

The complaint

Ms H complains that Watford Insurance Company Europe Limited cancelled her motor insurance policy and declined her claim following a motor accident.

What happened

A named driver on Ms H's policy had an accident and Ms H made a claim. Watford's engineer inspected the car and deemed it to be beyond economical repair. Watford offered Ms H £8,600 as the pre-accident value of her car and Ms H accepted this. Watford then obtained further comments from its independent engineer. He said that the left-hand rear tyre was below legal limits. Watford then declined the claim due to a policy exclusion for cars kept in an unroadworthy limit. It thought the tyre had burst and its condition had led to the accident. And it then cancelled the policy for the breach in policy terms.

our investigator's view

Our investigator recommended that the complaint should be upheld. Ms H's last MOT had found two tyres to be close to the legal limit. And he thought Ms H had provided evidence to Watford that she'd replaced these. He saw images of the tyres after the accident and couldn't see that the left hand rear one had burst or that it lacked tread. He thought Watford hadn't provided sufficient evidence to decline the claim.

The investigator thought Watford had unfairly declined the claim and cancelled the policy. He thought it should reassess the claim and the cancellation in line with the remaining terms of the policy. He thought that if a settlement was then paid to Ms H, Watford should add interest to this. And he thought it should pay Ms H £200 compensation for her trouble and inconvenience.

Watford replied that the engineer had measured all the tyres and the left hand rear one was found to be below legal limits. It said Ms H had told it that a tyre had burst causing her to lose control of the car.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms H and to Watford on 7 January 2021. I summarise my findings:

I could understand that Ms H felt frustrated by Watford's decision. She thought her claim had been settled and then Watford changed its decision. She explained that she'd been without transport for eleven months since the accident and was being pursued for the outstanding finance.

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably.

I could see that Watford relied on a policy exclusion to decline Ms H's claim. This states that

“26. Loss or damage if at the time of an incident, regardless of type, be that accident, Fire, malicious damage or Theft, Your Car is used in an unsafe or unroadworthy condition or, where such regulations require, does not have a current M.O.T certificate (You may be asked to provide details to show that Your Car was regularly maintained and kept in a good condition).”

I thought this was a common exclusion in motor insurance policies, and I didn't find it unusual or unreasonable. But it was significant, and I would expect it to be set out clearly in the policy wording, which I think it was. And I could also see the policy also required Ms H to maintain her car under the “Care of your Car” section. So I thought the term was sufficiently brought to the consumer's attention and I thought Watford could reasonably rely on it to decline a claim.

But I didn't think this would be fair or reasonable in Ms H's particular circumstances. I'll now explain why I thought this.

Watford relied on the following to decide to decline Ms H's claim: it said she'd told it that a tyre had burst; the left-hand rear tyre was measured by its engineer to be below legal limits; and, the last MOT had found the two rear tyres to be close to the legal limits.

But, from the images I saw of Ms H's car taken at the scene of the accident, this tyre hadn't burst. Ms H recalled that she may have told Watford that she thought a tyre may have burst, causing the accident. But she said this was just her thought at the time. Watford's engineer didn't provide a photo of this tyre, which I thought was surprising if it had been damaged. So I hadn't seen evidence that a tyre burst and so caused the accident.

The engineer said the tyre was below legal limits and he provided measurements of all of the tyres. But he didn't provide a photograph of the gauge readings to validate this. Nor did he provide a photograph showing the tread. I thought Watford had relied on the engineer's statement. But I hadn't seen that Watford had sufficient evidence that the tyre was below the legal limits and so justified the significant decision to decline the claim.

Ms H provided evidence in the form of an invoice for two replacement tyres dated four months before the accident. I could see that the invoice didn't state Ms H's name. But I thought Ms H had been consistent in stating that she had replaced the tyres following the MOT advisories, and so I had no reason to doubt her. I didn't think new tyres would be worn to below legal limits in this time.

So I thought Ms H had shown that she did maintain her car in a roadworthy condition. And I didn't think it was fair or reasonable for Watford to rely on the policy exclusion to decline her claim.

