

## The complaint

Mr Y is unhappy with how Admiral Insurance Company Limited handled a claim on his motor insurance policy.

## What happened

Mr Y had an Admiral multicar motor insurance policy. For one of the insured cars, Mr Y was the policyholder and his son was a named driver. In March 2016 Mr Y's son was driving this car when it collided with two pedestrians, who I'll refer to as the third parties. Mr Y's son later pleaded guilty to driving with excess alcohol in relation to this collision.

The third parties raised claims with Admiral. Admiral contacted Mr Y and his son about this:

- On 11 April 2016 it wrote to Mr Y advising of a possible incident, that it had set up a claim under his policy and that he should contact Admiral.
- Admiral's contact notes say it tried calling Mr Y on 13 and 20 April 2016, but there was no answer. Mr Y says he did in fact talk to Admiral on these dates.
- On 20 April 2016 Admiral sent Mr Y two letters to say it had asked an independent assessor to examine the car, and an investigator would be in touch to take a written statement to clarify the circumstances.
- On 26 April 2016 Admiral called Mr Y and he gave it some details about the collision.
- On 9 May 2016, Admiral wrote to Mr Y noting his son might be prosecuted for an offence involving alcohol and, if that was the case, it wouldn't provide cover under the policy. It said liability would instead be restricted to its obligations under Road Traffic law and it would recover its costs from Mr Y or his son. It asked Mr Y to confirm if his son was convicted.
- Admiral's contact notes say the policyholder's solicitor called on 3 June 2016 to say they were representing Mr Y's son in his prosecution for driving with excess alcohol and asked about likely costs for the third parties' claims. Admiral advised the claims might be costly and if Mr Y's son was convicted, Admiral would be the Road Traffic Act ('RTA') insurer and recover its costs from Mr Y's son as the named driver.
- On 8 June 2016, Admiral wrote to Mr Y saying he hadn't responded to its last letter. And on 29 June 2016 it wrote to say that as he hadn't responded, it concluded Mr Y's son had been convicted of an offence and so it wouldn't deal with the claim under the policy. And would remove Mr Y's son from the policy in line with the policy terms.
- On 8 July 2016 Admiral sent Mr Y's son a consent form, saying the RTA obliged it to satisfy any unsatisfied court judgment entered against him arising from the collision. And that while it wasn't obliged to, it offered to negotiate the claim on his behalf to try and reduce costs, as a negotiated settlement would cost less than a full trial. It asked Mr Y's son to sign the consent form if he wanted Admiral to do this. And in the '*Frequently asked questions*' included within that letter, Admiral made clear that the matter wouldn't simply go away if Mr Y's son did nothing.
- Mr Y called Admiral on 12 September 2017 to see if his son could be added back to the policy. Admiral said no because there was an open claim. And it told Mr Y over £8,000 had been paid so far on the third party claims following the collision, with the second third party's claim still to be settled.

- Admiral wrote to Mr Y's son on 18 February 2019 to say it had dealt with the third party claims under the RTA, that the third parties had signed 'assignment and agreement' forms transferring their right to recover costs to Admiral, and that Admiral was seeking to recover £20,736.94 costs from Mr Y's son.

Mr Y thought Admiral had made errors and should stop trying to recover its costs. He thought Admiral should have sent the consent form letter to him as policyholder, not his son. And that Admiral shouldn't have taken part in the claim, as the consent form wasn't signed and no judgment was obtained, so Admiral's duty under the RTA wasn't triggered. Yet Admiral signed agreements with the third parties without telling Mr Y, and didn't directly give him any claims updates or send him any claims correspondence between July 2016 and February 2019. So he'd lost his opportunity to defend the claim.

Mr Y said he thought the third party claims hadn't gone ahead, as renewal documents Admiral sent in February 2017 and February 2018, and the proof of no claims bonus it provided in March 2019 incorrectly showed his number of claims as 'none'. And these documents risked him inadvertently not disclosing the claim to a new insurer. Mr Y also said Admiral hadn't handled his complaint well, as its response came from the claims department and it didn't send him a leaflet for our service. He thought Admiral should pay for an independent review of its claim handling.

For its part, Admiral said it was obliged to deal with the third party claims and was right to send the consent form letter to Mr Y's son rather than Mr Y, as his son was driving during the collision and a named driver under the policy. It said Mr Y's son didn't sign the consent form, but the third parties signed 'assignment and agreement' forms under which it settled their claims and was entitled to recover its costs from Mr Y's son, instead of the claims going to court. Admiral clarified it had no contract with Mr Y for this claim because Admiral had declined it under the policy's 'drink and drugs clause' And that it wasn't obliged to send Mr Y's son claim updates either, as he hadn't signed the consent form so Admiral wasn't acting on his behalf.

