

complaint

Mr P has complained that Admiral Insurance Company Limited unfairly turned down his motor insurance claim and then disposed of his car without his permission.

background

Mr P was involved in an accident after overtaking another vehicle. He said the road was wet and the back end slid as he accelerated to avoid a collision. His car was damaged in the accident. The salvage agent said the tread on the car's tyres was below the legal limit, so Admiral asked an engineer to inspect the car. The engineer also said the tread on the rear tyres was below the legal limit. Admiral asked the engineer to comment on whether the tread would have contributed to the accident. Admiral ultimately turned down Mr P's claim because it said the policy didn't cover losses caused by him not keeping the car in a reasonable condition. It said a service ten months previously had shown an amber warning on the tyre depth. So, it thought Mr P should have been aware they were below the legal limit.

Mr P was unhappy with Admiral's decision as he didn't think the tread was below the legal limit before the accident. He said his car had been into the garage a number of times and they hadn't mentioned the tyre depth. He thought any issues with the tread depth must have been caused by the accident.

Mr P told Admiral he wanted to appoint his own engineer to inspect the car, so not to dispose of it. However, Admiral sold the car for salvage and offered Mr P the £1,267.50 it received. Mr P said Admiral shouldn't have done this as the car was his property. Admiral accepted it had made an error in disposing of the car. But said as the car was a category B write-off Mr P would need to have it broken by someone with a special licence. It offered him £100 to compensate him for selling his car when it shouldn't have done. Mr P said this wasn't enough as he'd seen parts of his car for sale online. He said he would have sold the parts himself and Admiral disposing of his car had caused him a considerable financial loss.

Mr P was unhappy with Admiral's response and brought his complaint to us. Our investigator thought it was most likely the tread depth on the tyres had contributed to the accident. So, he thought Admiral had fairly turned down Mr P's claim. He also thought £100 was enough compensation for Admiral to pay Mr P for disposing of his car, as he didn't think Mr P would have been able to break it for parts.

Mr P didn't agree. He appointed an engineer who reviewed the photos and said the tyres were of a legal limit. When this didn't change our investigator's view Mr P asked for an ombudsman's decision. In summary, he said:

- The measurements taken by the salvage agent and Admiral's engineer can't be relied on as they're contradictory and the salvage agent's report doesn't provide details of the person who took the readings.
- His own measurements are consistently higher than Admiral's engineer's and closer to the legal limits.
- His engineer found that his tyres were of the legal limit.
- The service records provided in the months before the claim don't show any mention of the tread being lower than legal limits.
- Reduction in the tread was caused by the accident.

- Admiral's engineer said in a call that he couldn't put in writing that the tread depth would have been a factor in the accident.
- A second report by the engineer is contradictory, as it says the tread depth would have contributed to the accident, whereas the first report says it could have contributed.
- Admiral have committed fraud and theft by disposing of his car.
- He could have asked a professional mechanic or salvage agent to break the car for parts for him. And it isn't accurate to say that it's necessary to have a licence.
- The car being recorded as a category B write-off ignores that the car was undervalued. If the correct value of the car had been reached he would have been able to challenge the salvage category.
- He should be paid the total retail value of the car's parts.
- The car is rare and of sentimental value.
- It doesn't seem fair that a contributory factor can lead to the claim being turned down, as this means it's being treated as the cause rather than a contribution.

Mr P also provided a letter from a garage that said the garage would break the car into parts for him and dispose of any waste.

Before reaching a provisional decision I asked Admiral to consider the evidence Mr P had provided about the sale of his car. Mr P said this showed his car was sold to a salvage agent and on to someone in a different county who was selling the parts of the car. Our investigator contacted that seller who advised that the engine had been sold but the rest of the car was still available for sale for £3,500. I asked Admiral to consider either:

- Buying and shipping the car back to Mr P, as well as making him a reasonable offer for the missing engine and any other parts that had been sold.
- Paying Mr P the pre-accident market value of his car.
- Make Mr P a reasonable cash offer to compensate him for the loss he's suffered by not being able to sell the parts.

