

The complaint

Mr C has complained about MS Amlin Insurance SE's decision to turn down his claim under his Motor Insurance policy for fire damage to his digger.

What happened

Mr C's digger caught fire whilst he was using it. It was badly damaged and Mr C made a claim under his policy. MS Amlin investigated the claim. Having obtained a report from a forensic engineer, it turned down the claim on the basis it resulted from wear and tear, which is excluded.

Mr C complained to MS Amlin. It wouldn't alter its position, so he asked us to consider his complaint. One of our investigators did this. She explained that she thought MS Amlin was entitled to turn down Mr C's claim.

Mr C wasn't happy with the investigator's view and asked for an ombudsman's decision.

I issued a provisional decision on 10 January 2024 in which I set out what I'd provisionally decided and why as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr C's policy covers accidental damage to his digger, as well as damage caused by 'fire, self-ignition and explosion'. It excludes damage caused by 'loss of use, wear and tear, depreciation, mechanical, electrical, electronic or computer breakdown....'

It is clear to me that the main cause of the damage to Mr C's digger was fire. This may have been started as a result of wear tear to a component or components in the engine. But it was fire that was the dominant and effective cause of the damage, not wear and tear. In my experience, the vast majority of fires in vehicles result from some sort of electrical fault or maintenance issue. But, unless an insurer can show the policyholder breached a policy condition requiring them to properly maintain the vehicle or a similar condition, I would not consider it reasonable for an insurer to reject a claim for damaged predominantly caused by

fire. And – from the evidence I have seen – I do not consider there was any lack of care or proper maintenance of the digger on Mr C's part. In view of this, I do not consider MS Amlin should have turned Mr C's claim down. And it follows that I consider that as part of the fair and reasonable outcome to this complaint it should settle his claim in accordance with the remaining policy terms.

I also think MS Amlin should pay interest on the settlement amount due to Mr C at our normal rate of 8% per annum simple from the date it turned down his claim to the date of actual payment. This is to compensate him for being without the funds to replace his digger. I have chosen the date it turned down his claim, as I think this is the date by which MS Amlin should have settled it.

I also consider MS Amlin's inappropriate decision to turn down Mr C's claim caused him

unnecessary distress and inconvenience. This would have been quite significant for him, bearing in mind the cost of replacing the digger and the impact and potential impact on his business. So I think MS Amlin should pay him a further amount of £300 in compensation for this.

I gave both parties until 24 January 2024 to provide further comments and evidence.

Mr C has responded to say he has no further comments and evidence to provide.

MS Amlin has provided further comments. It's said it does not agree the dominant and effective cause of the damage to Mr C's digger was fire, as opposed to wear and tear. And it doesn't consider that all the information from its forensic engineer has been considered. It's said the manual check that should have been carried out to the digger every 50 hours included checking the battery. And it has added that if they were checked it would have expected the damage to the hoses to have been noticed. It has suggested the expert evidence suggests the digger was not regularly maintained.

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, my view on the fair and reasonable outcome to this complaint remains the same as set out in my provisional decision.

I can assure MS Amlin I have carefully considered everything its forensic engineer has said in his original report and his subsequent comments. I explained in my provisional decision why I considered the dominant and effective cause of the damage to Mr C's digger was fire. This is evidenced from the photographs and the forensic engineer's report. And is irrespective of the fact that the reason the fire may have started in the first instance was an electrical fault or wear and tear.

MS Amlin has never previously said it wants to rely on the fact Mr C breached the policy condition requiring him to properly maintain his digger. However, I do not consider it has proved he failed to do so based on the evidence provided. I say this because Mr C has explained that he checked the digger each day before use and was aware of the need to maintain it, which I accept. He's pointed out the manual for the digger did not suggest checking the battery or hydraulic hoses every ten hours of operation or daily. But – as I have said - I am satisfied he checked his digger daily before use in accordance with the manual. The manual does say the battery should be checked as part of a wider check every 50 hours of use. Mr C has said he did carry out the required checks and would have noticed if the battery cover was missing, which I accept. And, based on his testimony I am simply not persuaded that a lack of maintenance on Mr C's part led to the fire in his digger starting.

In summary, bearing in mind what Mr C has said when compared to the forensic engineer's report, it is hard to be sure what started the fire in Mr C's digger. But I am satisfied the dominant and effective cause of the damage to it was fire and that this did not result from a lack of maintenance or proper care of the digger by Mr C.

Putting things right

It therefore follows that for the reasons set out in my provisional decision and above, it remains my view that the fair and reasonable outcome to Mr C's complaint is for MS Amlin to settle his claim in accordance with the claim settlement terms in his policy.

I also consider MS Amlin should pay interest on the settlement amount due to Mr C at our normal rate of 8% per annum simple from the date it turned down his claim to the date of actual payment. This is to compensate him for being without the funds to replace his digger. I have chosen the date it turned down his claim, as I think this is the date by which MS Amlin should have settled it.

I also consider MS Amlin's inappropriate decision to turn down Mr C's claim caused him unnecessary distress and inconvenience. This would have been quite significant for him, bearing in mind the cost of replacing the digger and the impact and potential impact on his business. So I think MS Amlin should pay him a further amount of £300 in compensation for this.

My final decision

I uphold Mr C's complaint and order MS Amlin Insurance SE to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 February 2024.

Robert Short
Ombudsman