

## **The complaint**

Mr P has complained about his motor warranty provider AWP P&C S.A. He is unhappy because it declined his claim for repair of his car which suffered a breakdown.

## **What happened**

In 2020, Mr P took out a warranty with AWP to cover his costs for repair or replacement in the event of a failure of a component of the car. The policy renewed in following years.

In 2023, after the policy renewed that year, Mr P had a problem with his car. When a manufacturer approved garage assessed it, it determined a problem with one of the pistons. AWP was contacted by the garage because it was felt the problem and resultant damage would be covered under the warranty.

AWP had an engineer visit the garage and view the car. The engineer agreed with the diagnosis of the garage. He noted the car had an aftermarket air intake fitted to it – a non-manufacturer modification. He concluded that intake had most likely *not* contributed to the problem with the piston.

When AWP saw the engineer's report it decided to decline the claim. It said the policy terms specifically excluded cover for cars with modifications. Mr P was unhappy and complained to the Financial Ombudsman Service.

Our Investigator noted the modification had taken place after the policy first began but before the latest renewal. However, she also noted that AWP had specifically chosen to decline the claim on the basis of the warranty's terms and conditions. Reviewing AWP's reason for decline, she felt it had acted unfairly. She explained that because the modification wasn't material to the loss which had occurred, it wasn't reasonable for AWP to rely on a policy exclusion in respect of modifications to decline the claim. She felt it should settle the claim, plus interest and pay £150 compensation to Mr P.

AWP did not agree with the outcome. However, it's response focussed on it not having known about the modification. It didn't comment on the point about materiality.

The complaint was referred for an Ombudsman's 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.

AWP chose to rely on policy terms to defeat the claim Mr P made. So my focus is on whether it was fair and reasonable for it to decline the claim on the basis of the exclusion it chose to rely upon.

In this case AWP established that Mr P's car had a modification, this isn't in dispute. That was to the air intake. AWP, referencing the wording of its warranty, highlighted the following 'general exclusion': *"The following vehicles are excluded from this policy..... Vehicles modified from the manufacturer's specification"*.

I've reviewed the engineer's report. It confirms that the modification on Mr P's car was unlikely to have caused the problem Mr P had claimed for.

As our Investigator explained, this Service takes the view that for an insurer to reasonably rely on a policy exclusion to decline a claim, it has to show the exclusion was material to the loss which occurred. Here, whilst Mr P's car was modified, the modification was not material to the fault which occurred and was claimed for. So I'm satisfied it is not reasonable for AWP to have declined Mr P's claim on the basis of the modification exclusion.

I note AWP has had the chance to fully consider the failure which occurred, including inspecting the car. I'm satisfied that the time for considering the claim has now passed. It now needs to settle the claim in line with the remaining terms and conditions of the cover. To any settlement it should add interest\*, applied to the settlement sum from the date of loss until that settlement is made.

I can see that having been without his car was somewhat inconvenient for Mr P, although that was mitigated until recently because he had use of another car. I'm satisfied that £150 compensation is fairly and reasonably due.

### **Putting things right**

I require AWP to:

- Settle the claim in line with the remaining terms and conditions of the cover.
- Add interest\* to any settlement sum to be paid to Mr P, applied from the date of loss until settlement is made.
- Pay Mr P £150 compensation.

\*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require AWP to take off tax from this interest. If asked, it must give Mr P a certificate showing how much tax it's taken off.

### **My final decision**

I uphold this complaint. I require AWP P&C S.A. to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 February 2025.

Fiona Robinson

**Ombudsman**