

The complaint

Mr T complains that QIC Europe Ltd unfairly declined his claim on his car insurance policy.

What happened

Mr T was driving along a small country lane following other cars. When driving down the lane Mr T said the lane went around a bend and there was then a ford in the road. Mr T said the car in front drove through the ford and, as it was just after the bend, he also drove through it without having much time to think. Mr T said after driving through the ford his car stopped and so he had it inspected by a garage.

The garage said the car had what is known as “hydro-lock”, and this meant he needed a new engine. Because of this Mr T claimed on his policy for the accidental damage to his car from driving through the ford. QIC reviewed the claim and declined it. It said there were signs warning drivers about the ford, and as Mr T had continued to drive through it, then QIC thought he hadn’t taken reasonable care to protect his car from damage.

Mr T didn’t agree and complained. He said it was at a time when there had been hot weather and the water level of the ford had seemed low. He said the car in front had driven through it and, as he was following them, he didn’t really have time to react and just followed them through the ford. QIC reviewed the complaint but didn’t uphold it. It stood by its position that Mr T’s claim wasn’t covered. Mr T didn’t agree and referred his complaint here.

Our investigator reviewed Mr T’s complaint and recommended it be upheld. She thought that by definition a ford is designed to be driven through. And that Mr T hadn’t thought it would damage his car by driving through it, as he’d seen another car drive through it before him. Our investigator recommended QIC accept Mr T’s claim and pay him the reasonable costs he incurred having his car repaired. She also recommended QIC pay £250 compensation to Mr T for the distress and inconvenience caused by having his claim unfairly declined.

Mr T accepted our investigator’s outcome. QIC didn’t and asked for an Ombudsman’s decision. As QIC didn’t accept our investigator’s outcome the complaint has come 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.

The terms and conditions of Mr T’s policy say under the general conditions section:

“You or any insured driver must take reasonable steps to:

- Protect your car from loss or damage;”

QIC has also relied on a term which says it won’t cover damage to Mr T’s car if it’s caused deliberately. I’ve therefore considered both of these to determine whether QIC has applied

them fairly, and I'm not persuaded it has.

For the term which refers to deliberate damage, there isn't anything other than QIC relying on the term to suggest Mr T damaged his car deliberately, and so I'm not satisfied that term applies here. I've therefore focused my decision on the reasonable steps term quoted above. The recognised approach to a reasonable care term is whether Mr T foresaw the risk and did nothing to mitigate it, i.e. that he was reckless.

QIC has said there are signs for the ford and that Mr T therefore would have known there was a ford and proceeded to continue to drive down the road. While I understand there were signs for the ford, a ford is also able to be driven through, albeit if the conditions permit. Mr T explained it was summertime and the weather had been warm. He also said he thought the water was inches deep and he didn't think it would have damaged his car. During the interview call after the incident Mr T also explained several other cars drove through the ford after he'd driven through it without any issues.

When considering Mr T's comments, I'm not persuaded QIC has shown he was reckless when he decided to drive through the ford. I say this as Mr T was aware of the ford and didn't think it would cause any damage to his car when driving through it, as another car drove through it before him. It therefore follows that I'm not satisfied QIC has acted fairly and reasonably by declining the claim under the term it has.

I've therefore looked at the impact of QIC unfairly declining this claim. Mr T said he's paid for a replacement engine and had this fitted and provided evidence of this. He also said he had to pay for storage of his car, moving it to be repaired and an initial inspection. Therefore, QIC should pay Mr T the £1,722 he paid for the replacement engine, and the £1,704.02 he paid for the engine to be fitted. For the storage of Mr T's car, initial inspection and moving it to a garage to be repaired, Mr T said this cost him £720. QIC should therefore also pay Mr T this amount, subject to Mr T providing evidence of this. QIC should also add 8% simple interest per year to the amount it pays for these, to compensate Mr T for not having the money. As this would be recorded as a claim, QIC will be entitled to deduct any applicable excesses from what it pays, in line with the remaining terms and conditions.

I've also noted in the file that it appears QIC has tried to recover £118.56 for an initial inspection fee from Mr T. As I'm satisfied this is a valid claim, it wouldn't be fair for QIC to recover its investigation costs, as that is all part of its claim handling process. Therefore, QIC needs to stop recovery of its claim costs and remove any adverse markers it may have applied if Mr T hasn't paid them. If money has already been recovered from Mr T by QIC, which relate to this claim, it needs to refund those along with 8% simple interest to compensate him for not having the money.

I've also considered that Mr T has had to organise for his car to be stored, find a replacement engine and organise for the engine to be fitted. If QIC had dealt with his claim, then Mr T wouldn't have had to do these. Therefore, QIC should pay Mr T £250 for the unnecessary distress and inconvenience he had organising all of these.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. I require QIC Europe Ltd to:

1. Pay Mr T £1,722 for the replacement engine
2. Pay Mr T £1,704.02 for the engine to be fitted

3. Pay Mr T £720 for the initial inspection, recovery and storage of Mr T's car. Subject to Mr T providing evidence of these costs
4. Not recover any claim costs it's incurred from Mr T and remove any adverse markers which relate to them if Mr t hasn't paid them. If any claim costs have already been recovered from Mr T, these need to be refunded to Mr T
5. Pay Mr T £250 for distress and inconvenience

For items 1,2, 3 and 4 above, QIC Europe Ltd also needs to add 8% simple interest per year to the amount it pays, calculated from the date Mr T paid them until payment is made. HM Revenue & Customs may require QIC Europe Ltd to take off tax from this interest. If asked, QIC Europe Ltd must give Mr T a certificate showing how much tax it's taken off.

As QIC Europe Ltd are paying the claim, it's entitled to deduct any applicable policy excess from the amount it pays.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 October 2023.

Alex Newman
Ombudsman