasonable.

Because of this I don't think it's fair for Eldon to pay for the repairs to Mrs A's gearbox. Or for the repairs to nearside door mirror, rear door; side step and rear wheel arch. But the damage which Eldon has concluded is accident related should be covered in line with the policy terms.

Mrs A responded to my provisional decision with the following points:

- No signed statement was taken from Mr A, so it's unfair to consider this as evidence.
- Eldon made no attempt to contact the witness who was present when Mr A pulled the motorbike out from under the car.
- It's unfair to call the independent engineer 'independent' as he was paid by Eldon.
- Eldon said it would fix the gearbox if it obtained the police report. No report was obtained, and this was Eldon's fault.
- She didn't report the oil leaking from the car as she wasn't aware of it.
- There is no other evidence to suggest the gearbox was damaged due to another incident, as she says her car was in a drivable condition before the incident.

Eldon responded to say it didn't have anything further it wanted to add.

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. Having done so, I've come to the same conclusion that I set out in my provisional decision, for the same reasons. But I will address Mrs A's further points.

Eldon has tried to get the police report but on the 22 May the police told it there wasn't one. This is also consistent with the letter Mrs A received from the police on 12 May, which said "*a police report was not submitted to our office*". So I can't say this is Eldon's fault. I appreciate Eldon said it would pay for the gear box repairs if it received a police report which confirmed Mrs A's testimony. And while I agree it would've been helpful to establish what happened, I have to base my decision on the evidence that is available. I can't know what the police report would've said and it would be unfair to penalise Eldon for the fact there isn't one.

I accept that Mr A didn't provide a signed witness statement. But in any event I've accepted Mrs A's version of events. But even doing this, I think it's unlikely the motorbike caused the damage to the gearbox. I say this because the engineer has said it's likely there would've been other damage to the underside of the car if the motorbike had been wedged under the car to the extent it caused damage to the gearbox.

With that in mind, even though Eldon didn't pursue the witness for a statement, I don't think it would change the outcome. The witness statement is likely to support Mrs A's version of events, which isn't in dispute. But as there wasn't a full inspection of the underside of the car at the scene, it's unlikely the witness would be able to conclude what exact damage was caused by the incident and whether the motorbike punctured the gearbox.

I'm satisfied that engineer's report provided by Eldon was completed independently. The engineer has the appropriate expertise. So he is best placed to comment on how the damage was caused. If Mrs A wished to dispute this, she had the option to pay for an independent engineer of her choice to inspect the car. And without any other, expert opinion about how the damage was likely to have been caused, I find what the engineer has said to be persuasive.

I've considered Mrs A's comments that she didn't report the oil leaking as she wasn't aware of it. And I understand she was driving the car at the time of the incident – so I agree that it was in a drivable condition. However, given the report and my reasoning above, I think it's

unlikely the puncture to the gearbox was caused by the incident in question. So I can't hold Eldon responsible for it.

So I've considered the further points raised by Mrs A but my decision remains the same as I outlined in my provisional decision.

my final decision

I know this isn't the outcome Mrs A was hoping for but I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 29 August 2017.

Jade Rowe
ombudsman