

## **The complaint**

Mr M complains that West Bay Insurance Plc trading as Zenith Insurance (Zenith) repudiated a claim he made against his motor insurance policy. And he complains Zenith caused further damage to his car while it was in the care of the approved repairers (AR).

For clarity, some of the actions I refer to in this decision were carried out by some of Zenith's agents. However, for ease of reading, I have mainly referred to Zenith throughout this decision; as it's responsible for the actions of its agents as the underwriters of the policy.

## **What happened**

In August 2022, Mr M was involved in an incident to which Zenith deemed Mr M to be liable. Mr M says that his car sustained minor damage but was in a driveable condition.

Mr M says that it took a long time from the incident for his car to be taken in for repairs - eventually, his car went in for repairs on 30 September 2022. He also adds that he didn't get a courtesy car until 7 October 2022, which was five weeks after the incident.

On 25 October 2022, Mr M says he received a phone call asking for the courtesy car back, the reason being that his claim had been cancelled. He later received a letter from Zenith stating that the claim had been repudiated – adding that it wouldn't be dealing with the claim under the policy because Mr M's previous MOT's had advisories relating to the condition of the brake pipe. It said that Mr M had enough time to replace the brake pipe, and it's said its engineers felt that this was a contributing factor to the incident.

Mr M disputes what Zenith has said. He says that the advisory on the MOT relating to the brake pipe was in 2021. The most up to date and current MOT didn't mention the brake pipe as an advisory. And so, he felt that he had looked after his car in line with the policy documents and didn't feel that the brake pipe was the cause of the incident.

Zenith later returned Mr M's car, at Mr M's expense. He said when he got the car back it had multiple issues including, no brake fluid, multiple warning lights, the gear stick cover hanging out and it was now in an undriveable condition. Mr M adds that his car was driven after the incident, and driven to the garage for repairs, so the incident couldn't have been the cause of the new damage to the car.

Zenith didn't change its view on the repudiation of Mr M's claim. It didn't think that Mr M's car had been maintained in a roadworthy condition in line with the policy terms and condition – namely because three previous MOT's had noted the corroded brake pipe, so Mr M should have got this repaired, which would likely have prevented the incident from occurring. It did however offer Mr M £150 for the distress caused when it's approved repairer damaged the gear stick cover. It also said that the approved repairer would fix this damage.

Our Investigator looked into Mr M's complaint and thought it should be upheld. Mainly because Mr M's car has passed the MOT's and so they felt this showed Mr M's car was roadworthy. The Investigator said Zenith should pay out on the claim, pay Mr M 8% simple

interest from the date it repudiated the claim until it was paid, reimburse Mr M the cost of transporting his car back to him and pay him £400 for distress and inconvenience. Mr M accepted the Investigator's view, however Zenith didn't.

In summary, Zenith explained that passing an MOT wouldn't be the only scenario that would deem a car to be roadworthy. It pointed out that Mr M had made repairs to some of the other advisory points on the 2021 MOT, so it wasn't clear why he hadn't also had the brake pipe repaired too.

Because an agreement couldn't be reached, the case has been passed to me to make a decision on the matter.

### **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 considered everything available to me, I will be upholding Mr M's complaint, for much of the same reasons as that of the Investigator. However, I will explain my rationale for this in more detail below.

The general conditions of Mr M's policy state:

*"2 Looking after your car:*

*You or any permitted drivers are required to maintain the insured vehicle in a roadworthy condition".*

It's now for me to decide if Zenith has applied these terms and conditions fairly when repudiating Mr M's policy, and I don't think it has.

I accept the MOT information from 2016 and 2017, prior to Mr M purchasing the car, state in the advisory section that there was slight corrosion to the brake pipe. MOT information from 2018, 2019 and 2020 does not mention any corrosion to the brake pipe. And the 2021 MOT information states *"Offside Front Brake pipe corroded, covered in grease or other material"*. The most recent MOT information from 27 June 2022, two months before the incident, doesn't mention the corroded brake pipe.

