

## **The complaint**

Mr P complains that Bapchild Motoring World (Kent) Limited (Bapchild) has declined two claims on his motor warranty policy.

Reference to Bapchild includes its agents.

## **What happened**

Mr P submitted two claims. The first claim submitted was for a failed rocker cover gasket, and a subsequent claim was submitted following the alleged failure of the fuel injectors in his engine. Bapchild declined both claims citing wear and tear.

So, Mr P complained to this service. He said the motor warranty policy was worthless and he wanted compensation to reflect the two failed claims that he says should be covered, the diagnostic tests, the time wasted and a refund of premium. Bapchild initially said this wasn't a product that came within our remit, and as such it said we couldn't look at the complaint. Bapchild also said the parts failed due to wear and tear, and this was excluded from cover.

An investigator reviewed the complaint. The investigator deemed the policy to be within the scope of our remit. The investigator also recommended that Bapchild pay the costs associated with replacing the rocker cover gasket only. The investigator said it was more likely than not that the injector failure was excluded.

Mr P agreed in part. He was happy that part of his claim was being paid. But he still felt the policy had been mis-sold and he wanted his premium back. Bapchild responded with an engineer's report solely about the injectors. But it didn't accept or reject the investigator's view. Because of this, the complaint has been passed to me for a final decision.

## **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.

Having done so, I'm upholding this complaint in part. I'll explain why.

I'll firstly address Bapchild's comments about this being a service agreement. Bapchild is a member of our compulsory jurisdiction so I'm satisfied we can consider complaints about it. I now need to consider whether Bapchild has been carrying out a regulated activity and whether this 'service agreement' is a contract of insurance. So, I've looked at the contract between Mr P and Bapchild. This contract is one which Mr P paid a fee for to protect him against mechanical breakdown. Our investigator has already set out the criteria I need to consider, to decide if this is a contract of insurance, And I'm satisfied, without setting the criteria out again here that this particular contract has all the features of an insurance contract. So, we can consider this complaint.

The crux of this complaint is whether Bapchild has acted fairly and reasonably by declining the two claims Mr P made under the terms and conditions of this policy.

The first issue is the rocker cover gasket. The garage determined that the gasket had failed, and that oil was spitting out whilst the engine was running. The policy is silent on whether gaskets are covered. But the policy does exclude wear and tear. There is nothing on file to document what happened, bar an invoice for repair. In later correspondence, Bapchild says that the content of any discussion about this gasket is outside its knowledge. It says that in all probability it failed as a result of wear.

If Bapchild want to decline the claim based on an exclusion in the policy, it needs to evidence that this is fair. But Bapchild hasn't sent us any information and there's no report been completed on the cause of the fault. So, I'm not satisfied Bapchild has shown its actions were in line with the policy or fair. It follows that based on the limited information I've seen; I don't find its decline of Mr B's claim fair. To put things right, Bapchild needs to pay Mr P's claim for the rocker cover gasket repair as set out in the invoice sent with our investigator's view, less the excess, but with 8% added interest from the time Mr P paid for the repair.

The second issue is the failed injectors claim. This time there was a conversation about the injectors and Bapchild sent an engineer out to inspect the failure. The engineer said a diagnostic scan showed no fault codes stored or pending. He said there was an evident mis-fire in the engine but the injectors had not been removed so weren't available for inspection or testing. In conclusion the engineer said the *"condition is wear and deterioration related"*.

Usually I'd say this wasn't enough. The reality is that the engineer made a conclusion based on the age and mileage of the vehicle, not based on a visual inspection of the failed part, as none of the injectors had been removed. However, I note that in order to get the vehicle back running smoothly, a full set of injectors was required. So, it seems there was a consistent issue across all of the injectors, and not just one or two of them. As such I think it's more likely than not this was a wear issue that was in line with the age and mileage of the vehicle as opposed to a sudden mechanical failing. As such, I have to conclude that even though Bapchild probably didn't do enough to decline the claim, it's more likely than not the injectors failed due to wear and this is excluded from cover. So, I won't be asking Bapchild to pay this part of the claim. I do note that Bapchild, via its agent did attempt to provide second-hand replacement injectors, but they were not the correct fit for this vehicle.

I appreciate that Mr P wants us to recommend a full refund, alongside paying both claims and compensation. He doesn't say the policy was mis-sold. But he does say that the policy is worthless, and not worth the premium. Mr P bought this 36-month extended warranty, probably in a face to face sale alongside the purchase of the car. And generally, when purchasing an extended warranty on a second hand car there will be certain limitations. I can't say what Mr P was told when he bought the policy, as I wasn't there. But I can see these limitations have been clearly set out in the documentation Mr P should've received, so Mr P should've been aware of the scope of the policy. And Mr P is now getting the benefit of this policy as he is getting part of his claim paid. As such, based on the evidence I have on file, there's no suggestion that the policy was mis-sold. So, I won't be asking Bapchild to refund the premium.

### **My final decision**

My final decision is that I uphold this complaint in part. I require Bapchild Motoring World (Kent) Limited to:

- Pay the invoice (including associated costs as per the invoice) for the failed gasket, less excess but with 8% interest added from the date Mr P paid the invoice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 24 November 2022.

Derek Dunne  
**Ombudsman**