DRN-5781348

The complaint

Mr R complains that Automobile Association Insurance Services Limited ('AA') mis-sold him an upgrade to his AA membership and misled him into thinking a claim would be covered with only his excess payable.

What happened

Mr R held AA membership which included roadside assistance cover, national recovery, and parts and garage cover. The type of membership he held was vehicle based, which meant only his own car was covered.

On 14 May 2024, Mr R was driving someone else's car. I will call that person 'Mr B'. Unfortunately, the car broke down, so Mr R called AA for help.

AA said that since Mr R's membership only covered him for his own car, he wasn't covered for this breakdown. But it offered him the option to upgrade his membership to personal single cover – which would mean he would be covered for breakdowns in other people's vehicles. Mr R agreed to take out this upgrade, and AA sent out a patrolman.

Unfortunately, the patrolman couldn't repair the car at the scene. So, it was recovered to a garage. After not hearing anything for a couple of days, Mr B phoned this garage for an update. He was told his car needed a new fuel pump, and the cost of this wasn't covered by Mr R's policy so he would need to pay privately for the repair. Mr B agreed to pay for this repair, but he along with Mr R complained to AA that it had misled Mr R during the call when the policy was upgraded that this would include parts and garage cover for other vehicles, and that the patrolman who attended misled them into thinking all they'd need to pay for a repair was the excess.

AA provided a final response to this complaint on 2 September 2024. It said it had listened to the call from 14 May 2024 when the policy was upgraded and agreed Mr R was incorrectly advised his parts and garage cover would be upgraded. It also said it couldn't evidence what the patrolman said at the roadside, but it decided to uphold this part of the complaint saying the patrols should check the policy first before giving any advice regarding cover, and if this had been done, they would have seen that nominated vehicles only are covered for the parts and garage cover.

In recognition of these points, and in recognition of a delay in attending to a later breakdown Mr B experienced, AA compensated Mr B £150.

Dissatisfied with this response, Mr R brought his complaint to us. One of our investigators considered the complaint and said he agreed Mr R was told the upgrade would apply to his parts and garage cover but he didn't think AA needed to cover the cost of repair because the terms of the policy still applied, and the parts and garage cover contained a 14 day exclusion which he thought applied to Mr R's circumstances at the time of the breakdown. He also didn't think Mr B's sole reason for agreeing to upgrade was for the parts and garage cover, so he didn't agree a refund should be provided for the upgrade.

However, the investigator didn't think the £150 compensation was enough because it caused inconvenience by not reviewing the calls when it initially reviewed the complaint so he recommended it pay a further £100 compensation. AA agreed to do this, and paid the compensation amount to Mr B.

But because Mr R didn't agree with the investigator's opinion, the complaint was referred to me to decide. I issued a provisional decision not upholding the complaint, and I said:

"I should start by saying while I've read and considered everything Mr R and AA have provided, I won't be commenting on every point made. I'll instead concentrate on what I consider are the key points I need to think about for me to reach a fair and reasonable decision. This isn't meant as a discourtesy to either party, but instead reflects the informal nature of this Service.

Mr R's AA membership included parts and garage cover. This was an add on cover underwritten by an insurer who I will call 'A' and it covered the cost of spare parts which AA would ordinarily charge for when carrying out a roadside repair, or the cost of getting a repair carried out in a garage after a breakdown.

I've listened to a recording of the call from 14 May 2024 in which Mr R upgraded his AA membership. Having done so, I'm satisfied that Mr R was misadvised his policy upgrade would apply to his parts and garage cover. But AA doesn't dispute this as it already acknowledged in its final response to the complaint that Mr R was given this misadvice.

I've considered if Mr R was disadvantaged by the misadvice. But on balance, I don't think he was, because I think it is more likely than not he still would have agreed to upgrade his membership from vehicle based to personal based even if he had been told this wouldn't apply to his parts and garage cover.

