

The complaint

Mr T complains that Watford Insurance Company Europe Limited (Watford) declined a claim involving a named driver on his policy and is pursuing him for the third-party costs, under his motor insurance policy.

What happened

In September 2018 Mr T says he was away from home and his partner (at the time) decided to drive his car. The car didn't have an MOT. Whilst driving Mr T's car, his partner was involved in an accident. She was determined to be at fault.

Watford wrote to Mr T later in September 2018 to say it was not indemnifying him for any claim that arises as a result of the incident when his partner was driving the car. It says its policy doesn't provide cover in these circumstances. Watford advised it would be pursuing Mr T to recover any payments it is required to make by law to any third-party.

In July 2022 Watford wrote to Mr T to say that under the Road Traffic Act it is obligated to settle any third-party claim made against its policyholder. The cost of settling the claim came to £84,463.05. Watford asked Mr T to pay this amount.

Mr T didn't think this was fair and submitted a complaint. Watford didn't change its mind, so he asked our service to consider the matter. Our investigator decided to uphold his complaint. She says although the policy terms allow a claim to be declined in the absence of an MOT, she didn't think Watford's decline decision was fair in these circumstances.

Our investigator says it's only reasonable to rely on this term if the absence of an MOT was material to the incident that gave rise to the claim. She says Watford hadn't shown that Mr T's car wouldn't have passed an MOT. So, she didn't think it'd shown that this had a material impact on the accident that happened in September 2018. Because of this she thought Watford should reconsider the claim in line with the remaining policy terms and pay Mr T £350 compensation for the distress he experienced.

Watford disagreed with this outcome. It thought its decision to decline the claim was fair. It asked for an ombudsman to consider Mr T's complaint.

It has been passed to me to decide.

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 have decided to uphold Mr T's complaint. Let me explain.

There is no dispute that Mr T's partner (now ex-partner) was driving his car when the accident occurred in September 2018. I can't see that Mr T is disputing his ex-partner was at fault for the accident. So, I needn't consider these points further. My remit here is to consider whether Watford behaved fairly when declining to indemnify Mr T for the costs incurred as a

result of the accident, under his policy.

In its response to Mr T's complaint Watford refers to the following excerpt from his policy terms. The section relating to, "*General Exclusions*" says:

"This Policy does not cover the following:

- used in an unsafe or unroadworthy condition or, where such regulations require, does not have a current MOT Certificate;

- any loss, damage or liability when Your Car is involved in any incident regardless of type, be that Accident, Fire, Malicious Damage, Theft or attempted theft and does not have a valid MOT Certificate in force at the time of the incident."

Watford has supplied information obtained by its underwriters when it was considering the claim. This shows a current MOT wasn't in place. The evidence provided shows the MOT expired in June 2018, which was around three months prior to the date of the accident.

I've thought about whether it was fair for Watford to rely on its policy terms in order not to indemnify Mr T in these circumstances. I accept no MOT was in place. But I don't think this means Watford acted fairly in deciding not to cover the cost of the claim.

When considering this point, I've thought about the industry guidelines as set out in the Insurance Conduct of Business Sourcebook (ICOBS). This says an insurer can only decline a claim, due to a breach of a policy condition if it's material to the loss. In these circumstances Watford would need to show that the lack of an MOT also means the car wouldn't have passed an MOT. I don't think it's shown that Mr T's car wouldn't have passed an MOT or that its condition was a factor in the accident. So, I'm not persuaded that it's fair for it to rely on this exclusion to reject the claim.

I can see from its response to our investigator's view that Watford says it would usually consider whether the lack of an MOT had been a relevant factor in the accident. But in this case, it thinks the time the vehicle was without an MOT is of relevance. It says the car shouldn't have been on the road other than to travel to an MOT testing station. Watford says it shouldn't have to provide cover when a vehicle isn't being driven legally. It says it was the policy holder's choice to allow his car to be driven despite there being no MOT in place.

I've considered these points. But it remains that Watford hasn't shown that the car wouldn't have passed an MOT inspection or that this was material to the loss. I can see from the contact records Watford supplied that Mr T described his car as roadworthy and in good condition, as of the time of the accident.

Having considered all of this, I don't think Watford treated Mr T fairly when declining to provide cover for the reasons it gave. He describes the stress this matter has caused him and the impact this has had on his mental health. I can understand that it must have been very upsetting for Mr T to be pursued for this amount of money, when he felt he wasn't at fault. I don't think this was fair and I agree with our investigator that it's reasonable for Watford to pay £350 compensation for the distress this caused.

My final decision

My final decision is that I uphold this complaint. Watford Insurance Company Europe Limited should:

- reconsider the claim in line with its remaining policy terms; and

- pay Mr T £350 for the distress it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 December 2022.

Mike Waldron
Ombudsman