

The complaint

Mrs A complains that Mulsanne Insurance Company Limited should meet her claim on a motor insurance policy.

What happened

The subject matter of the claim and the complaint is a saloon car, made by a premium-brand car-maker with a diesel engine and first registered in 2017.

Mrs A acquired the car in November 2020.

For the year from mid-June 2022, Mrs A had the car insured through an insurance intermediary. She had a comprehensive policy with Mulsanne. Any claim for damage (except to glass) was subject to an excess of £550.00. Mrs A also had optional extras such as legal expenses insurance that was provided by an insurer other than Mulsanne.

In early August 2022, the car passed an MOT test with a recorded mileage of about 41,000.

In early November 2022, Mrs A reported to Mulsanne that an incident on a flooded road had caused an engine problem with her car.

Much of the complaint is about communications with a policy administrator acting on behalf of Mulsanne. Insofar as I hold Mulsanne responsible for such communications, I will refer to them as Mulsanne's.

Mulsanne got an engineer to do an inspection in mid-November 2022. He recommended a diagnostic report from a main dealer franchised by the car-maker.

In late December 2022, the main dealer did an estimate. It said the car's engine had a bent con-rod.

In about mid-February 2023, Mrs A complained to Mulsanne that it should meet her claim.

By a letter dated 4 April 2023, Mulsanne said that Mrs A had deliberately misrepresented and exaggerated the claim. It said it was treating the policy as void from November 2022.

By a letter dated 6 April 2023, the intermediary said it had cancelled the policy with effect from that date and made a refund to Mrs A.

By a final response dated mid-April 2023, Mulsanne turned down the complaint. It said that Mrs A was responsible for deliberate misrepresentation and fraud and the policy was void. At that time, Mrs A's representative brought her complaint to us.

our investigator's opinion

Our investigator didn't recommend that the complaint should be upheld. He thought that Mulsanne hadn't reached an unreasonable conclusion when declining the claim and cancelling cover.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs A and to Mulsanne on 6 November 2023. I summarise my findings:

Mrs A's representative had sent us some online information that the most common cause of a bent con-rod is hydraulic action due to the induction of water, either from a blown head gasket or from driving through water above the air intake.

The main dealer didn't mention a blown head gasket. However, the main dealer didn't mention water in the air intake either.

On balance there wasn't enough evidence that water entered the engine via the air intake causing hydraulic pressure in the engine to bend the con-rod.

I hadn't seen any evidence that – in making and pursuing the claim – Mrs A knew that there was no connection between the reported incident and the engine problem. So Mulsanne had fallen well short of showing reasonable grounds for its suspicion of fraud.

I found it likely that Mulsanne's cancellation or voidance on the grounds of fraud had caused Mrs A personal offence and inconvenience additional to not being able to use her car.

Subject to any further information either from Mrs A or from Mulsanne, my provisional decision was to uphold this complaint in part. I intended to direct Mulsanne Insurance Company Limited to:

1. write a letter to Mrs A (which she may show to prospective insurers) apologising for cancelling or avoiding the policy and confirming that, insofar as it had provided any adverse information to any external database, it has removed such information; and
2. pay Mrs A £250.00 for distress and inconvenience.

Mrs A disagreed with the provisional decision in part. She and her representative say, in summary, as follows:

- She has sent us some photographs from the day of the incident.
- He has sent us an estimate from the main dealer dated 8 November 2023.

Mulsanne accepted the provisional decision.

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 Claim

The policy covered accidental damage to the car – whether Mrs A or a third party caused the damage. The policy didn't cover mechanical failure.

I haven't had access to a recording of Mrs A's first call to report the damage to Mulsanne. From is file, I see that it noted that the incident had occurred on 3 November 2022 (a Thursday) and Mrs A rang to report it on 7 November 2022 (the following Monday). Mulsanne's file noted Mrs A's report as follows:

"PHV stationary as ahead was flooded, PH started to reverse but oncoming bus has come through water & wet PHV. PH turned engine off for 20 mins then restarted but engine light was on."

Mulsanne's file also indicated that Mrs A's car was at the premises of a recovery agent she'd instructed.

Mrs A's representative's email address indicates that he works at the garage that acted as recovery agent. But the representative hasn't given us much detail about any roadside recovery or about what happened to the car at the garage.

Mulsanne's engineer's total loss report recorded the car's mileage as 43,030. From the photographs, I wouldn't describe the car as "immaculate" because there was damage to a tyre and wheels.

The engineer's report included the following:

"Vehicle has suffered from being splashed by a large puddle due to floods, the vehicles engine management light is on, however the vehicle is running, reported damage not consistent with reported circumstances as vehicle is running so engine light is due to mechanical issues which is not covered."

So I find that Mulsanne's engineer had understood Mrs A's report (that the bus had wet her car) as "*being splashed*". The engineer didn't consider that the undiagnosed engine issue was consistent with Mrs A's report.

The engineer hadn't diagnosed the engine fault – or identified a bent con-rod. So I don't accept that Mulsanne said it would pay the claim if driving through water had damaged the con-rod.

The main dealer's estimate dated 22 December 2022 recorded the mileage as 43,031. So the car had only covered one mile since the inspection in mid-November 2022. The estimate included the following:

"...removed all injectors to check piston heights and cylinder no.2 ConRod is bent. by 4 mm. Engine requires replacement."