Admiral said its renewal documents were correct, based on its systems correctly showing Mr Y's son was driving at the time of the collision, and it was for Mr Y to tell his new insurer about the claim. But Admiral did apologise for aspects of its complaint handling – a complaint wasn't registered when it should've been, a complaint response was incorrectly addressed to Mr Y's wife, and it hadn't sent Mr Y its complaint handling guide or a leaflet for our service.

Mr Y referred his complaint to our service. Our investigator thought it was fair and reasonable for Admiral to deal with the third party claims and that Admiral had told Mr Y (the policyholder) and his son (the named driver) about them. She said Mr Y's son was responsible for dealing with these claims, not Mr Y. She agreed the renewal documents appeared confusing, but said Mr Y knew about the claims in June 2016 and Admiral told him about them again in September 2017. She said it was for Mr Y to let Admiral know if his insurance documents were incorrect, and the renewal documents hadn't led him to give his new insurer incorrect information as Mr Y changed insurer after he knew about the claim. For completeness, our investigator said she hadn't seen how the claim was recorded on the Claims Underwriting and Exchange Register ('CUE'), but the policy terms entitled Admiral to pass information to CUE. However, she said Admiral should ensure CUE made clear there was an open claim against Mr Y (as policyholder) and that his son was the driver in the collision. And she advised our service couldn't investigate Admiral's handling of Mr Y's complaint.

Mr Y asked for his complaint to be reviewed by an ombudsman. He reiterated some of his complaint points and clarified some details. Mr Y agreed Admiral told him about the claim in

September 2017, but said his March 2018 and March 2019 renewal documents showed the number of claims as none, so he thought there were no actual claims against his policy. He said his new insurer wasn't aware of the claim until Mr Y told it, so Mr Y thought Admiral hadn't recorded the claim on CUE. But he confirmed the open claim hadn't affected his new policy.

### **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 done so, I'm not upholding this complaint. I'll explain my reasons, but first I'd like to be clear that my decision won't address every point or comment that either Mr Y or Admiral has made. I mean no discourtesy by this, and I'd like to reassure Mr Y and Admiral that I have considered everything they've provided. But my decision will only address what I see to be relevant in reaching a fair and reasonable outcome.

#### *involvement in claim*

I'm satisfied Admiral was correct to decline the claim under the policy. I say that because Mr Y's son pleaded guilty to driving with excess alcohol regarding the collision. And Section 11 of the policy terms say that if an accident happens while a person entitled to drive under the policy is found to be over the alcohol limit, then the policy won't provide cover and Admiral's liability will instead be restricted to its obligations under Road Traffic law.

This means Admiral wasn't involved in the third party claims because liability for them was covered by Mr Y's policy. Instead, Admiral says it was involved in the claims as the RTA insurer, so it was obliged to pay third party claims in the circumstances set out in the Motor Insurance Bureau Articles of Association ('MIB Article 75') and the Road Traffic Act ('RTA').

But I think it's incorrect for Admiral to suggest it was the RTA insurer, as I understand this can't be the case if Mr Y's son was uninsured due to a policy exclusion. I think Admiral would potentially be the MIB Article 75 insurer instead. However, both MIB Article 75 and the RTA only apply if a third party obtained a judgement against either Mr Y's son as named driver. I've seen no evidence of such a judgement, so I don't think MIB Article 75 or the RTA were triggered here. Therefore, I don't think either MIB Article 75 or the RTA meant Admiral was legally obliged to settle the third party claims.

Having said that, I think it was fair and reasonable of Admiral to settle them anyway. That's because there would have been uncertainty about whether it might become the MIB Article 75 insurer, and because it was trying to limit the claim costs by acting quickly and negotiating a settlement instead of waiting for a full court trial to decide costs.

In any case, while Mr Y is the policyholder, he's not the person Admiral is asking to repay the claim costs or the person driving at the time of the collision – that person is his son, a named driver under the policy who was liable for the collision because he pleaded guilty to driving with excess alcohol. Section 11 of the policy terms say that in these circumstances, Admiral will *'...recover from you or the driver, all sums paid (including all legal costs), whether in settlement or under a Judgement, of any claim arising from the accident.'* Given this policy term, and that Mr Y's son was the person driving and that Admiral has settled the third party claims, I think it's reasonable of Admiral to try to recover its costs from Mr Y's son rather than Mr Y.