So, the most recent MOT prior to the incident, didn't mention any corrosion to the brake pipe at all. Because of this, it makes it very difficult for me to conclude, within my fair and reasonable remit, that the brake pipe on Mr M's vehicle required immediate attention and enough to deem the car to not having been maintained in a roadworthy condition.

Zenith has said that it isn't just the MOT certificate that it would take into account to deem whether a car was roadworthy or not, which I accept. But for me to be able to agree with it that Mr M hadn't maintained the vehicle in a roadworthy condition, I would have to make the finding that the vehicle was unroadworthy. And the MOT completed on 27 June 2022, passed, without any advisories relating to the brake pipe. If the brake pipe had corroded to the extent that the car was no longer roadworthy, I would have expected this to have been recorded and for the car to fail the MOT, which didn't happen. In fact, it wasn't mentioned at all.

I take on board Zenith's point that the corroded pipe wouldn't have got better over time. But I wouldn't have expected Mr M to have questioned the test centre carrying out the MOT as to why it wasn't mentioned as an advisory on the 2022 MOT. It also wasn't mentioned in 2018,

2019 or 2020. Zenith state that the pipe had corroded to the extent that it shouldn't have passed the MOT. While I have taken on board these comments, the evidence I do have shows the car did pass the MOT. And so, I can't fairly conclude that Mr M hasn't followed professional guidance and not maintained his car to a roadworthy state.

In addition to this, Mr M hadn't reported or noted any leaks from the brake pipe either before or after the incident. I can see that Zenith has provided photos that it says shows the brake pipe with a leak. However, I have also seen a video provided by Mr M, after his car was returned, showing no leak. Both parties have also provided their own reports from engineers which contradict each other and support their own version of events. So, it's difficult for me to be able to fairly conclude if there was a leak or not.

The only independent information I have is the most recent and valid MOT. And taking this into account, I don't think there was anything more Mr M needed to do to maintain his vehicle to be in a roadworthy condition. And so, I don't find that Zenith has fairly applied the terms of the policy in this case, and it needs to put things right for Mr M.

Mr M has said that when his car was returned to him, it was more damaged than when the appointed repairer collected it and he feels that the damage caused was deliberate. The AR has agreed to repair the damage to gear stick cover already, so I've assumed it has accepted that it damaged this. I can understand Mr M's strength of feeling here in that he feels the damage was deliberate, however, it's very difficult for me to be able to agree with this point without any clear evidence, which I haven't been provided with.

Overall, I think Zenith has caused Mr M a lot of avoidable distress and inconvenience. I've seen information on file that suggests the situation has caused Mr M to visit his GP. He's also been without a car for many months, which has impacted his ability to be able to work on some days. I will be considering these things when deciding on appropriate redress.

### **Putting things right**

It isn't clear from the information I have on file what Zenith's position is in terms of whether it deemed Mr M's car a write off, or whether it could be repaired. I've thought about both of these options when deciding on fair redress.

To put things right for Mr M, Zenith should:

- Meet the claim in line with the policy terms
- If this requires paying out on the claim (either the cost of repairs or the market value), then Zenith should also pay Mr M 8% simple annual interest from the date it repudiated the claim until it pays it.
- If repairs to the car are required, Zenith should repair Mr M's car to the pre incident condition.
- Reimburse Mr M the cost of his vehicle being delivered back to him, along with 8% simple annual interest from the day Mr M paid it, until it reimburses the cost. This is a cost Mr M wouldn't have incurred had Zenith dealt with the claim.
- Pay Mr M £400 for the distress and inconvenience this situation has caused – this is in addition to any other compensation award it has already agreed to pay Mr M.

If Zenith decide to repair the car to the pre incident condition, and Mr M has concerns over this, then that'd potentially be a new complaint. Here, I'm simply deciding whether the claim should be met or not.

**My final decision**

For the reasons set out above, it is my decision to uphold Mr M's complaint. I order West Bay Insurance Plc trading as Zenith Insurance to put things right for Mr M by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 September 2023.

Sophie Wilkinson  
**Ombudsman**