I find that – in order to inspect the top of the engine – the main dealer had removed the fuel injectors. It then made a diagnosis of a bent connecting rod (between one of the pistons and the crankshaft).

Mulsanne's letter dated 4 April 2023 included the following:

"This estimate clearly states that the damage to the vehicle was a bent injector piston"

That was incorrect. The estimate clearly stated that the damage to the vehicle was a bent con-rod.

Mrs A's representative has sent us some online information that the most common cause of a bent con-rod is hydraulic action due to the induction of water, either from a blown head gasket or from driving through water above the air intake. The information also says that severe operating conditions may cause a minor bend.

Mrs A's response to the provisional decision

Mrs A has sent us some photographs. They were taken in daylight, so after the incident that she says happened at 05:00 that morning in November 2022. The photographs show a road flooded to above kerb height, but with other vehicles driving through. The photographs also show Mrs A's car wet.

I don't find the photographs inconsistent with Mrs A's report of the incident. But I consider that the photographs fall short of showing that water had got into the engine.

Mrs A's representative has sent us an updated estimate or report from the main dealer. It includes the following:

*"...the head [gasket] had not failed...
Vehicle was involved with water ingress to engine
Car was started up and immediately misfiring. Vehicle has been investigated by local garage who with a piston 2 – compression problem and misfire. EML is on..."*

So the main dealer has now said that there was water ingress to the engine, the car was immediately misfiring, and its engine management light is on.

However, Mrs A's representative hasn't said that his garage saw water in the air intake. Indeed – as I've said - the representative hasn't given much detail about any roadside recovery or about what happened to the car at the garage.

The main dealer didn't see the car until several weeks later in December 2022, when it didn't mention ingress of water. So I consider that the main dealer's recent mention of "*water ingress to engine*" and "*Car was started up and immediately misfiring*" are not based on its own inspection but rather on what Mrs A or her representative has told the main dealer in response to the provisional decision.

Crucially, I still can't see that the main dealer has expressed an opinion about the cause of the bent con-rod.

On balance, I don't consider that there's enough evidence that water entered the engine via the air intake, causing hydraulic pressure in the engine to bend the con-rod. So I don't find it fair and reasonable to direct Mulsanne to meet the claim.

Cancellation (or avoidance)

The policy terms included the following:

*"8. Fraud
The insurer will not pay for any claim you make that is dishonest or exaggerated or if you or any insured driver makes a false statement or provides false documents to support a claim. If this applies, the insurer may also tell the police and your policy may be cancelled from the date of the dishonesty, as shown in condition 10.
Cancellation on page 47....
10. Cancellation...
Our right ... to cancel your policy*

Your insurer and/or [the intermediary] has the right to cancel your policy at any time by giving you seven day's notice in writing. We or your insurer will send a cancellation letter and/or email to the latest address/email address we have for you and will set out the reason for cancellation in the letter. Neither we nor your insurer will ever cancel your policy without a valid reason for doing so. Valid reasons may include but are not limited to the following:

*...
We may also cancel this policy and may not refund your premium if:*

- ...*
- you (or someone on your behalf) make or try to make a fraudulent claim under this policy or where you act in a fraudulent way;*
 - we or your insurer suspect you of fraud. If we or your insurer cancel your policy on the grounds of fraud, cancellation may be immediate and we may keep any premium you have paid. We may also inform the police of the circumstances. If the fraud or suspected fraud is in respect of a claim under this policy, your insurer has the right to recover any payment already made right to recover any payment already made in respect of this claim..."*

I have a number of reservations about the application of those policy terms. For example, condition 8 says that the *"policy may be cancelled from the date of the dishonesty, as shown in condition 10"* yet condition 10 provides for cancellation either on notice or immediately – but not retrospectively or backdated to *"the date of the dishonesty"*.

Moreover, Mulsanne would have to show strong grounds of suspected fraud in a claim before I would find it fair for Mulsanne to cancel the policy (let alone to treat it as void) on that ground.

I've found on balance that there's not enough evidence that water entered the engine via the air intake causing hydraulic pressure in the engine to bend the con-rod. However, I haven't seen any evidence that – in making and pursuing the claim – Mrs A knew that there was no connection between the reported incident and the engine problem. So Mulsanne has fallen well short of showing reasonable grounds for its suspicion of fraud.

I find it likely that the Mulsanne's cancellation or avoidance on the grounds of fraud has caused Mrs A personal offence and inconvenience additional to not being able to use her car.

Curiously, the intermediary cancelled the policy with effect from 6 April 2023 and refunded part of the premium, contrary to what Mulsanne had said a couple of days earlier. Mrs A hasn't complained about the amount of that refund. So I make no findings about that.

Putting things right

I will direct Mulsanne to write a letter to Mrs A (which she may show to prospective insurers) apologising for cancelling or avoiding the policy and confirming that, insofar as it had provided any adverse information to any external database, it has removed such information.

In addition, I find it fair and reasonable to direct Mulsanne to pay Mrs A £250.00 for distress and inconvenience at the level I've found.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Mulsanne Insurance Company Limited to:

1. write a letter to Mrs A (which she may show to prospective insurers) apologising for cancelling or avoiding the policy and confirming that, insofar as it had provided any adverse information to any external database, it has removed such information; and
2. pay Mrs A £250.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 19 December 2023.

Christopher Gilbert

Ombudsman