

The complaint

Mr S is unhappy with Mulsanne Insurance Company Limited's decision to decline his claim.

What happened

Mr S had motor insurance with Mulsanne. He had an accident on 24 April 2022 and his car was deemed uneconomical to repair. An independent engineer assessed the damage to Mr S's vehicle, and it was noted that the left-hand front tyre tread was below the legal limit. Mr S's claim was declined as a result, but he said it was declined unfairly because the tyre had been replaced before the accident and was within the legal limit. Mr S provided an engineer's report to support his argument. Mr S also said the service he received from Mulsanne was poor and confusing because it initially accepted his claim, but later changed its position.

Mulsanne said its report was more reliable because it was taken two days after the accident. The report highlighted the tyre in question measured a tread of 1.5mm and that the legal limit was 1.6mm. It dismissed Mr S's report saying it'd been taken weeks after the accident.

Our investigator said Mulsanne declined the claim fairly because it had relied on the independent report to do so. He said that report was more persuasive because it was carried out independently and within 48 hours of the accident having taken place. He also agreed the service offered by Mulsanne was poor and noted it'd taken three weeks to reach a decision on liability. He recommended Mulsanne pay Mr S £100 compensation in recognition of that.

Mulsanne agreed to pay the compensation. But Mr S disagreed. He reaffirmed his argument that the tyre had been replaced and was within the legal limit. He referred to the MOT test certificate on November 2021 which noted the tyre-ware and explained he'd replaced them. He believes the engineer sent by Mulsanne made a mistake and so requested an ombudsman to make a final decision – which is what I'll go on to do.

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 decided to uphold it in part. I agree with our investigator's opinion and mainly for the same reasons he's already explained. I think the £100 compensation is fair because there were times where communication became confusing, in particular, when it was explaining the positions of the tyres. Mulsanne interchangeably referred to the left-hand side and off-side tyre, which I think could have been simplified as it was clear Mr S was having difficulty understanding the terminology.

Further, I agree Mulsanne had enough information to reach the right decision sooner than it did, thus causing unnecessary delays and confusion about whether the claim had been accepted. Consequentially, Mr S received a pay out from his GAP insurance provider, because Mulsanne mistakenly told him it'd accepted his claim.

I've considered whether Mulsanne declined Mr S's claim fairly and I'm satisfied it did. I say that because it relied on independent specialist evidence to determine whether to accept liability. To be clear, the policy terms say;

"The insurer will not cover any injury, loss or damage caused while your car is:

Being driven in an unsafe, unroadworthy or damaged condition or where your car does not have a valid Department of Transport test certificate (MOT) if one is required by law"

This means it was Mr S's responsibility to maintain the vehicle to a roadworthy standard. The engineer's report taken two days after the accident persuasively demonstrates this wasn't the case. The tyre tread depth was below the legal standard. And, therefore, Mulsanne declined the claim fairly because the under-tread tyre was unsafe and unroadworthy as determined by the specialist's report in April 2022.

I've thought about Mr S's arguments about the engineer making an error and his comments about the MOT report. But I'm not persuaded by what he's said here. There's no evidence to support that an error had been made. Further, the MOT report from November highlights the tyre in question was nearing the legal limit as it was noted in the advisory section of the certificate. In addition, the evidence Mr S provided to show the tyre had been changed was related to a different tyre altogether. And so, I don't find this persuasive in the circumstances as it appears the tyre in question wasn't replaced, despite it being advised some four months prior to the accident.

I also wanted to acknowledge Mr S's engineer's report from July 2022. This report says the tyre tread depth is within the legal limit. But, like our investigator explained, this was completed months after the accident. And so, I don't think I can accurately rely on it to show the condition of the tyre in question at the time of the accident.

It's for these reasons, I don't consider Mulsanne to have declined Mr S's claim unfairly. But I do think the service offered was, at times, poor and so £100 compensation is awarded to Mr S.

My final decision

I'm upholding this complaint in part and Mulsanne Insurance Company Limited must now pay Mr S £100 compensation for the distress and inconvenience caused. But it need not take any further action in respect of its claims decision because I think it declined Mr S's claim fairly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 May 2023.

Scott Slade
Ombudsman