Admiral offered to pay Mr P £6,000 - as that was the amount the salvage agent had sold the car on for - minus any third-party costs. Admiral made this offer because it thought Mr P would most likely have sold his car as a whole rather than breaking it for parts. Admiral also said Mr P hadn't raised this as a complaint point and only provided evidence of the parts for sale much later.

I issued a provisional decision on this complaint on 21 October 2020, where I explained what I thought Admiral needed to do to put things right. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr P's made a number of detailed points. I don't intend to address all of them although I'd like to assure him that I've considered them all. Instead I'm going to focus on what I see as the central issues of this complaint. I don't intend this as a discourtesy to Mr P, instead it reflects the informal nature of our service and my role in it.

The terms and conditions of Mr P's policy say that if he fails to protect his car from loss or damage through its condition and that condition causes or contributes to the loss, then he won't be covered by the policy. This means that it's for Admiral to show that it's most likely the tread depth on the tyres caused or contributed to the accident. Having considered all the

available evidence I think Admiral has shown that it's most likely. I'll now explain why.

The salvage agent contacted Admiral and said the tread depth on both rear tyres was 0mm. I appreciate Mr P would like me to discount this information but I'm not going to. I say that because I think this information was provided to indicate to Admiral that the tread depth was lower than it should be and that might need looking into further.

The first report Admiral's engineer provided said that the tread on the rear tyres was 1mm. In that report the engineer said depending on the weather the tread depth could have made a difference. I understand Mr P doesn't think it can be accurate because both tyres are recorded as being 1mm which suggests the measurements have been rounded. But whether the measurements have been rounded up or down, this would still make them under the legal requirement.

I've listened to calls where Admiral spoke to the engineer's firm and asked them to confirm whether the tyres would have contributed to the accident. In those calls the engineer says he can't say in writing that the tyres would have caused the accident, although he says if the road was wet then they would have been a contributing factor.

In the second report the engineer said that both rear tyres were below the legal requirements with at least three quarters of the tyre being below 1mm. He said as the conditions were wet the condition of the tyres would have contributed to the accident. I think this is consistent with the conversations Admiral had with the engineering firm. The terms of the policy don't require the tyres to have been the cause of the accident, only a contributing factor. And I'm satisfied that the engineer confirms this.

Due to the age of Mr P's car there wasn't a MOT. But Admiral pointed out that a service carried out almost a year before had shown an amber warning. I appreciate Mr P has provided evidence to show that an amber warning means the tread was between 3mm and 5mm at that time. And that meant he didn't need to have them changed immediately. But I think this means he should reasonably have been aware that the tyres were worn.

Mr P has provided invoices showing recent work carried out on his car. He says these show the tyres can't have been worn because it would have been picked up by the garage. But the most recent ones seem to be for work on specific parts of the car and not an overall service. So, these don't persuade me that the tyres weren't below legal requirements. In addition to this, the measurements Mr P took himself show most areas of the tyres are below the legal requirement.

I understand Mr P thinks that any excessive wear to the tyres must have been caused by the accident. Admiral's engineer provided further comments to say the tyres were already below legal requirements and the circumstances of the accident wouldn't have contributed, I'm persuaded by what he's said because the measurements take account of the whole tyre and not just the area in contact with the ground when they slid.

The engineer Mr P appointed reviewed the photos of the tyres and the assessment of Admiral's engineer. He concluded that both tyres looked to be well above the legal requirement at around 2mm. He said the wear indicators were clearly visible and the service documents supported the view that the tyres were within legal limits at the point the car was serviced.

Mr P's engineer also said there had been heavy skidding of the tyres and this was supported

by the markings on the tyres. He thought this would have impacted the tread in parts but even with this impact the tyres were over the legal limit.

While Mr P's engineer has given a detailed explanation as to why he thinks the tyre tread was above the legal requirement, I'm more persuaded by Admiral's engineer. This is because he was able to take measurements from the tyres. And these measurements are generally supported by those of the salvage yard and Mr P's own measurements. So, even if Mr P's engineer had physically inspected the tyres, it remains that the other measurements provided are more in line with each other, particularly when considering that the service almost a year before had indicated an amber warning.

