

The complaint

Mr A complains that AWP P&C SA (AWP) has declined a claim on his mechanical breakdown insurance policy.

What happened

An issue arose with Mr A's vehicle and following a diagnostic test he submitted a claim on his insurance policy. However, when AWP was validating the claim, it discovered that the V5 for the insured vehicle was not in Mr A's name but was actually registered to a business that was a taxi company. AWP said the policy would not cover an insured vehicle used for taxi or private hire services, so it declined the claim.

Mr A says this vehicle is not being used as a taxi or private hire. He says it's his private, personal vehicle that is registered to his brother's taxi business. Mr A says just because that business is a taxi company, that doesn't mean this particular vehicle is used as a taxi or for private hire.

AWP didn't agree so Mr A complained to this service. An investigator reviewed the complaint and recommended that AWP pay the claim and £250 for the distress and inconvenience caused.

AWP still doesn't agree and its asked for an ombudsman to review this complaint. I issued a provisional decision on this complaint on 22 September 2022. I said I was going to uphold the complaint, but with a different recommendation. The 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'm thinking of upholding this complaint. I'll explain why.

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

The vehicle in question is registered to a business. And that business happens to be a taxi company. The V5, belonging to the vehicle has the taxi company listed as the registered keeper of the vehicle. Mr A says this is his brother's business.

AWP has declined this claim because it says cover is excluded under the following term "This warranty will not cover: An insured vehicle used for courier or private hire services, track days, off road use, competitions or racing of any kind". AWP says the fact the registered keeper on the vehicle's V5 documentation is a taxi company is enough evidence to exclude cover.

Mr A says this vehicle cannot be a taxi, as under local council regulations, it's too old to be registered as a "hackney carriage vehicle". I've reviewed these regulations and this vehicle is too old to be used as a taxi.

But AWP says this doesn't rule out private hire. It says Mr A could be using the vehicle for private hire, and this is specifically excluded.

Mr A says he doesn't use the vehicle for private hire. He says this vehicle is his own personal vehicle. Mr A has provided evidence of his role in the business, he is a resource and maintenance manager. He's not a driver. Mr A says he was undergoing a divorce from his then partner at the time of purchasing the vehicle. Mr A says that at that time, he had no fixed address and he was in between places of residence. Because of this he registered the vehicle at his brother's business for correspondence purposes, and he says he explained this clearly to AWP.

AWP says it wasn't made clear the business was a taxi company. AWP says the fact the vehicle is registered to a taxi company, it could potentially be used for private hire. AWP says it will provide cover on a vehicle that's registered to a business. But in this instance, it's the type of business involved that's causing the issue.

And I can see why this is causing concern. It is very possible Mr A is using this vehicle for private hire. But the key here is that the burden of proof lies with AWP to demonstrate that the vehicle is being used for private hire. And in this specific instance AWP hasn't provided enough to support this claim. I can't see that it asked for any further documentation, it didn't check Mr A's status in the business, it seems to have ignored the local council private hire regulations, and I can't see that it's taken into account Mr A's testimony.

I appreciate AWP says the V5 is enough evidence. But I'm not inclined to agree. Mr A has provided a plausible explanation as to why the V5 has a taxi company as its registered keeper. And as AWP knows a V5 isn't actually proof of ownership. The name on the document is the entity responsible for registering and taxing the vehicle, not necessarily the one who owns it. Further to this I note that AWP were happy to keep the vehicle on cover, as yet no premium has ever been returned or offered.

So, AWP now needs to do more. However, I don't think I can ask AWP to pay the claim. I've spoken to the garage and Mr A. The garage advised that Mr A took the car back in January 2022. Mr A says it's still not repaired. The garage said the only remarks it had on file was that the car was blowing smoke from the exhaust. Mr A has provided the diagnostic invoice from the garage. It says, "investigate smoking from exhaust". So, to be fair to both parties I think AWP now needs to reconsider this claim, in line with the remaining terms and conditions of the policy. I also think AWP should pay Mr A £250 in compensation for the inconvenience he has experienced from delays so far.

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.

AWP didn't respond to my provisional decision.

Mr A did respond. He asked us to clarify the decision, so we replied setting out the recommendations in the provisional decision again. Mr A also included a technician's report, job card and fault code print out in relation to the engine failure. I note that the diagnosis provided by the motor technician is that cylinder eight is misfiring. An endoscope review

shows scoring in the engine bore and the technician's recommendation is a new engine block and piston replacement.

I would like to acknowledge the additional information from Mr A. However, the additional information has no impact on the recommendations I set out in the provisional decision. The additional information will assist AWP as the engine problem has now been diagnosed. But I've only considered the exclusion AWP used to decline this claim in the first instance in this final decision. I haven't considered whether the actual engine failure is something that is covered by this policy. This is now something AWP has to consider without applying the exclusion that excludes private hire services. As such, I now direct AWP to reconsider this claim, in line with the remaining terms and conditions of the policy. AWP should also pay Mr A £250 for the inconvenience caused so far, as set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I require AWP P&C SA to:

- Disregard the "*private hire services*" exclusion in the policy and reconsider the claim, in line with the remaining terms and conditions of the policy.
- Pay £250 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 November 2022.

Derek Dunne
Ombudsman