

## **The complaint**

Mr T complains that Advantage Insurance Company Limited declined a claim made under his car insurance after his car was written off in an accident.

## **What happened**

Mr T has car insurance underwritten by Advantage. He made a claim in September 2021 after his car was involved in an accident and written off.

The accident happened because Mr T's brakes failed and he ran into the rear of a car in front. Mr T's car had been through an MOT relatively recently and the brakes had been serviced.

Advantage declined the claim. They said Mr T's policy didn't cover mechanical or electrical failures.

Mr T made a complaint to Advantage. They said the decision to decline the claim had been correct, but they paid Mr T £30 in compensation because in one phone call they hadn't been entirely clear with Mr T that he wouldn't be covered.

Mr T wasn't happy with this outcome and brought his complaint to us. Our investigator looked into it and didn't think Advantage had been fair to Mr T.

He said the exemption they'd quoted when declining the claim didn't apply in this case and Advantage should reconsider the claim.

He also said if the claim was then settled, Advantage should pay Mr T 8% simple interest on the settlement amount from the date the claim was declined to the date they made the payment. And – again if the claim were settled - they should also pay Mr T £400 in compensation for his trouble and upset.

Advantage didn't agree and asked for a final decision from an ombudsman.

## **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.

There's no real dispute about the facts of this case. Whether we uphold Mr T's complaint or not hinges entirely on whether the exemption Advantage used to decline the claim should in fact apply in all the circumstances.

Mr T's policy requires him to maintain his car in good working order. I'm satisfied he did everything possible to do this. The evidence shows that his car had an MOT relatively soon before the accident. And it shows that work was carried out on the brakes to make sure they met the required standard.

So, it seems to me that Mr T met his obligations under the terms and conditions of the policy.

Section One of the policy document sets out the cover provided for damage to the car (except by fire or theft). Section Two sets out the cover for damage caused by fire or theft. Mr T's claim was under Section One.

There's then a list of things which aren't covered under Sections One or Two. It's worth quoting the document at length because the outcome hinges on an understanding of the list. The document says:

*"You're not covered for:*

- *The excesses shown on your schedule....*
- *Damage to your car's windscreen or glass windows.*
- *Loss of or damage to any audio visual equipment....*
- *Accessories to your Car.*
- *Loss of use of your Car....*
- *Wear and tear....*
- *Failures, breakdowns, or breakage of mechanical, electrical, electronic or computer equipment.*
- *Damage to tyres caused by braking, punctures, cuts, or bursts.*
- *Loss of value following repair.*
- *Theft or damage if the Car keys were left in....*
- *Replacement of locks if the Car keys were left in....*
- *Loss of damage if someone claiming to be a buyer or agent takes possession of your Car deceitfully.*
- *Your Car being repossessed by its rightful owner....*
- *Any amount greater than the manufacturer's last list price.... for any part or Accessories.*
- *Repairs or replacements.... that improve the condition of your Car.*
- *Loss or damage as a result of your Car being driven or used without your permission by a member of your family or household....*
- *Loss or damage caused by an inappropriate.... fuel being used.*
- *Loss or damage as a result of malicious damage or vandalism, where the Police refuse to issue a crime number....*
- *Any additional damage resulting from your car being moved by anyone insured under your policy after an accident, fire, or theft.*
- *Loss or damage resulting from the legal confiscation of your Car..."*

The exemption Advantage said applied to Mr T's claim was the seventh one in that list, relating to failures, breakdowns, or breakage of mechanical, electrical, electronic or computer equipment.

They're saying essentially that Mr T isn't covered because the loss or damage he's claiming for is a result of a mechanical failure – in the brakes.

They say, in their final response to Mr T's complaint:

*"We do not cover any incidents that are due to mechanical failure"*

And, in the same correspondence:

*"... you're not covered for an incident due to failures and breakage of mechanical... equipment."*

I agree with our investigator that the exemption quoted is wrongly applied in this case. This is shown by the different formulations of the exemption in the policy (as above) and in the final response (as quoted above).

The policy says Advantage won't over – i.e. won't pay for repair of – failures, breakdowns, or breakage of mechanical equipment. They won't pay for repair of Mr T's brakes, for example, if they break down or fail.

On the other hand, the final response says Advantage won't cover *"incidents due to mechanical failure"* or *"an incident due to failures and breakages of mechanical equipment"*.

Unfortunately for Advantage, the policy doesn't say what their final response letter claims it says.

The most natural reading of the policy suggests that Advantage aren't going to pay for repairs to Mr T's brakes if they fail. It does *not* say they aren't going to pay for damage to his car if he has an accident caused by brake failure.

