

The complaint

Mrs and Mr P complain that Acromas Insurance Company Limited declined a claim made on their breakdown and repair policy.

Acromas has been represented on the claim by its agents. For simplicity, at points, I've referred to the actions of Acromas' agents as being its own.

What happened

The background is well known to Mrs and Mr P and Acromas, so I've summarised what I think are the key points.

Mrs and Mr P took out a breakdown and repair policy (the policy) with Acromas in October 2023. This included at home cover. In November 2023, they contacted Acromas because their car had broken down. Mr P said he was unable to reverse out of the drive and the gear stick was moving freely ('the breakdown').

Acromas carried out a temporary repair at the location of the breakdown, noting the gear selector cable had come loose. The car was then taken to a garage for further inspection and repairs. Acromas agreed with the repairing garage that it could carry out the repairs and Acromas would arrange an independent inspection of the replaced part (gear selector cable), in order to make a decision on cover.

The inspection report said the fault observed on the part was due to wear and deterioration and was not unexpected given the vehicle's age and mileage. The report said the fault would have been present or in development at the point the policy was taken out.

Acromas declined the claim and Mrs and Mr P complained.

Acromas responded to the complaint in December 2023. It maintained its decision to decline cover under the policy terms. Acromas said the fault would have been developing prior to the purchase of the cover and was caused by wear over time. Acromas said there hadn't been a sudden electronic or mechanical failure and there was therefore no cover under the policy.

Our Investigator upheld the complaint. She said there were no signs that Mrs and Mr P were aware of the issues prior to the claim and that some wear and tear would be expected on the car. She felt it was not fair for Acromas to decline the claim as the fault occurred after inception and it was possible for a fault to occur after wear and tear starts. She recommended that Acromas cover the cost of Mrs and Mr P's repairs along with 8% simple interest on this amount.

Mrs and Mr P accepted the Investigator's view. Acromas disagreed.

Acromas said there was no cover for faults which occurred prior to the purchase of the policy and it was not relevant whether or not Mrs and Mr P were aware of the fault. Because the expert reports confirmed the fault existed prior to the policy, it felt it was entitled to decline the claim under the terms.

Because the complaint was not resolved, it's been passed 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.

I've considered what the policy covered, under the terms.

Under 'what is covered' Acromas says it will pay '*up to £535 per Paid Claim towards the cost of repair or replacement to insured parts, labour and VAT following a breakdown which occurs during the Period of Insurance*'.

Breakdown is defined as below:

'a sudden or unexpected event involving the nominated vehicle:

- a) As a result of Mechanical or Electrical Failure; and*
- b) which has been attended by the AA under Your AA membership; and*
- c) that has prevented the Nominated Vehicle from starting or continuing its journey safely; and*
- d) that requires the repair or replacement of insured part(s) to enable the journey to be resumed or, when At Home (Home Start) cover is held under Your AA membership, commenced'*

Mechanical or electrical failure is defined as '*the sudden and unforeseen breaking or burning out (electrical) of any insured part(s).*'

Under '*Parts insured*', the Gearbox is included in the table under '*Parts covered*' with nothing further added for the Gearbox under '*Parts not covered*'. I'm therefore satisfied that the gear selector cable would form part of the gearbox and would therefore qualify as an insured part.

I'm also persuaded that Mr P being unable to reverse out of the drive, and the gear stick moving freely, amounted to a sudden and unexpected event. Acromas' breakdown report of November 2023 said the gear selector cable had come loose. I'm satisfied that the selector cable coming loose meets the description of the breaking of an insured part. Acromas has not provided evidence to persuade me that the event was expected, or that the failure was foreseeable to Mrs and Mr P. Because I don't think Mrs and Mr P had any reason to expect the breakdown or the failure, I'm satisfied that the event and failure were sudden.

Mr P has said he was unable to continue his journey as a result and this is supported by the breakdown report following AA's attendance, which confirms a temporary repair was carried out and that a new gear selector cable would be required. I'm therefore satisfied that the other elements of a 'breakdown' as defined under the policy were met.

Because I'm satisfied that the event giving rise to the claim met the definition of 'breakdown', I've gone on to consider whether Acromas acted fairly in relying on the policy exclusions.

Acromas said in its response to the Investigator's view that the claim was declined because the fault was pre-existing and is caught by an exclusion within the terms. I can see that the policy does exclude cover for any costs for repairs following a mechanical or electrical failure, if the faults existed prior to the purchase of the cover.

Acromas has said the fault was caused by wear over time. It has relied on the independent report which said the fault would have been developing prior to the purchase of the cover, along with the repairing garage's confirmation that the fault was wear related. In particular,

the independent report said the nylon socket on the end of the cable was excessively worn and deteriorated – the report said this would have been present or in development when the policy was taken out.

Fault isn't defined within the policy terms. In the absence of a definition, I think it's reasonable to interpret this as meaning 'broken' or 'not functioning'. Although the engineer report did identify the cause of the breakdown to be wear and deterioration, I don't think the wear and deterioration, prior to the cable coming loose, can fairly be considered a fault.

I say this because I think it's possible for something to be in a less than ideal condition (for example, if it's affected by wear and deterioration) without that meaning it's broken or not functioning. Acromas has not provided sufficient evidence to persuade me Mrs and Mr P's car was showing signs of a problem prior to the breakdown. And because I think it's likely that Mrs and Mr P's car was functioning adequately prior to the breakdown, I don't think it's fair for Acromas to say there was a fault or failure before the breakdown happened. I think, on balance, that the fault occurred at the point Mrs and Mr P made the claim in November 2023, when Mr P tried to reverse out of the drive. For this reason, I don't think it's fair for Acromas to rely on the exclusion for a pre-existing fault.

Acromas has relied on the repairer's confirmation that the breakdown was wear related. but apart from listed service items (which don't include the gearbox and gearbox cable) and the friction plates of a clutch, there is no general exclusion for breakdown caused by wear. So, I don't consider it fair for Acromas to seek to decline the claim on the basis there was wear which led to the breakdown.

Because I think Acromas declined the claim unfairly, I will require it to pay Mrs and Mr P £535. This represents the policy limit per claim and the amount I think Mrs and Mr P should fairly be reimbursed. This is because the total cost of the repairs they paid for, less the £35 policy excess, exceeds this amount. And this represents the Financial Ombudsman Service's approach to fair application of the policy excess in the circumstances.

Acromas will need to pay them simple interest at 8% a year on the above amount, from the date Mrs and Mr P paid for the repairs until the date of settlement. This is because Mrs and Mr P will have been deprived of this money because Acromas didn't settle their claim earlier.

My final decision

My final decision is that I uphold this complaint.

I require Acromas Insurance Company Limited to:

- Pay Mrs and Mr P £535.
- Acromas Insurance Company Limited should add interest to the above at the rate of 8% simple, from the date Mrs and Mr P paid for the repairs, until the date of settlement.*

* If Acromas Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs and Mr P how much it's taken off. It should also give Mrs and Mr P a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 29 October 2024.

Monjur Alam
Ombudsman