I say this because had Mr R not agreed to upgrade his membership, AA wouldn't have been required to do anything to help with the breakdown. So, Mr R wouldn't have benefitted from the attempted repair at the roadside, or from the vehicle being recovered by AA and taken to a garage. As such, he likely still would have needed to pay for some form of roadside assistance elsewhere to attend to the breakdown. And neither Mr R or AA could have known during the phone call if a repair at the roadside would be successful or not. So, even if AA had been clear that the parts and garage cover wouldn't apply to his circumstances, I still think the membership upgrade would have been attractive to Mr R because it meant the breakdown could possibly have been resolved at the roadside, and if not, the car could have been recovered to a garage.

In addition to which, it wasn't until after Mr R had already agreed to upgrade his membership and paid for it that he enquired about whether the parts and garage cover would be included in the upgrade. So, I think this shows it was not just the parts and garage cover Mr R was interested in upgrading, but it was his membership as a whole.

Ultimately, Mr R did receive the benefit of the membership upgrade because AA attended and attempted to carry out a roadside repair and when that was unsuccessful it recovered the vehicle and took it to a garage. And because of this, and because I think it's likely he'd have still chosen to upgrade had he been given the correct advice, I don't intend to require AA reimburse him the cost of the membership upgrade.

Although there's no dispute AA led Mr R to think his parts and garage cover was being upgraded to cover the car he was in, I don't find it reasonable for AA to be bound to that misadvice by having to pay for the cost of the repair as I see no reason to think the cost of paying for the repair could have been avoided had AA not given the misadvice.

I should say here that I can only consider any impact which was caused to Mr R. This is because for the events I have considered in this complaint, only Mr R was AA's customer. Although it was Mr B's vehicle, it was Mr R who held the AA membership and who upgraded the membership. As such, Mr R is an eligible complainant because he was AA's customer, but Mr B was not a customer of AA's and doesn't fall under any other category of eligible complainant. So, I could only award compensation for any impact caused to Mr R by AA acting unfairly, and not to Mr B.

I am aware that AA has already compensated Mr B £250 for this complaint - £150 of which was from its final response, and a further £100 of which followed the investigator's opinion. But since Mr B isn't an eligible complainant for this complaint, I can't make any findings on anything which Mr B has been compensated.

Instead, I have considered if any compensation should also be paid to Mr R for the misadvice he was given when he upgraded his policy. Having considered this, I don't intend to award compensation to Mr R for this misadvice.

This is because, as I set out earlier, I think Mr R would have upgraded the policy anyway without this misadvice, and although I think an expectation was unfairly set that AA would cover the cost of repairing the car once it was in the garage, I think that mostly to the detriment of Mr B, since it was his car.

Mr R has also complained about the patrolman leading him to think he'd only need to pay an excess once the car was taken to the garage.

I consider this part of Mr R's complaint to relate to the performance of his emergency breakdown cover contract. However, a different AA business from the one who had sold him the policy upgrade were responsible for providing Mr R with the roadside assistance service and as such if Mr R is dissatisfied with the advice he was given by the patrolman, he'd need to pursue this against that AA business.

But this Service would not be able to consider Mr R's complaint about the advice he was given by the patrolman.

This is because this Service can only consider complaints about certain types of activities carried out by businesses. The rules about what complaints we can consider are set out in the Financial Services and Markest Act 2000 and are included in the FCA handbook. A copy of which can be found on the FCA website.

Although effecting and carrying out contracts of insurance are usually regulated activities which this Service can consider complaints about, The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('RAO') contains an exclusion which excludes roadside assistance contracts that meet certain criteria from inclusion under these activities. Mr R's breakdown cover meets this criteria, which means we'd be unable to consider this part of his complaint since based on the exclusion in the RAO it is not about a regulated activity. "

AA didn't reply to my provisional decision. Mr R replied disagreeing, and in summary he said:

- He only agreed to upgrade his membership cover because he was told that the upgrade would apply to his parts and garage cover. Had he known it did not, he would not have upgraded.

