

## **The complaint**

Mr A complains that AWP P&C SA (AWP) has declined a claim and avoided his motor warranty insurance policy after his vehicle suffered a catastrophic engine failure.

## **What happened**

Mr A's vehicle suffered a catastrophic engine failure. It was recovered to a dealership and the failure was diagnosed. However, following the diagnosis, Mr A was advised that there were irregularities in the electronic data retrieved from the vehicle. The dealership said that the data showed changes had been made to the engine management and gearbox control unit software after a specific date. AWP said this meant the vehicle was outside the scope of the cover the motor warranty insurance provided, so it declined the claim, avoided the policy and refunded Mr A's premium.

Mr A says he'd owned the vehicle for 18 months, and there were no alterations or manipulations made to the vehicle's engine software whilst in his care. But AWP didn't agree and refused to pay the claim.

So, Mr A got the vehicle repaired himself for approximately £14,000 and he submitted a complaint to this service. An investigator reviewed the complaint and said that based on the evidence that had been made available to us that AWP should reinstate policy and reconsider the claim.

As there was no response from AWP the complaint was passed to me for an ombudsman's decision.

I wrote to AWP. I explained that in the absence of any supporting data I would be asking AWP to reinstate the policy and reconsider the claim as per the view issued by our investigator. AWP replied and said it had supporting data, but the data was sensitive to the manufacturer. So, AWP set up a call between myself and the manufacturer to discuss what it had found when it retrieved the data from Mr A's engine.

I issued a provisional decision on this complaint on 13 April 2022. That provisional decision is below and forms part of my final decision.

## ***What I've provisionally 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. Having done so, I don't intend upholding this complaint. I'll explain why.*

*The crux of this complaint is whether AWP has acted fairly and reasonably by declining the claim and avoiding the policy.*

*The policy says it will cover the sudden and unexpected failure of a component which is covered. The engine is covered under the named component section of the policy. So, Mr A was entitled to submit a claim after his engine suffered a sudden catastrophic failure.*

However, the policy also says it will not cover “an insured vehicle that has been subject to alterations, has had experimental equipment fitted or has in any way been modified from the manufacturers approved specification”.

AWP says Mr A’s engine software has been manipulated and that this manipulation has happened outside of the manufacturers network. AWP says the most recent change in software happened between October 2019 and the date of the engine failure diagnosis.

Mr A says he owned the vehicle in October 2019 and there was no manipulation of the engine at that time. He says nothing was done in that period to alter the car and there is no evidential or quantitative proof to counteract this assertion. Mr A says once AWP saw the bill for repair it just looked for a way to decline the claim.

When the investigator issued the view on this complaint, AWP hadn’t supplied any data analysis to support its decline. AWP said the manufacturer had run the data and this had confirmed there were irregularities within the engine software. But AWP said this data was commercially sensitive and it couldn’t be shared. Mr A had already tried to get the data. He had written to both the manufacturer and AWP and both parties had referred Mr A back to each other. But neither party had provided any supporting evidence of software manipulation.

As the supporting evidence was deemed commercially sensitive AWP set up a call between the manufacturer and myself only in order to explain the data. As this is commercially sensitive information, I can’t share it with Mr A. But I’ve considered what the manufacturer showed me, and I accept it as a reasonable explanation. During the call the manufacturer shared on screen the “Fasta” data diagnostic analysis taken from Mr A’s vehicle. I confirmed that the make, model, mileage, registration and VIN were that of Mr A’s vehicle. The manufacturer explained that it had the ability to verify if modifications had been made to a specific vehicles’ software outside of the standard software. And in this specific case, the manufacturer was able to show me that the software on Mr A’s engine had been altered twice. The manufacturer advises that every log on, update or brief test is recorded in the software. And they were able to show me that changes from outside the manufacturers network had been made to this software at some point between October 2016 up to June 2019. And another change was made after 8 October 2019 up to the date the diagnostic was carried out.

To explain further the CAL-ID (calibration ID) and the CVN (calibration verification number). are not of the standard expected. And during the call I had with the manufacturer I was shown the calibration numbers and I can confirm they were not the same as the calibration numbers listed at date of manufacture. The manufacturer was able to show me that there were changes to the original calibration numbers recorded on or before June 2019 and again after 8 October 2019 and before date of diagnosis.

The manufacturer has also confirmed that the vehicle had been presented with software not designed for the i-frame standard of the vehicle and that multiple adaptations of both engine and gearbox software had been completed on the vehicle. This means the changes were made outside of the manufacturers network. Engine software modifications are known to increase the pressure on a vehicle’s components, and that is why AWP excludes any modifications outside of the manufacturer’s specifications. And I think this is fair and reasonable. AWP doesn’t want to provide cover for parts that are at a higher risk of failing. And its set this out clearly in its policy terms and conditions. So, AWP declined the claim and put Mr A back in the position he was in before he took out the cover. I’m satisfied with this, and I don’t plan to interfere with AWP’s decision.

*From the evidence I've seen the data presented on this vehicle shows the software is not at the standard expected. This means the vehicle is outside the scope of cover as per the policy terms and conditions. As such the vehicle would never have been on cover so I'm satisfied with what AWP has done by declining the claim, avoiding the policy and refunding the premium and I'm not going to interfere with its decision. Because of this I'm not planning on upholding this complaint and I won't be asking AWP to do anything more.*

### **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.

I sent my provisional decision on 13 April 2022 as set out above. AWP hasn't replied. But Mr A has.

Mr A says he is extremely disappointed with the provisional decision. He says that no change was made to the vehicle to suggest there was increased wear or pressure on the drivetrain. Mr A says AWP is simply spinning an unrelated instance on the vehicle to make it appear there were modifications, and that it is using any possible excuse not to pay the claim. Mr A acknowledges that the ombudsman has been shown specific software data. And he's expressed disappointment that this data can't be shared.

I acknowledge Mr A's disappointment. It is frustrating when sensitive data can't be shared. But every manufacturer has its own sensitive data and this specific manufacturer has explained the disadvantages of, and risks it runs, if either consumers or other manufacturers had access to the software or technology it uses in its vehicles. So, I think it's quite fair that the manufacturer isn't prepared share the data it found when it ran the diagnostics on Mr A's engine.

However, I can confirm again that the manufacturer did show me what the diagnostics had found. And I can confirm the diagnostics showed Mr A's engine had been altered twice and that the alterations were made outside of the manufacturers network. I was shown the calibration numbers and I can confirm they are not the same as the calibration numbers listed at date of manufacture. The manufacturer was able to show me that there were changes to the original calibration numbers recorded on or before June 2019 and again after 8 October 2019 and before date of diagnosis. As such I think it's more likely than not changes were made to the engine software on this vehicle as stated. So, AWP declined the claim and put Mr A back in the position he was in before he took out the cover. I'm satisfied with this, and I don't plan to interfere with AWP's decision.

I understand Mr A's strength of feeling on this case. And I understand the impact of my decision on him financially. But based on the evidence I've been shown and based on the fact no new evidence has been presented that would change my provisional decision, I see no reason to depart from my findings as set out above.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 June 2022.

Derek Dunne  
**Ombudsman**