

The complaint

Mr H has complained that his van insurer, Advantage Insurance Company Limited ('Advantage') unfairly declined a claim he made on his policy.

Mr H brought his complaint to our service through a representative, Mrs H, but for ease I will refer to all comments as being made by Mr H.

What happened

I issued a provisional decision on this complaint earlier this month where I said I was considering upholding it. I said Advantage must reconsider the claim under the remaining policy terms and pay Mr H £250 compensation for the distress and inconvenience it caused him. An extract from that decision follows:

"In October 2024, Mr H made a claim on his policy after, he says, he accidentally poured too much oil into the engine. He said that a light had come on on his dashboard saying "change oil" so he decided to book the van into a garage. The appointment wasn't until the following week and Mr H said he panicked and decided to put some engine oil into the engine himself in the meantime. He said he stopped at a petrol station, topped the oil up and drove off but the van eventually broke down.

Advantage arranged for one of its approved repairers to inspect the van who suggested that the damage was due to a mechanical failure. It then instructed an independent engineer who said that the vehicle was being driven despite there being an engine failure. The engineer said the van was beyond economic repair and would have to be written off.

Mr H said he didn't receive any updates from Advantage until December 2024 when it told him that the cause of the van damage was a mechanical failure. He also said he was given confusing information by Advantage as to whether the claim was covered or not. He said that it later emailed him to say that the claim was recorded as "notification only" as he decided not to claim. Mr H said he asked Advantage why it closed the claim down and it told him it wasn't progressing the claim as he had failed to maintain the van.

Mr H wasn't happy about this and complained. He said the van had been well maintained and had passed its MOT about a month earlier. He added that the van was in working order until he put too much oil into the engine.

Advantage didn't uphold the complaint so Mr H brought his complaint to our service. He said he missed out on a number of work opportunities and missed social occasions due to the fact that the courtesy van he was provided with was too small. He said that the way that Advantage handled the matter caused him extreme stress.

One of our investigators reviewed the complaint and thought it should be upheld. Our investigator thought that Advantage failed to show that the exclusion it relied on applied in these circumstances. She said it failed to provide sufficient evidence that there was an engine failure as opposed to Mr H accidentally overfilling the engine with oil. Our investigator thought Advantage should consider the claim under the remaining terms of the policy and pay Mr H £250 for the distress and inconvenience it caused him.

Mr H said that he also wanted to be compensated for the finance and insurance payments he has been making whilst not having the van. And this is in addition to any loss he suffered in his earnings.

Advantage didn't agree to reconsider the claim and asked for an ombudsman's decision. It agreed its service was poor but felt £200 compensation was more appropriate. It made a number of points as to why the claim wasn't covered including the following:

- Overfilling the engine with oil wouldn't be classed as "accidental" damage which is something that would only result from a road traffic accident.
- It considered Mr H's actions to be negligent not accidental and added that he failed to follow the manufacturer's guidance.
- It consulted a senior engineer who said that the damage resulted from improper maintenance rather than an insured event.
- Mr H failed to care for his vehicle.

Our investigator didn't change her view and the matter was then passed to me to decide.

What I've provisionally 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.

The policy

Mr H has a comprehensive policy with Advantage which covers, among other things, damage as a result of an accident. Under the policy Advantage may repair the damage or replace the van and pay the market value immediately before the loss. Under this section, the policy has exclusions for loss of use of the van as well as failures, breakdowns or breakage of mechanical, electrical or other equipment.

Under general conditions, the policy states that the insured must care for their van and protect it from damage or loss. This includes maintaining it in an efficient and roadworthy condition with a valid MOT.

The policy also provides a replacement vehicle service whilst repairs are being undertaken by an Advantage nominated repairer and says the replacement vehicle will be a "group A" van. Mr H also took out optional hire vehicle insurance which would have enabled him to claim for a replacement hire van for 28 days. This cover is, as far as I understand, provided by a different insurer.

