

The complaint

Mr T complains that Advantage Insurance Company Limited declined his claim on his motor insurance policy. He wants it to pay his claim.

What happened

Mr T had a car accident and he made a claim on his policy. Advantage declined the claim because it said Mr T's car had failed its MOT the previous day and wasn't in a roadworthy condition. And it said the faults found by the MOT had contributed to the accident. Mr T said he still had a valid MOT, the faults weren't dangerous, and no warning lights had shown when he had started his journey. Advantage still declined the claim, but it paid Mr T £50 compensation for communication issues.

our investigator's view

Our Investigator recommended that the complaint should be upheld. She thought Mr T still had a valid MOT and his car was still legally roadworthy. She thought Advantage hadn't fairly decided that the car's condition had contributed to the accident. So she thought it should reconsider the claim and pay Mr T £200 compensation for the trouble and upset caused.

Advantage replied that it thought the warning lights for the anti-lock braking system (ABS), and traction/stability control had been showing and Mr T's car hadn't met the minimum requirements for roadworthiness. It thought these faults explained why Mr T had lost control of his car at a low speed shortly after the MOT. Advantage asked for an Ombudsman's review, so the complaint has come to me for a final decision.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr T and to Advantage on 22 November 2022. I summarise my findings:

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably.

Advantage relied on the following terms and conditions on page 36 of the Policy Booklet to decline the claim:

"You should maintain your Car in an efficient and roadworthy condition and have a valid Department for Transport Test Certificate (MOT)..." and

"If the condition of the car causes or contributes to an incident, cover won't be provided under the policy"

Mr T said he had a valid MOT until the end of the month in which he had the accident. Advantage thought his new MOT over-rode this. The Investigator pointed out that the government advice is that you can drive your vehicle away from an MOT garage if:

- *Your current MOT certificate is still valid*
- *No 'dangerous' problems were listed in the MOT*

Otherwise, the vehicle will have to be repaired before it can be driven. So, as Mr T's previous MOT hadn't expired, then he still had a valid MOT. And the new MOT didn't list any concerns that were "dangerous", though it did list five concerns that were "major" and requiring immediate repair.

But the government advice also says that if you can take your car away, then it must meet the minimum standards of roadworthiness. So Mr T also had a legal responsibility to make sure that his car was roadworthy.

The government advice is, amongst other things, that tyres must be free of cuts and defects and the brakes must work. Mr T's MOT failed the day before his accident, showing five major defects that required 'immediate repair'. Two of these faults were:

- *"Anti-lock braking system warning lamp indicates ABS fault"*
- *"Offside front tyre has cut in excess of the requirements deep enough to reach the ply or cords"*

Mr T said the ABS warning light was intermittent. He said it wasn't on when he started his journey. But it was picked up as requiring "immediate repair" in the MOT. A working ABS system is a legal requirement as faults with the ABS can lead to loss of stability and traction control.

So, due to the tyre cut and the brake fault, I was satisfied that Mr T's car was unroadworthy at the time of the accident. Mr T shouldn't have been driving it after the MOT test. And I was satisfied that this was a sufficient reason, in keeping with the policy's terms and conditions set out above, for Advantage to decline the claim.

Advantage also said these faults contributed to the accident. It pointed out that a driver is particularly at risk of losing control in wet conditions, where traction control is especially important. And Mr T had said he'd lost control of the car in wet conditions whilst travelling at 25 to 30 mph around a roundabout, having driven just 11 miles since the MOT.

Our Investigator thought that Advantage should carry out further investigation of how the faults contributed to or caused the accident. But I didn't think this was needed. I could see that Advantage had explained its reasoning in consultation with its inhouse engineers. And I thought this was sufficient in the circumstances to justify its decision to decline the claim.

Subject to any further representations by Mr T or Advantage, my provisional decision was that I intended to not uphold this complaint.

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.

Neither Mr T nor Advantage made further representations for me to consider. So I can see no reason to change my provisional decision.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 January 2023.

Phillip Berechree
Ombudsman