I can understand Mr P's frustration that Admiral disposed of his car when he'd asked it not to. I agree that as it wasn't paying his claim, then the car wasn't its property to dispose of. It's not my role to punish Admiral for this, instead I need to consider the impact this had on Mr P and whether it caused him a loss. I do think it caused him a loss by incorrectly disposing of his car and I'll now explain why.

Firstly, I'm satisfied that Mr P raised a complaint with Admiral about it incorrectly disposing of his car. Admiral responded to that complaint in its final response letter dated 26 November 2018. While Mr P might not have sent Admiral the further evidence showing his car for sale Admiral had the opportunity to discuss this complaint further with him. Instead it sent him its final response on his complaint which resulted in him bringing his complaint to us.

Mr P has provided photos and links to web pages that show his car being sold by the salvage agent. He's provided further links to webpages that show the car being sold for parts by someone else. Mr P identified his car through the registration number and VIN number, I haven't seen any evidence to show this isn't Mr P's car. So, on balance I'm persuaded this was Mr P's car.

Mr P said if Admiral had returned his car he would have broken it and sold the parts. He's provided a letter from a garage showing that he would have been able to have the car broken and the parts bagged, ready to be sold, for £1,794. Given the loss Mr P suffered by not having his claim covered, I think he would have looked for the option that would have given him the greatest return. So, while Admiral think it's most likely Mr P would have sold the car as a whole, I'm more persuaded he would have broken it for parts as he's said. So, I don't think Admiral's offer to pay Mr P £6,000 as the salvage value of the whole vehicle is fair and reasonable.

Our investigator was able to establish from the current owner of the car that it was for sale for £3,500, however this was without the engine that had already been sold. Our investigator wasn't able to find out from the seller how much the engine had sold for or the combined value of the parts being sold individually. Mr P has listed the new price of each part that's advertised for sale which totals £51,663.97. However, I haven't seen any evidence to show it's most likely the second-hand parts would sell for the same amount as new ones. I appreciate Mr P feels I should use the value of the new parts because Admiral fraudulently sold his car, but as I've said, my role here is to consider Mr P's loss as a result of what happened and not to punish Admiral.

Mr P has also made the point that his car depreciated by 22.57% between the time he bought it and the date of the accident. So, he suggests that this should be the maximum depreciation applied to the parts, which would mean the total value of the parts was £40,003.41. Given that neither Mr P or Admiral has provided me with anything to show how

much the second-hand parts would sell for, I think the principle of applying the same depreciation to the parts as to the whole car would produce the most fair and reasonable outcome to this complaint.

Mr P and Admiral disagree about the value of the car at the time of the accident. Mr P said his car was worth £47,000 whereas Admiral valued the car at £42,250. I've looked at relevant trade guides to decide which I think is more accurate. I generally find these persuasive as they're based on nationwide research of prices. They also take account of the car's mileage and any extras on it.

The three guides I've checked give values of £37,323, £43,920 and £46,151. The third valuation is using a loss date of October 2018, as the guide doesn't produce valuations over two years' old. Using these valuations. I've discounted the lower valuation as it's out of line with the other two. I then think in this case it's fair to take an average of the other two which gives a value of £45,035.50. I checked the value of the car in the third trade guide a few months after October 2018 to take account of the depreciation between July and October. This shows that in that guide the value would likely have increased to around £47,000 at the time of the accident, this would mean I'd then need to take account of the range of values - as they're all equally spaced - which would still give me an average value of around £45,000. So, I'm going to use the value of £45,035.50 when looking at the depreciation.

Mr P said he bought his car for £61,345. When using a value of £45,035.50 in July 2018 this gives a depreciation of 26.6%. I think it's fair to apply this to the value of the parts Mr P has provided as I haven't seen anything from Admiral to persuade me these aren't accurate costs for new parts. Applying a 26.6% deduction to £51,663.97 gives a value for the parts of £37,921.35. From this amount I think it's fair and reasonable to deduct £1,794, as Mr P would have needed to pay this to get his car broken for parts.

