

The complaint

Miss B has complained about JGC Trading Limited. When she bought a car from it, it sold her a warranty for mechanical and electrical failure, but when she tried to claim on the warranty, it declined her claim.

What happened

Miss B had a warranty from JGC to cover her in the event her car suffered a mechanical or electrical failure. In November 2023 Miss B had a problem with the timing chain on her car. She made a claim to JGC.

JGC considered the terms of the policy. It noted Miss B had made a prior claim, which it had settled without question. But it then became concerned that Miss B was using a non-VAT registered garage for servicing. It said that was against the policy terms and so said it was cancelling the cover (it said voiding it) and declining Miss B's claim.

Miss B wasn't happy and brought her complaint about the decline of the claim and the ending of the warranty to the Financial Ombudsman Service. JGC objected to that – it said the warranty it offered wasn't an insurance policy, so Miss B's complaint was one which we could not consider. An Ombudsman considered JGC's concerns and determined that Miss B's complaint was one which we can consider.

Our Investigator considered the merits of Miss B's complaint against JGC. She noted the prior claim and felt JGC, in settling it, had likely affirmed the warranty. But she explained also that if an insurer wishes to rely on a term to decline the claim, it must show the breach of the term was material to the loss which occurred. She said JGC should, therefore, reinstate the warranty and consider Miss B's claim. She said if that resulted in a settlement, JGC should apply interest to that sum. Noting Miss B had paid for repairs by taking out a loan, she said interest should be paid at the loan rate. She said £150 compensation should also be paid.

Miss B was happy with that outcome. JGC objected to it.

JGC said the first claim had been simple and small, so it was agreed without any extra scrutiny being applied. It didn't agree this precluded it from having made the decision it had when the second claim was made. It said its terms are clear that servicing must be completed by a VAT registered garage – in its experience that goes a long way to ensuring the car remains in good condition. It said that as Miss B had not adhered to the servicing requirements, it would not reinstate the warranty. It said if the claim were considered it might fail as the timing chain failure might be due to improper servicing.

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.

I note JGC has referred to voiding the warranty due to terms of the policy not being complied with. However, in insurance the phrase “voidance” is most often associated with the rights and obligations of both parties at sale and/or renewal of a policy. What happened at the sale or renewal of Miss B’s warranty is not in question here, so I won’t be considering this complaint in light of the sale/renewal rights and obligations of both parties. Rather, and to be clear, I’ll be considering what JGC says about the warranty terms, what happened with the claims and whether or not the policy should be reinstated.

The warranty, under “Service and Service Records”. says:
“A VAT registered garage must carry out the servicing unless your vehicle has a [certain] Service Plan, and receipts retained as [JGC] are entitled to check the service record in the event of a claim”.

So the warranty does not state that if a non-VAT registered garage is used the warranty will be at risk of cancellation, nor does it say that a claim might be declined. All the warranty does is allow JGC, in the event of claim, where a non-VAT registered garage has been used, to check the service record.

In any event, the claim for the timing chain was Miss B’s second claim on the warranty. But she had used the non-VAT registered garage for servicing before, even submitting detail from it during the first claim. JGC did not question the use of that garage at that time and the claim was settled.

I understand that claim related to a much lower repair cost. I appreciate that, in assessing claims for differing amounts and/or issues, differing levels of scrutiny may be applied. However, the choice of what evidence to consider and/or rely on was always JGC’s and I think it’s unfair for Miss B to be the one at a loss because of what JGC chose to overlook. I’m satisfied that, on this occasion, it effectively affirmed the cover – it received information which, in its view, might serve as a bar to it continuing to offer cover or assistance in the event of a claim, but chose not to act on that information at that time. The fact that it then sought to rely on that same fact later on, only in the event of a much more expensive claim, feels unfair.

As I said, I note that first claim was settled without questions being raised. I also note that JGC has since said that the failure issue at the heart of the first claim was likely unrelated to how the car had been serviced – it says that is not the case with the second claim. The point our Investigator made though about this was that she thought JGC, if it hadn’t overlooked the servicing document, would likely, initially, have sought to at least decline the first claim based on this term. And for an insurer to decline a claim based on the policyholder breaching a condition of a policy, the insurer must show the breach was material to the loss. So our Investigator did not think that JGC would reasonably have been able to decline the first claim on the basis of Miss B having breached the condition requiring a VAT registered garage to be used for servicing. However, had JGC tried to do so, that would have drawn this issue of concern for JGC to Miss B’s attention.

Even if JGC would not have sought to initially decline that first claim and I am wrong about the affirmation issue, I think it's fair to say that JGC, by overlooking the detail in the first claim, prejudiced Miss B's position. If JGC had sought to cancel the cover and consequentially decline the claim, Miss B would have only lost a few hundred pounds. Further, the cancellation would have put Miss B on notice that she had no further cover. Meaning she'd also have been able to challenge that decision, at that time, before another event giving rise to a potential claim occurred. In addition, I think she'd certainly have looked to change her garage. And/or she could have looked at obtaining an alternate policy. There might be other possibilities Miss B could have explored too. But because JGC overlooked detail key to the cover Miss B had with it, she had no option to explore any of these things, any one of which would likely have meant her position, as at the point of the second claim, was different.

From everything I have seen I think JGC has acted unfairly and unreasonably here. I'm satisfied that the policy should be reinstated – JGC hasn't shown that any grounds exist on which it can reasonably withdraw the warranty. I'm also satisfied that the claim should be considered by JGC. I note what it has said – that it thinks the failure might be due to improper servicing – but I'd draw its attention to what I've said above about an insurer, wanting to rely on such a breach to decline a claim, needing to show that the breach was material to the loss which occurred. Not just that it 'might' be/'might' have been.

I understand that in order to mitigate her loss, Miss B went ahead and paid for the car to be repaired. She's explained that she did that by obtaining a loan. She's clarified that the interest rate of that loan was 14.4%. If JGC, having considered Miss B's claim, should settle it, it will need to add interest to the settlement. In light of the extra cost Miss B has incurred taking out the loan, interest at the loan rate should be applied to the settlement sum (should the claim succeed, and a cash settlement be paid).

I can see that JGC's decline was frustrating for Miss B. I can see that she had to challenge JGC and I've found that it acted unfairly and unreasonably. I'm satisfied that £150 compensation is fairly and reasonably due.

Putting things right

I require JGC to:

- Reinstatement the warranty.
- Consider Miss B's claim for the timing chain.
- If a settlement results from that claim, to any cash settlement sum paid, add interest* applied at the loan rate of 14.4%, from the date Miss B paid for repairs and until settlement is made.
- Pay £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 JGC to take off tax from this interest. If asked, it must give Miss B a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require JGC Trading Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 28 February 2025.

Fiona Robinson
Ombudsman