

The complaint

Mrs M complained that Saxton 4x4 Limited ("Saxton") unfairly declined her claim under her motor vehicle warranty and there were some aspects of poor customer service experienced. Mrs M was represented during this claim, but for ease and simplicity, I will only refer to Mrs M.

What happened

Mrs M said whilst driving her car the "*restricted performance*" error message and red triangle illuminated on her vehicle's dashboard and the performance of the vehicle reduced limiting her to "*limp*" to her closest dealership.

The dealership identified several issues with the vehicle. Mrs M contacted Saxton, who arranged for an expert to inspect the vehicle. There were some issues with the expert not turning up which caused Mrs S some inconvenience.

Once the car was inspected, Saxton declined the claim based upon the report provided by its appointed expert. Saxton said "*the report concluded that none of the components inspected had suffered from a mechanical or material failure and advised the parts had failed due to gradual in-service deterioration. Due to this, your repair request was rejected, and our engineer informed you of our decision and the reasons for this*".

Mrs M thought this was unfair, she explained the warranty supported her for components that had failed to perform their normal function and she felt all the failed components had met this criterion.

Our investigator decided not to uphold the complaint. He thought Saxton had been reasonable in relying on the findings of an independent expert and he thought it had fairly declined the claim in line with the policy terms. Mrs M disagreed, so the complaint has been referred to 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.

Mrs M explained that she wanted to be present at the garage when Saxton's appointed expert investigated what had failed on the car. She turned up at the garage at the arranged time, but the expert didn't show. So, the appointment had to be re-arranged. This caused Mrs M inconvenience as part of her day was needlessly wasted. Saxton said this wasn't its fault, but the fault of the expert. This may be true, but as the expert was appointed by Saxton – ultimate responsibility for the experts work and actions lay with Saxton's. Therefore, I uphold this aspect of the complaint. For the inconvenience, I award Mrs M £100 compensation.

Mrs M said she was unhappy with the warranty that was sold to her (as well as the declined claim itself). However, our investigator said in his view "*[Mrs M's] concerns about the sale*

stem from [Saxton's] decision to decline the claim. So, I've only considered [Saxton's] handling of Mrs M's] claim. If [Mrs M] wants to pursue a complaint about the sale she can let us know and we can investigate that separately". Mrs M didn't respond saying she wanted the sale investigated, so I haven't considered the sale either – however, the option is still there for Mrs M to have this investigated if she so chooses, by contacting the investigator.

Mrs M has suggested the expert appointed by Saxton wasn't independent. She said the wording in the expert's report implies that it considered the terms and conditions of the contract – but she said its conclusions should only be limited to its expertise in engineering.

Its normal under warranty / insurance type claims for the underwriter to seek an expert view before deciding on a claim. I think Saxton has been reasonable in following this approach for this claim and I haven't seen any evidence to suggest its views shouldn't be properly considered. There hasn't been any information provided from other experts put forward in relation to the specifics of this case, so I'm reliant on what's been put forward by Saxton's expert to determine what's reasonable in the circumstances of this complaint.

Saxton said *"the [expert's] report concluded that none of the components inspected had suffered from a mechanical or material failure and advised the parts had failed due to gradual in-service deterioration"*. I have reviewed the report produced by the expert and Saxton's summary is consistent with the commentary provided.

Saxton declined the claim as it said, *"your warranty doesn't support a mechanical breakdown due to the gradual deterioration of your vehicle's performance due to age and mileage"*. I have checked the warranty and section 7 of the terms and conditions shows an exclusion clause which states *"the gradual deterioration of your vehicle's performance due to age and mileage, including, but not limited to, gradual loss of engine compression requiring the repair of valves or rings and the gradual increase in the oil consumption due to normal operating functions"*.

I think Saxton has come to a reasonable conclusion based upon the report provided by the expert it appointed. As gradual deterioration is not covered by the warranty, I think Saxton has been fair in declining the claim. The car was around seven to eight years old at the time of inspection, with a mileage of over 80,000. So, I don't think it would be unreasonable to expect signs of ageing and deterioration.

I appreciate Mrs M has put forward an argument suggesting that Saxton hadn't applied the terms and conditions to this claim fairly. Mrs M has argued that the exclusion only applied to the vehicle in its entirety and not its individual parts. However, I don't agree – the vehicle is intrinsically a sum of all its parts. As the parts start to fail, the performance of the car would do so also, so I don't think there is anything wrong with how Saxton has applied the terms and conditions. I think the intent of the terms and conditions are clear.

Mrs M has provided reasoning why she thinks gradual deterioration doesn't apply in her circumstances. Mrs M has set out in depth why she thinks the reduced performance of her car was down to a sudden breakdown to part of her car (e.g. a fractured part) as opposed to a gradual deterioration of the part. However, I think the expert has been clear that he observed *"in-service age-related deterioration"* or *"in-service fatigue"*. He has stated the fracture was *"a well-documented issue and would not be classed as a sudden and unforeseen mechanical/material failure"* and he found no faults with the suspension compressor.

Saxton's evidence has been provided by an expert, so I find this to be more persuasive. And Saxton have clarified that gradual deterioration and fatigue that happens over time can often lead to a sudden fracture to a part. I think this builds on the experts reports and explains why

the impact of this may have appeared sudden to Mrs M who was driving the vehicle when the car's warning system first alerted her to the issue.

I think Saxton has reasonably interpreted its terms and conditions and applied these fairly to the findings from an expert. So, I think it has fairly declined this claim. As I haven't seen any expert reports that contradict what has been put forward by Saxton's appointed expert, I don't uphold this aspect of the complaint.

My final decision

My final decision is I uphold this complaint, I require Saxton 4x4 Limited to pay Mrs M:

- £100* compensation – for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 July 2022.

* Saxton 4x4 Limited must pay the compensation within 28 days of the date on which we tell it that Mrs M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Pete Averill
Ombudsman