Mr H said that the light which came on said “change oil”. Advantage said, according to the manufacturer, a “change oil soon” warning meant that there was still 5% oil life remaining so Mr H wouldn’t have needed to take any action. Alternatively, the “oil change required” light may have come on and this also meant there was no need for Mr H to add any oil. So, by adding oil Mr H failed to follow manufacturer’s instructions. It said that Mr H also seemingly failed to check the oil level before filling it which was again against manufacturer guidance. It said this was negligence and not an accident. Mr H said his understanding was that he could have still driven the van for another 1000 miles even with that warning light on but panicked and topped the oil up himself.

The engineering evidence

The independent engineer said that, on inspection, the oil level was above the manufacturer’s recommended level. The engineer found evidence of oil expression to the underside of the van which suggested that it was being driven at the time of the engine failure. The engineer added that this could be considered as a failure to maintain the van correctly as the engine damage could have occurred when the warning light was on.

Advantage said that it also consulted a senior engineer who said that the oil light came on before the incident took place and that this was evidence that the engine was damaged before Mr H put oil in the van. This would be classed as a mechanical failure.

Advantage also spoke to another engineer who said that the sequence of events suggests that the engine failure resulted from overfilling the oil which led to potential internal damage. The light coming on prior to the failure indicates that a maintenance issue had already been detected and adding too much oil could have led to the matter getting worse. The engineer concluded that the absence of external factors suggested that the claim resulted from improper maintenance and not an insured event.

Was there a mechanical or engine failure?

I have considered the engineering evidence and Advantage’s arguments but, on balance, I don’t think this was a mechanical failure and I think the damage resulted from Mr H accidentally overfilling the engine with oil.

I say this for a number of reasons. I think the warning light which came on was either the “change oil soon” or “oil change required” light. I say this because from what Advantage said these were the only two possible warnings regarding the engine oil. And the fact that Advantage says that one of the lights would suggest there was 5% engine oil life still left ties in with Mr H’s belief that he could still drive the van for 1000 miles. So, on balance, the warning displayed on the dashboard didn’t suggest that Mr H had to take any immediate action, or that there was an engine failure or that if he carried on driving the van the engine would fail. This means that it is unlikely that Advantage’s suggestion that the engine failed before Mr H added more oil is correct. So I think the engine likely failed after oil was added to it and more likely than not because there was excessive oil. This is also what one of the engineers said. And as far as I’m aware there were no other warning signs or any other indications that there was something else wrong with the van.

But even if there was existing engine damage, Advantage hasn’t shown that Mr H was

aware of it and failed to take action. The last engineer Advantage spoke to said that the additional oil likely exacerbated an existing maintenance issue. But the only warning sign Mr H saw was regarding the oil which, Advantage accepts, he didn't have to take immediate action for. Furthermore, a mechanical breakdown is often something that happens suddenly and unexpectedly. There is no suggestion that what happened in this case was sudden or unexpected. The warning light that came on indicated that the van needed some attention but there was no immediate danger. And the van only broke down after the oil was topped up by Mr H.

Accident and failure to maintain

The policy doesn't define the word "accident" so we would normally rely on the ordinary definition of the word. Advantage said this would only involve damage following a road traffic accident whether another party was involved or not. I have considered this but I don't agree. If the policy was intended to be so restrictive I think this is something that should have been stated in the policy. In the absence of this we would interpret this in a way that is most favourable to Mr H as the non-drafting party and I agree that, in these very specific circumstances, "accident" shouldn't be restricted purely to a road traffic accident.

Advantage says that this wasn't an accident but negligence because Mr H failed to check the oil level and failed to follow manufacturer's guidance which was not to take immediate action. I have considered this but I don't agree. Mr H isn't an engineer and I wouldn't expect him to be familiar with everything he was required to do. He booked the van into a garage which I think was reasonable. But he said he panicked as this wouldn't take place for a few more days so he decided to fill the engine oil himself. Advantage says this wasn't appropriate or the action someone else may have taken. This may be the case, but I think it was a mistake not negligence. And I think what happened was an accident rather than anything intentional as Advantage has also suggested. I don't think Mr H wanted his van to break down. On the contrary, I think he tried to make sure it didn't.