- He was induced into upgrading based on AA misrepresenting the parts and garage cover would also be upgraded to include the vehicle it was in and under Section 50 of the Consumer Rights Act 2015 any information provided verbally that influences the decision to enter into a contract becomes legally binding.

- Mr B wasn't told by the garage the car needed a new fuel pump. It was actually the patrolman who diagnosed this. And it was based on the assurances of the AA patrolman that only an excess would be charged that the car was recovered to an AA approved garage rather than to a more local mechanic who otherwise would have been used.

- AA wouldn't share the call recording of the sale and only complied after a Subject Access Request and threat of legal action were made.

- Only £250 of compensation was ever received from AA. The additional £100 compensation which AA agreed to was not received.

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 considered Mr R's comments, I've reached the same conclusion as I did in my provisional decision. I'll explain why.

I've listened again to the call recording of the conversation where Mr R decided to upgrade his AA membership. Having done so, I think Mr R decided to upgrade his membership before he was incorrectly informed the upgrade would apply to his parts and garage cover.

Mr R was misinformed by AA before paying for the upgrade that his parts and garage cover would be upgraded to apply to the car he was in. But before this AA told him it wouldn't respond to the breakdown because he only had a vehicle-based membership. So, he would either need to change the vehicle on his membership, or upgrade to a personal based membership. Mr R asked if he could do that now, and said he thought it would probably be better to change to the personal based membership.

So, I think on balance Mr R had already decided he wanted to upgrade his membership before he was misled into thinking the upgrade would also apply to his parts and garage cover. And I think he likely decided to do this to benefit from an attempted repair at the roadside and roadside recovery which the upgrade would have provided him.

I've considered Mr R's comments about the Consumer Rights Act 2015. But for the misadvice about the parts and garage cover to be treated as being included as a term of the contract it would have needed to have been taken into account by Mr R either when deciding to enter into the contract or when making any decision about the service after entering into the contract. But I don't think that was the case here because I think Mr R had likely already decided he wanted to upgrade his membership before he was misinformed about the parts and garage cover.

Mr R says it wasn't necessary for him to upgrade for roadside assistance as the car was broken down safely in a layby less than a mile from Mr B's home and his regular garage. But the upgrade entitled Mr R to an attempted repair at the roadside first before any recovery of the vehicle would be carried out and given that he couldn't have known whether a roadside repair would resolve the breakdown I think he likely sought to benefit from this and it informed his decision to upgrade his membership.

I acknowledge Mr R's comments about the service and advice given by the patrolman. But for the reasons I set out in my provisional decision I cannot consider this as this aspect of the complaint is outside our jurisdiction.

I've considered Mr R's comments about the Subject Access Request. Ultimately, AA didn't dispute in its final response that Mr R was incorrectly told during the call his parts and garage cover would cover him for any vehicle. While I can see Mr R made the initial Subject Access Request, this was subsequently chased by Mr B and as such I think it would have been Mr B who was inconvenienced by having to chase for this. But as I set out in my provisional decision, I can only award compensation for distress and inconvenience caused to Mr R, and not to Mr B.

With regards to the £100 compensation recommended by the investigator, AA said in an email dated 27 May 2025 it would contact Mr B to advise the additional £100 compensation had been issued. I acknowledge Mr R's comment that this wasn't received, but again I'm not able to award compensation to Mr B for distress and inconvenience caused to him. Given that AA said it had issued this payment and Mr R says it wasn't received, Mr B may though wish to contact AA directly to inform it he hasn't received the payment.

However, considering that it was Mr B's car which was affected and the main impact to Mr R would have been if he wouldn't have upgraded his membership had he known his parts and garage cover wouldn't have covered Mr B's car, I've decided as per my provisional decision not to award compensation to Mr R.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 September 2025.

Daniel Tinkler
Ombudsman