I therefore think the fair and reasonable outcome to this particular complaint is for Admiral to pay Mr P £36,127.35, minus anything it's already paid him for salvage, to compensate him for the loss he's experienced by it selling his car.

Mr P would also like interest and compensation on this amount. However, I'm not going to award any because I've also taken into account that much of the car is still for sale, meaning it's impossible to know if Mr P would have sold most of the parts yet and as such wouldn't have had the money. While I also have no doubt that Admiral selling Mr P's car has caused him distress, he would also have had the inconvenience of selling the parts, plus any fees associated with the sales. So, I'm not going to award anything further for his distress and inconvenience.

Neither Mr P nor Admiral accepted my provisional findings.

Mr P made a number of detailed points. In summary:

- Mr P didn't think the salvage agent's findings over the tread depth should be considered, as they weren't accurate.
- Mr P's own readings weren't professionally taken and are being used against him.
- If Admiral's engineer's measurements were rounded down, it would take very little friction from the accident to have reduced the depth even further.
- Wear from the accident would have been across much of the tyre due to the nature of the accident which wasn't one single skid. The rear tyres would have taken the brunt of the damage due to being a rear wheel drive.

- Mr P's own engineer was only able to work from photos due to Admiral having sold his car.
- Admiral's engineer wasn't consistent in his view on whether the tyres made a difference to the accident. He also said the tyres 'could' have contributed to the accident and not that they 'would' have done.
- A health check was carried out on 27/11/17 – eight months and fewer than 3,000 miles – prior to the accident which didn't mention any adverse issues with the tyres.
- Mr P has received a demand for third party damage caused by the accident.
- Mr P accepts that using depreciation on the cost of parts seems fair and reasonable and while the value I've produced for his car is on the low side, it's not out of the question.
- Mr P has not received anything for the salvage of his vehicle from Admiral.
- Mr P feels interest should be paid because while it's impossible to know if he'd have sold all the parts it's also impossible to know what parts might have already sold. And given the time that has passed, the parts would have been on sale a long time ago. Also, the most expensive part – the engine – has been sold. He suggests 4% interest would be appropriate as this is splitting the interest between him, and Admiral.
- Mr P feels it is unfair and unbalanced to not award any compensation and effectively punishes him. He explained the impact of Admiral selling his car and him needing to bring his complaint to our service.

Admiral said it had spoken to a director of a salvage company who confirmed that parts would achieve 50% of their retail value at best, while some parts wouldn't be able to be transferred to another car. Admiral provided a breakdown of the parts Mr P had listed with comments on how much it thought they would sell for, as well as those parts that he thought were damaged in the accident and as such couldn't be re-sold. Admiral said the total for the parts was £10,889.13, so this is the amount it would now offer Mr P. It said as a gesture of goodwill it wouldn't deduct either the breakage costs or its outlay of £609.21 for the third-party claim. Admiral said this was a reasonable offer because it seemed most parts are still for sale and it's impossible to know if they will sell.

my findings

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 not persuaded to depart from my provisional decision and I'll now explain why. I'd also like to again reassure Mr P that although I haven't listed every point he's made, I have considered them. However, I've focussed my decision on what I see as the central issues.

Mr P has explained why he doesn't think I should be able to rely on the readings relating to the tyre tread in the way that I have. But I don't think these are new points and as such I'm not going to repeat my reasoning for why I think Admiral can fairly rely on them, as that's set out in my provisional findings above.

I've taken Mr P's point that the accident wasn't caused by one single skid and therefore there would have been friction across much of the tyre, rather than in one place. However, I remain satisfied that on balance it's most likely that the tyres were below the legal limit for the reasons set out above in my provisional decision. I'd like to reassure Mr P that I hadn't overlooked the health check that was carried out on his car eight months before the

accident. And although the car might have done less than 3,000 miles since then, that's not enough to persuade me that the tread wasn't below the legal limit at the time of the accident.

