

The complaint

Mr I has complained that Tradex Insurance Company PLC unfairly and unreasonably refused to cover his claim under his motor policy, as it didn't think his claim amounted to an insured risk.

What happened

Mr I said he contacted Tradex via his broker on 29 March 2024 which happened to be Good Friday. He told his broker he wanted to make a potential claim due to water ingress, which might be a known issue with his make of car. He also said it would either be a claim, or he will need to use his legal cover.

Tradex said it wasn't notified until after the bank holiday weekend on 2 April 2024. It confirmed it contacted Mr I then to ask for photos of the car along with the recovery invoice. It explained that on 3 April 2024, its claims handler said they believed the damage to be wear and tear and not incident related. And on 4 April it confirmed to Mr I that the claim would be repudiated and that his recovery invoice wouldn't be covered.

As Mr I disagreed it was agreed Tradex would get the car examined. An independent engineer inspected Mr I's car on 18 April and provided their report to Tradex on 23 April 2024. The independent engineer agreed it was more likely a case of a wear and tear issue. So, the decision to repudiate Mr I's claim was maintained on 2 May 2024. But on 9 May Tradex felt it needed more direct evidence of the wear and tear issue, so it instructed further water testing on Mr I's car. This resulted in a report that there was further clean water in the footwells of the car but no obvious location where the water was getting in. Therefore, Tradex definitively decided this was a wear and tear issue and maintained its repudiation of Mr I's claim.

Tradex said in its final response letter that it would cover the storage costs for Mr I's car, but it didn't think it would refund Mr I's recovery fee he spent on 29 March 2024 getting his car to a garage. Tradex also agreed its communication with Mr I was poor. So, it paid him £150 compensation.

Dissatisfied, Mr I brought his complaint to us. He didn't believe Tradex had provided a legal reason for why his claim was repudiated on the basis of wear and tear issues. The investigator was of the view that Tradex hadn't done anything wrong in deciding Mr I's claim should be repudiated due to wear and tear. And he thought the compensation paid of £150 for poor communication was reasonable. But given Mr I was initially told on 29 March 2024 that his recovery costs of £336 would be covered, he felt Tradex should cover this. Essentially neither Mr I nor Tradex agreed with the investigator's view, so Mr I's complaint has 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.

Having done so, I'm upholding this complaint merely along the lines that the investigator did. I'll now explain why.

Wear and tear exclusion

It's common knowledge that unless you buy some sort of warranty or repair cover any breakdown of a vehicle commonly isn't insured under the statutory motor policies that every driver of a car must obtain by law. Namely the type of policy Mr I bought for his car through Tradex. Indeed, most of the warranty and repair policies will also exclude wear and tear and other types of breakdown issues too.

The reason for this is that no provider wishes to provide cover for issues which can break down with wear or indeed tear as they are seen as consumables so generally part of the maintenance of the car. Although not always, as things like fuel pumps deteriorate as do gearboxes and lots of other things not routinely maintained through servicing and none of those matters are covered either, as they are seen to be wear and tear too. Further as Mr I ably showed he understood initially, motor policies don't cover some sort of known fault with the car or the design or the materials used. That is a matter for the car manufacturers' liability insurers, which is something different entirely.

Therefore, I consider the exclusions in Tradex's policy, which Mr I chose to buy for his car, are common across the motor insurance industry and therefore not either unusual or indeed significant. These are as follows:

- *"Loss or damage caused by wear and tear or depreciation.*
- *Loss or damage caused by any mechanical, electrical, electronic computer or computer software failures, breakdowns, faults or breakages"*

What is insured

So, first and foremost, the policyholder Mr I here, has to show that the damage caused to his car was what is called an 'insured event' or indeed one of the 'perils' specifically insured under the policy. No insurance policy covers every single eventuality. For instance, if Mr I had left his car open or the keys inside and it got stolen, his claim wouldn't be covered either. Likewise, any damage caused to the car has to come about due to some incident, be it a crash with another driver; a crash caused by the insured accidentally, like reversing into something; something a vandal did to the car; the car getting caught in a fire etc. In motor insurance law, something has to actually have caused the issue permitting the damage to be caused, beyond a part degrading.

I consider there was no such incident given that Mr I noticed the water ingress in his car on 7 March 2024 but hadn't driven his car since around Christmas time. And he was quite categorical that it was only rain which caused the problem. Rain on a car which then causes damage isn't insured unless there is evidence of a huge sort of storm or flood, neither of which is at all evident here. And Mr I initially was of the view that very possibly this was a known issue with his make of car so he also thought he might have to use his legal cover for pursuing the damage caused by this water ingress.

So, I consider that Mr I hasn't been able to show that something which was covered under this policy caused the water leak in his car. Indeed, Tradex's engineers subsequently couldn't find what was causing the water to continue to come into the footwells of his car either. There was no accidental damage, there didn't appear to be any vandalism issue, it

simply seemed some seal somewhere had failed. That is commonly a wear and tear issue and besides that I consider it's not an insured peril.

I don't consider Tradex has to show any more either, as it's clear no event that actually is insured under the policy happened to Mr I's car causing the water ingress and consequent damage. Therefore, I consider that it didn't do anything wrong in deciding to repudiate Mr I's claim.

Recovery and storage charges

As the investigator detailed in his view, I consider Tradex eventually did confirm it would cover all storage charges and indeed it did do so up to the time it asked Mr I to arrange to take his car back since his claim was repudiated. I consider this is the right thing in view of the policy conditions and with any claim to include potential claims Tradex's policy is clear it will do the following:

"The insurer will also pay reasonable costs for the protection, removal and storage of the car and delivery after repair to your risk address."

Further as the investigator noted it was Mr I's decision to have his car recovered to a garage of his choice instead of letting Tradex recover it to one of its approved repairers. Therefore, I agree that if Mr I's car wasn't stored properly by his chosen garage, that can't be a matter for Tradex to deal with.

As regards the initial recovery charges in the sum of £336, I consider the adviser Mr I spoke to on 29 March 2024 clearly offered to pay these recovery charges. Then Tradex backtracked on this only to almost confirm it again in its final response letter. Bearing in mind the policy term quoted directly above, I consider given this confusion by Tradex of its own stance on the matter to include Mr I's agreement throughout that his car could go to an approved repairer, that it is fair and reasonable in the particular circumstances that Tradex refunds this recovery charge with interest.

Communication issues

Given the above I do think Tradex could have been a lot clearer with Mr I from the outset bearing in mind its obligations under the ethos of its Consumer Duty. Much of its communications surrounding the repudiation of the claim could have been more succinct in my view. Plus, as it's acknowledged it did delay in responding to Mr I more so when it knew he was going abroad.

Therefore, I consider it's fair that Tradex ultimately decided to pay Mr I £150 compensation. I can see this is in line with our stated approach to compensation issues more widely discussed on our website. So, I'm of the view the amount of £150 is fair and reasonable too.

My final decision

So, for these reasons, it's my final decision that I'm upholding this complaint.

I now require Tradex Insurance Company PLC to do the following:

- Refund Mr I the sum of £336 being the recovery charge he was charged. Interest of 8% simple should be added from the date Mr I paid this to the date it refunds him. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr I for HMRC purposes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 15 January 2025.

Rona Doyle
Ombudsman