Admiral sent Mr Y's son a consent form to sign if he wanted Admiral to negotiate the claim on his behalf. Mr Y says Admiral should've sent this to him instead, as policyholder. But it

wouldn't have been appropriate for Admiral to send this to Mr Y, because as I've said, the claim wasn't being dealt with under the policy. And because under MIB Article 75, Admiral would have no right of recovery against Mr Y – MIB Article 75 only allows recovery from the driver, which in this case was Mr Y's son. In any case, by this point Admiral had already written to Mr Y several times about the collision and the claim, which I'll return to.

Mr Y's son didn't sign or return the consent form. Mr Y thought this meant Admiral wouldn't take any part in the claim and would contact him to ask for the details of his solicitor. But as I say, I think it was fair and reasonable for Admiral to settle the third party claims. And the third parties signed assignment and agreement forms with Admiral, under which Admiral paid the third parties the settlement it had negotiated and the third parties transferred their rights of action against Mr Y's son to Admiral. These agreements are separate from the policy and the consent form Mr Y's son didn't sign. Technically Admiral didn't need to enter into these agreements until the third parties had judgements against Mr Y's son. But Admiral could choose to enter into them before a judgement, and I think it was reasonable to do so in this case because, as I say, Admiral was trying to limit costs.

#### *communication about third party claims*

Mr Y says Admiral should have been writing to him about the claim and keeping him updated. And that because it didn't, he lost his opportunity to defend it. But as I've said, the claim isn't being dealt with under Mr Y's policy and Mr Y isn't the person liable for the collision. So it wouldn't be for him to defend the claim. It would instead be for his son to defend the claim. Therefore Admiral wasn't obliged to give Mr Y regular updates about the third party claims. But I think it should fairly have let him know there were third party claims, because, as policyholder, they could affect him even though Admiral wasn't dealing with them under the policy.

And I'm satisfied Admiral told Mr Y there were third party claims. I've seen copies of the letters it sent him between April and June 2016. And I've heard the September 2017 call in which it told him there was an open claim it had already paid out a significant amount for. So I think Admiral took reasonable steps to provide Mr Y with an opportunity to engage with this issue if he wanted to. And I've not seen any evidence that Admiral told either Mr Y or his son the third party claims weren't going ahead any more. However, I know Mr Y says the renewal documents made him think there was no claim. So I'll now turn to this.

#### *renewal documents*

I've seen that the 2018 renewals documents and the March 2019 proof of no claims bonus Admiral sent to Mr Y do say there are no claims against Mr Y or his wife (another named driver) for this car. And I think that's correct because there wasn't a claim against Mr Y or his wife as drivers under the policy. As I've said, Mr Y's son was driving at the time of the collision and the third party claims weren't dealt with under the policy.

And as I've also said, by this time Admiral had told Mr Y that there were third party claims and that it had started to settle these. So if Mr Y thought his renewal documents were incorrect, then he could have queried this with Admiral. But I've not seen that he did.

#### *recording on CUE*

Admiral is obliged to pass information about collisions like the one in question to CUE. And Mr Y's policy terms say it can do this. But Mr Y has told our service he doesn't think Admiral has passed this information to CUE. And Admiral hasn't shown our service what's been recorded on CUE. Given the circumstances, I'd expect Admiral to have recorded this as a

claim against Mr Y's policy with the driver as Mr Y's son, with any payments recorded as payments due to obligations under the RTA or MIB.

But Mr Y hasn't raised this with Admiral as a complaint point. So, if Mr Y thinks Admiral has recorded this incorrectly on CUE, he should raise it with Admiral in the first instance so it can investigate and provide him with a response. And if Mr Y remains unsatisfied, he could then refer his complaint about what's recorded on CUE to our service for an impartial investigation.

### *complaint handling*

I note Mr Y is unhappy with some aspects of Admiral's handling of his complaint, saying the department he was complaining about answered his complaint, and it didn't send him a leaflet for our service. And he's suggested Admiral should pay for an independent review of how it handled this claim.

However, our service isn't free to look into every aspect of a complaint that's brought to us. Instead we have to abide by the rules set out by the Financial Conduct Authority in its Dispute Resolution Handbook, known as the "DISP" rules. DISP rule 2.3 sets out the kind of activities we can consider complaints about.

Complaint handling isn't an activity listed in DISP 2.3. So I think the DISP rules mean I can't consider the complaint handling Mr Y is specifically unhappy about. In any case, if Mr Y was unhappy with Admiral's response to his complaint, then he had the right to refer his complaint to our service for an independent and impartial investigation. Which he did.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 27 January 2021.

Ailsa Wiltshire  
**Ombudsman**