Advantage said that Mr H failed to maintain or care for the van but, again, I don't agree. The van had an MOT in September 2024, a month before the incident and there were no engine issues detected. Advantage said the engine isn't checked during an MOT but I think if there was a warning light on the dashboard it would have come up during the MOT and rectified seeing as the van was already at the garage. Also none of the engineers said the van was in a poor condition prior to the accident.

It follows that I think that Advantage unfairly turned the claim down for the reasons it gave and it should reconsider the claim.

The courtesy van

Mr H said that he was only provided with a small van by the repairers which meant he wasn't able to carry on as normal with his work which led to him suffering a loss in his earnings. I appreciate this would have been very frustrating for Mr H but the policy says that the replacement vehicle would usually be a "group A" van which is normally a small van. So I don't think Advantage is responsible for any losses that may have flown from this. If Mr H was also provided with a replacement van under his optional van hire cover this would have been done by a different insurer so he would need to take his complaint to them.

Mr H also said that he continued to pay for insurance and finance payments despite not having the van. I, again, appreciate that this would have been very frustrating but as far as the finance payments go these would go towards reducing Mr H's balance so, as far as I can see, he hasn't lost out by making those payments.

I understand the policy is still live and Mr H said that he recently received an email from Advantage to say that this would go down as a fault claim which would impact his no claims discount (NCD). Mr H said he bought another van and took out a new policy in the meantime. As I think that Advantage should reconsider the claim this means that if the claim is covered the full premium for the policy year will be payable in any event. And if Advantage has an outlay this will be considered to be a fault claim. If the claim is paid and Mr H is unhappy about the impact on his NCD or for having to pay for two policies at the same time when he may have been able to add his new van to his existing policy, he will have to raise a new complaint.

Customer service

Advantage has accepted that its customer service was poor. As I said earlier in my decision it didn't update Mr H as often as it should have and I think the reasons it relied on to reject the claim were not fair or reasonable. For these reasons I think it should pay Mr H £250 compensation for the distress and inconvenience it caused him."

Both parties responded to my provisional decision. Mr H accepted it. Advantage didn't agree and raised a number of points including the following:

- Mr H was aware of the fact that he didn't need to take immediate action but still chose to overfill the engine with oil.
- The policy doesn't cover mechanical failures. The action of overfilling the engine with oil caused the breakdown so Mr H's actions caused a mechanical failure.
- Mr H was negligent and failed "to take proper care over something" as required under the policy terms.

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.

Advantage has said that Mr H's actions amounted to negligence and caused a mechanical failure which is something that is excluded under the policy.

As I said in my provisional decision, I didn't think the damage was due to a mechanical failure as I thought the warning sign displayed on Mr H's dashboard didn't suggest immediate action was necessary. Advantage also says Mr H was negligent because he failed to take proper care but I don't think it would be fair or reasonable to consider Mr H's actions as negligence. As I said in my provisional decision, I thought Mr H overfilling the engine with oil was an accident. I thought Mr H was trying to stop his van from breaking down and tried to take action to prevent this. He said that his garage appointment wasn't for a few days so he topped up the oil in the meantime. I appreciate he also said he recognised he could still drive the van for 1000 miles but said he panicked. I can understand why he

wouldn't want the van to run out of oil as this is something that can be quite dangerous. And I can understand why Mr H would feel that by refilling the oil he was taking proper care of his van and not the opposite.

Advantage says this was a mechanical failure caused by the overfilling of the engine oil. The policy excludes this. Again I think it would be unfair and unreasonable to consider this to be a mechanical failure. As I said in my provisional decision there is no suggestion this was something that was sudden and unexpected. I think this was an accident which is something which is covered under the policy.

These and the findings I made in my provisional decision now form the findings of this, my final decision.

My final decision

For the reasons above, I have decided to uphold this complaint. Advantage Insurance Company Limited must reconsider the claim under the remaining terms of the policy. It must also pay Mr H £250 compensation for the distress and inconvenience it caused him.

Advantage Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr H accepts my final decision. If it pays later than this it must also pay interest on it from the deadline date for settlement to the date of payment at 8% a year simple.

If Advantage Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H 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 H to accept or reject my decision before 19 June 2025.

Anastasia Serdari
Ombudsman