I'd like to clarify that where I referred to calls with the engineering firm, these weren't both with the same engineer. The second person Admiral spoke to said he'd looked at the engineer's photos and if the conditions were wet then the tyres would have contributed to the accident. The original engineer then issued a second report that said if the road condition was wet then the tyres would have been a contributing factor. While this might be slightly different in the wording he used in the call where he said the tyres 'could' have caused the accident. This was also in a different context, because he was referring to whether the tyres caused the accident rather than contributed to it.

As such, I remain satisfied that Admiral can rely on the policy term that if Mr P's fails to protect his car from loss or damage through its condition and that condition causes or contributes to the loss, then there isn't cover under the policy. This means it's not Admiral's responsibility to cover either Mr P's claim or any third-party claim made against him, unless it's liable under the Road Traffic Act. And if Admiral do have to settle a third party claim they may decide to recover this amount from Mr P.

In reaching a fair valuation for the salvage of Mr P's vehicle, it's been difficult to find out which parts have sold and it's impossible to predict which parts will sell in the future. Therefore, it's very difficult to put an exact figure on how much the salvage is worth. So, in reaching what I feel is a fair and reasonable decision, I've taken all of the circumstances of this complaint into account, including that Admiral sold Mr P's car when it wasn't its property to do so.

Admiral has provided a breakdown of how much it feels the parts would sell for and it's also provided comments from the director of a salvage company that says the parts would likely never fetch more than 50%. He also says that there would need to be demand for the parts and there would also be a reduction in value due to the length of time taken to sell. However, the director also says that anything he says will be 'speculative'. So, I don't think this is enough to persuade me that the parts would definitely only fetch a maximum of 50% of their original value.

Admiral's engineer has set out what he thinks parts might sell for and also those parts that he feels were too damaged to sell, such as the catalytic converter. He has also said that some parts, such as the air conditioning pump would have been sold as part of the engine. However, the current owner of the salvage has listed the catalytic converter and other parts noted as being damaged by Admiral, as being for sale. The air conditioning pump is also listed as a separate part for sale. I think that indicates that parts aren't too damaged to sell and that parts could have been sold separately to other parts. And as such I'm not persuaded by the information Admiral has provided.

There are also some parts that Mr P has listed that weren't shown as being for sale. I understand Mr P thought this might be because the seller had already sold them. It seems from the seller's website that he doesn't remove the parts he's sold, as the engine is still shown as being for sale. It's impossible to know if these were sold elsewhere or if they weren't suitable for sale, as we haven't been able to get that information from the seller. However, as Admiral's engineer listed parts as being too damaged, that were later for sale, I'm still going to award for these parts, as I'm not persuaded by the engineer's comments.

Overall, I'm still satisfied that applying depreciation to the parts produces a fair and reasonable outcome here. I say that because while the parts might not have fetched this much when being re sold, the reason we can't know how much Mr P would have recouped through the sale of parts is because Admiral sold his car when it wasn't its property to do so, and Mr P had specifically asked it not to.

I appreciate Mr P would like me to include interest and an award for distress and inconvenience. However, I still don't think that would result in a fair and reasonable outcome here. I say that because the information from the seller suggests that although the engine has sold, most parts haven't. So, I don't think I can fairly award any interest when it might have taken Mr P considerably more time to sell the rest of the parts.

I thank Mr P for setting out the distress and inconvenience that he's undergone since the accident. While I don't hold Admiral responsible for any distress and inconvenience caused in the turning down of the claim, I do accept it's caused him considerable distress and inconvenience in incorrectly disposing of his car. In not making an award for this, I've taken into account that the award I'm making for the value of the parts is likely the maximum they would fetch. And also, that Mr P hasn't had the inconvenience or selling costs associated with the selling the parts himself.

For these reasons, as well as those set out in my provisional decision, I remain satisfied that the fair and reasonable outcome to this complaint is for Admiral to pay Mr P £36,127.35, minus anything it's already paid him for salvage.

my final decision

I uphold this complaint and require Admiral Insurance Company Limited to pay Mr P £36,127.35, minus anything it's already paid him for salvage.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 January 2021.

Sarann Taylor
Ombudsman