

The complaint

Mr D complains AWP P&C S.A unfairly declined part of his motor warranty claim.

AWP's been represented by an agent for the claim and complaint. For simplicity I've referred to the agent's actions as being AWP's own.

What happened

In August 2023 Mr D took out an AWP motor warranty for his car. In October 2023, after noticing an irregular noise from the car's engine, he took it to a manufacturer garage. A claim was made against his AWP warranty for a replacement gearbox, oil pipe and oil pump. AWP accepted the oil pump to be covered by the policy. However, it referred to policy exclusions to decline the other parts of his claim. It said the oil pipe had corroded – something excluded. It said a gearbox fault existed before the policy started – something also excluded.

Mr D complained to AWP. However, it didn't change its position on the declined parts of the claim. He wasn't satisfied, so referred his complaint to the Financial Ombudsman Service. He didn't accept the gearbox fault pre-existed the policy. To resolve his complaint he asked that AWP honour the policy and cover replacement of the gearbox.

Our Investigator felt Mr D's claim, for the gearbox, met the policy requirement for a sudden and unexplained failure. She didn't think AWP had shown it could fairly rely on the pre-existing fault exclusion to decline that part of the claim. She concluded AWP should have covered the cost of the gearbox's replacement.

The Investigator noted the gearbox had been replaced in the summer of 2024. The manufacturer had, separate from the warranty, covered the cost of that work. But Mr D had incurred a charge of £718 for the oil pump repair. The repairing garage had increased the cost of that repair since AWP had authorised it in November 2023. AWP had refused to cover the increase.

The Investigator considered AWP, by unfairly declining the gearbox claim, was responsible for the delay in the oil pump being repaired and so the increased cost. So she recommended it reimburse Mr D that amount plus simple interest. She also recommended it pay him £500 compensation.

Mr D was happy with that proposed outcome. AWP didn't accept it. It said it still considered the damage to the gearbox pre-exist the start of the policy. It asked that an Ombudsman consider the complaint.

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.

As this is an informal service I'm not going to respond here to every point or piece of

evidence Mr D and AWP have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

Mr D's warranty covers the costs of repairing or replacing factory fitted mechanical and electrical components of his vehicle that have suffered sudden failure during the period of cover - subject to the maximum claim limit and terms and conditions of the policy.

'Gearbox' is listed as a covered component.

'Sudden failure' is defined by the policy as '...the sudden and unexpected mechanical or electrical failure of a componentwhich needs immediate repair or replacement.' The definition adds that 'Wear and tear or normal deterioration is not covered under the definition of electrical or mechanical failure'.

An engineer inspected the car and undertook various tests. Having considered his report, along with Mr D's timeline of the problem and AWP's comments, I'm satisfied it's reasonable to conclude there was a 'sudden failure' of the gearbox.

The engineer reported the engine making a loud rumbling noise when in use. He said the gearbox needs to be replaced. His opinion was that the bearings had worn prematurely. So it seems the part failed sooner than expected. That means the failure was unexpected. The engineer doesn't refer to any issue with a lack of maintenance or oil. And I consider, as the part wore out prematurely, it would be unreasonable to reject the claim based on the cause being 'wear and tear or normal deterioration'.

So I'm persuaded the gearbox was covered by the policy benefit. But AWP relied on the following exclusion to decline the gearbox part of the claim - 'We will not pay for repair or replacement if the fault causing the component failure or damage existed before your extended warranty came into effect'. It's for an insurer to show its reasonable for it to rely on a policy exclusion. In my opinion AWP hasn't done so.

AWP says the engineer believes the failure happened over time – so AWP concluded it likely happened before the policy started. It's pointed to the mileage between the policy start date and claim in support of its position. AWP says no expert evidence has been provided to challenge its position.

The engineer said the cause was most likely 'premature wear of bearings'. He added as further explanation 'Wear is by nature progressive and whilst it is likely the wear was present and/or developing at the start date of the policy (August 2023), it is considered likely that further deterioration to a point of detectability may have occurred post warranty commencement.'

As the engineer has pointed out wear is progressive. Many moving parts will wear during use. That doesn't mean a fault automatically exists. It becomes a fault once it impairs the performance of the part or - to consider the words of the exclusion - it causes component failure or damage.

If AWP wishes to rely on the exclusion it needs to show there was most likely a fault (not just wear) before the policy started. The engineer doesn't specify the exact point the wear became a fault. He explains further deterioration to the point of detectability may have occurred after the warranty started. I don't consider that to support AWP's position. I've considered AWP's comments about oil levels but I'm still not persuaded there's enough to show there was most likely a fault before the warranty started. So it wasn't fair or reasonable for it rely on the exclusion to decline the claim.

I haven't seen any other persuasive reason for AWP to have declined or limited the claim. There is a maximum claim limit – the market value of the car. But AWP hasn't referred to it – and neither have I seen evidence that the claim would have exceeded it. So AWP should have, had it acted fairly in November 2023, accepted the gearbox claim alongside the oil pump repair. Had it done so Mr D would likely have had repairs completed at that time. Instead that repair was delayed because of this dispute with AWP about the gearbox.

Fortunately for AWP the manufacturer agreed to cover the gearbox as a gesture of goodwill – meaning it evaded that cost. Because of the delay to the oil pump repairs the repairing garage applied an inflation related increase in cost for those repairs. AWP also refused to pay that – leaving Mr D to foot the bill. I don't consider that fair as AWP is ultimately responsible for the delay by unfairly declining the gearbox claim. So it will need to reimburse him the £712 cost. To make up for him unfairly being without those funds it will need to apply simple interest at 8% from the date he paid the invoice until the date of settlement.

I agree with the Investigator that £500 is a fair amount for AWP to pay to recognise the unnecessary distress and inconvenience its unfair decline caused Mr D. Whilst he had use of another vehicle for transport, he was unable to enjoy the high-performance features of the insured car for months longer than should have been the case. He's reported being distressed and frustrated by finding himself unable to use the car, afford repairs or sell it. He also had the additional unnecessary inconvenience of pursuing the manufacturer for an alternative solution.

My final decision

For the reasons given above, AWP P&C S.A must pay Mr D £712 for the additional repair costs (adding simple interest at 8% from the date he paid that invoice to the date of settlement*) and £500 compensation.

*If AWP considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 August 2024.

Daniel Martin
Ombudsman