I bear in mind here that several of the listed exclusions begin with the words *"Loss or damage caused by..."* or *"Loss or damage as a result of..."* (see the list above). If Advantage had wanted the exemption they're claiming in Mr T's case to say what they now want it to say, one would have expected it would begin in the same way.

It doesn't – and therefore, I think most readers would take the exemption in question to mean that Advantage aren't going to pay for repairs to Mr T's brakes if they fail or break down. They wouldn't take it to mean that Advantage won't pay for damage caused in an accident that was due to Mr T's brakes failing.

I'm sure different interpretations could be put on the list of exemptions quoted above. But I also have to bear in mind that where the wording of a policy is ambiguous, the benefit of any interpretation should be given to the customer.

It's down to the business, who are after all the experts in insurance, to ensure that their customer is left in no doubt what they're covered for - and what isn't covered – when they choose to buy the policy.

In summary, I agree with our investigator that Advantage should reconsider Mr T's claim, beginning with the assumption that the exemption they relied on to decline it originally does not reasonably apply.

As I said above, Mr T has provided evidence to show that he did everything he reasonably could to maintain the vehicle, as he was obliged to do under the terms of the policy. I can't immediately see any other reason to decline the claim, but I am not a claims handler and I'll leave Advantage to apply the rest of the terms of the policy and make a decision on the claim accordingly.

### **Putting things right**

Our investigator suggested that *if* Advantage now settle the claim, they should also pay Mr T £400 for his trouble and upset.

I am going to come to a slightly different conclusion, but it will not make a significant difference to the amount to be paid to Mr T in total (to settle the claim and to compensate him) if the claim is settled.

That's why I'm not issuing a provisional decision in this case to invite further comment or information from Mr T and/or Advantage, despite coming to a slightly different conclusion to our investigator on the amount of compensation which may be appropriate. I note also that there is little dispute here about the facts of the case, so it's difficult to see any information which could now be provided which would sway my thinking.

Mr T has provided evidence that he had an agreement in principle to finance to purchase a replacement car. But this was dependent on Advantage settling the claim, so that Mr T could pay off the existing car finance agreement and have some money to contribute to the cost of the new car.

Mr T has been without a car since the accident. He's had to pay off the existing finance agreement month by month and he's incurred costs for travel by public transport. He's also lost the facility of being able to do certain things, such as taking an elderly relative shopping. He's also been paying his car insurance premium, on the assumption that he had to do so if Advantage were to re-consider the claim.

If Advantage would have settled the claim, but for the exemption they claimed, then their error has caused Mr T the trouble and inconvenience – and expense – of being without a car for several months.

I'm aware that loss of use isn't covered by the policy, but that's loss of use caused by loss or damage to the car. In this case, Mr T has been deprived of a car because Advantage didn't settle his claim.

That being the case – and assuming they do now settle the claim – I'm going to require Advantage to pay Mr T £10 per day for the loss of use of a car in the period between the date of the decision to decline the claim and the date Advantage settle the claim.

This is an amount generally used by the courts in cases where an individual has been deprived of the use of a car, to reflect the distress, inconvenience and expense that causes.

If it had been possible to precisely quantify the exact amount of Mr T's travel expenses in that time, I might have suggested a different calculation. But whilst he's been able to provide evidence that he had to take public transport to work and for other reasons, he understandably hasn't kept an exhaustive log of his travel expenses.

I'm not going to ask Advantage to refund any car insurance premiums Mr T has paid since the accident. They certainly didn't tell him he had to keep the policy on if he wanted his complaint considered. And if he were in any doubt about that, he could have enquired.

Mr T has continued to pay off the finance on his previous, now written off, car. That simply means that he'll pay less to settle that finance agreement if and when Advantage pay out on his claim.

So, in summary, *if* – and only if - Advantage now settle Mr T's claim and pay out for the loss of his car in September, they'll also need to pay him £10 per day – for loss of use of a car and for the distress, inconvenience and expense that has caused for Mr T - between the date the claim was originally declined and the date the settlement payment is made.

### **My final decision**

For the reasons set out above, I uphold Mr T's complaint.

Advantage Insurance Company Limited must:

- reconsider Mr T's claim in line with the remaining terms and conditions of his policy; and
- if they then settle the claim, add 8% simple interest to the settlement figure from the date the claim was originally declined until the date the settlement payment is made; and
- again if they then settle the claim, pay Mr T £10 per day from the date the claim was originally declined to the date the settlement payment is made.

If Advantage Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 June 2022.

Neil Marshall  
**Ombudsman**