Watford wrote to Ms H after it had declined her claim cancelling her policy for breach of the policy conditions. But, as I've explained above, I didn't think Watford had justified this decision. So I didn't think it was fair or reasonable for it to rely on this to cancel the policy and I thought Watford should remove records of this and refund any charges applied.

Ms H was caused considerable distress and inconvenience by Watford's unfair decision. Our investigator recommended that it should pay her £200 compensation for this. But I didn't think this was enough in the circumstances as Ms H had been without her car and settlement for so long and had suffered inconvenience because of this. I thought Watford should pay her £400 compensation for this. This was in keeping with what I'd award in similar circumstances.

Subject to any further representations by Ms H or Watford, my provisional decision was that I intended to uphold this complaint. I intended to require Watford Insurance Company Europe Limited to reconsider the claim, add interest to any settlement, remove any cancellation markers and charges, and pay Ms H £400 compensation for her trouble and upset.

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.

Ms H replied that she had nothing further to add. Watford replied that it disagreed with my provisional decision for the following reasons:

1. Its engineer had provided depth measurements for all four tyres, so it had no cause for doubt he'd made any mistakes, despite the lack of photographic evidence.
2. It thought the measurements showed that the rear tyres hadn't been replaced after the MOT as they were unlikely to be so worn down in the interim before the accident.
3. It thought Ms H hadn't provided satisfactory evidence that she'd replaced the tyres. It asked for this now.

Watford was alerted to the possible tyre fault by its independent engineer who inspected the car after the accident. He supplied details of his inspection, including measurements of the tyre treads, and photographs of the car's damage. Unfortunately the engineer didn't substantiate the tyre measurements with photographs showing the gauge readings of the measurements or clear photographs of the tyres showing their tread.

He said in his report:

"We note that the left hand rear tyre is below the legal requirement therefore, we suggest a physical inspection to confirm your liability in this matter and suggest a review of incident circumstances for relevance."

But I can't see that Watford made a further physical inspection. It relied on the independent engineer's measurement of the tyre depth to decline the claim and cancel the policy.

I think Watford made a mistake in deciding that a tyre had burst and caused the accident. This error arose because it simply relied on a statement made by Ms H rather than relying on physical evidence, which was in fact contradictory. And I think Watford should have made the physical inspection suggested by the independent engineer. So I'm still not satisfied that Watford has sufficient evidence to justify a decision which had a such very serious outcome for Ms H.

Ms H provided an invoice for two rear tyres. The car's registration and Ms H's name aren't included. But I don't think this is unusual for small suppliers and cash sales. The invoice is dated a month after the car's MOT which had identified that the rear tyres were close to their legal limits. The supplier was from near Ms H's address. Ms H has been consistent in stating when she replaced her car's tyres. So I think, on balance, that it's most likely that Ms H did replace the tyres as she said she had.

Ms H sent the invoice to Watford almost a year ago, and a month after the accident when Watford first declined the claim. I can see that this invoice was passed to the policy's underwriters who maintained their position, but without explanation. Watford didn't then ask Ms H for an invoice with her name and the car's registration. And so I think it's unfair for it to ask for this now as it's unlikely to be provided.

Watford said new tyres wouldn't have worn to below or close to legal limits in the four months between their replacement and the accident. But as I don't think it has satisfactorily established the tread depths of the rear tyres, then I don't think this point is relevant.

So, I'm still not satisfied that Watford has justified its decision to decline Ms H's claim and to cancel Ms H's policy in keeping with the policy's terms and conditions. So I think it should put things right for Ms H, as I've stated above in my provisional view.

Putting things right

To put things right for Ms H, I require Watford Insurance Company Europe Limited to do the following:

1. Reconsider the claim in line with the remaining policy terms and conditions.
2. If a settlement is paid to Ms H, then interest should be added to this at the rate of 8% simple per annum from the date of repudiation to the date of settlement†.
3. Remove any cancellation markers from Ms H's record and any databases where it's been recorded and refund any cancellation charges.
4. Pay Ms H £400 compensation for the distress and inconvenience caused by its unfair handling of her claim.

† HM Revenue & Customs requires Watford to take off tax from this interest. Watford must give Ms H a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Watford Insurance Company Europe Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 15 March 2021.

Phillip Berechree
Ombudsman