

complaint

Mr S complains that Tradewise Insurance Company Limited has refused to pay a claim on his motor insurance policy.

background

Mr S' car rolled when parked and hit some other vehicles and a fence. Mr S initially said he didn't know why this happened but has more recently suggested he left the handbrake off. Tradewise refused to pay his claim as it says his car was unfit for the road. Mr S says the car was fit for the road and has provided the MOT and a report from a manufacturer's garage. But he is unhappy that Tradewise has continued to refuse to deal with his claim.

Our investigators felt this complaint shouldn't be upheld. They said:

- Mr S' policy says he must maintain his car in a safe and roadworthy condition. Tradewise says the car's brakes were worn and its engineer's opinion is that if the brake pads were working correctly the car wouldn't have rolled because the handbrake would've used them to make the car stationary.
- On the evidence it's most likely that the condition of the brake pads was a contributory factor in the car rolling as they were insufficient to hold it on the hill. If the handbrake wasn't engaged, as Mr S has suggested, it's likely the car would've rolled immediately and not some 15 to 20 minutes after it was parked.
- Mr S has provided an email from a manufacturer's garage saying the brakes were low but not un-roadworthy. But Tradewise has relied on a full engineer's report. And it's shown the brake pad warning light was on after the accident. The MOT advisory on the brakes was also some 3,000 miles before this accident and it's unlikely that this warning light had only just come on when the car was being taken for inspection by the engineer.
- The brake pads weren't in a roadworthy condition at the time of the accident and Tradewise has acted reasonably declining the claim.

Mr S doesn't agree and has asked for an ombudsman review. He thinks he left the handbrake off and says the car rolled from a flat surface. It wasn't on a hill. The manufacturer's garage says the brakes are still effective. He had comprehensive insurance and thinks he should be covered.

my findings

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

Some of the evidence in this case is incomplete, inconclusive or contradictory. So, I've made my decision based on what I think is more likely to have happened than not.

It's not our role to decide exactly what caused this incident. But we can look into whether Tradewise has conducted a reasonable investigation into what happened and whether it has applied the policy terms and conditions fairly when making its decision not to deal with the claim.

In this case I think Tradewise has carried out a fair investigation. It asked an independent engineer to inspect the car after the incident and the engineer's report noted that the brakes were "*unsatisfactory*". Tradewise says it was also found that an MOT check before the incident advised that the brake pads were worn thin and the repairer has advised that the dash shows warning lights were on for the brake pads. And the engineer deems the car to have been unfit for road usage. Tradewise says the incident is consistent with brake failure and it's refused to deal with the claim.

Mr S has some evidence from a manufacturer's garage which says that although the brakes are low they are still effective, roadworthy and would pass an MOT. And low brakes wouldn't cause the car to roll. But Mr S hasn't produced evidence from an independent engineer or obtained a diagnostic report from the manufacturer showing when the brake pad dash warning light came on.

Tradewise's policy clearly says in the General Conditions that Mr S must ensure his car is maintained in a safe and roadworthy condition. But in this case I think Tradewise was entitled to rely on its investigation and the conclusions of the independent engineer when deciding that the car wasn't safe or roadworthy and that the brake pad condition caused, or at very least, contributed to the incident.

Mr S may disagree with Tradewise's interpretation of the evidence and decision to decline the claim but I don't think it's failed to comply with the policy terms or exercised its discretion unfairly or unreasonably when deciding to do so on the available evidence.

Overall, although I recognise Mr S' frustration, I don't see any compelling reason to change the proposed outcome in this case. And I don't think I can fairly or reasonably require Tradewise to now deal with Mr S' claim as he'd like.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 January 2020.

Stephen Cooper
ombudsman