

The complaint

Mrs C has complained about Admiral Insurance Company Limited's response to a claim she made on her motor insurance policy.

What happened

Mrs C insured her car with Admiral. Her son, who I'll refer to as R, is a named driver on her policy. R went to a friend's house, who I'll refer to as L, in Mrs C's car. R parked the car and left the keys in the kitchen while he and some friends enjoyed a social evening in an outhouse at the end of the garden.

At around 2am police knocked on Mrs C's door. They told her that her car had been in an accident when it had crashed into a shop. Both the shop and the car were badly damaged. R was still at L's house at that time. He said he thought the car was still parked outside. But he noted the key was missing as was the car. The police didn't ever take a statement from R or any of his friends about the night's events.

Mrs C told Admiral the next day that a thief had taken her car and crashed it. While Admiral was considering that claim the police officer looking into the matter (the investigating officer) spoke to Admiral. He told it he believed R was driving the car at the time of the accident and asked it not to pay the claim. Admiral instructed investigators to look into it. The investigators interviewed R and L. Admiral also asked the police for its report, the police didn't provide this for many months. After it received the police report Admiral refused to pay Mrs C's claim. It did so because it thought R had been driving the car when it crashed into the shop and it thought that the theft claim was fraudulent.

Mrs C brought her complaint about Admiral's decision to refuse her claim to us. I issued a provisional decision on 28 April 2021. For ease I've copied the relevant extract below. I said:

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

In bringing this complaint Mrs C's made a number of detailed points. I've considered everything that's happened and everything Mrs C's said very carefully. But in this decision I don't intend to refer to every event or comment and instead will focus on what I see as the key issues.

I've seen that initially Admiral was happy with the circumstances of the claim as Mrs C reported them and it was about to settle it. That was until the investigating officer rang it. I've listened to that call. The officer said that a "dubious" witness had told him R was driving the car at the time of the accident. The investigating officer said he believed that forensic testing on the car's air bags would show that R was driving at the time of the accident. And if that was the case he wouldn't need a witness statement from his "dubious" witness.

At that point Admiral put its claim decision on hold and instructed investigators to interview R and L. Admiral said there were some discrepancies between their two accounts. I agree that's the case. But I don't think the discrepancies automatically mean that the accounts

aren't reasonable or point to them being fabricated. For example those discrepancies involve things like the time R arrived at L's house, what drinks were consumed and where R had left his mobile phone. But R and L had clearly drunk a fair amount of alcohol that evening. And the investigator took statements from them over two and three months respectively since the night of the theft. So, given the passage of time and the drinking of alcohol on the evening in question, I think some discrepancy in accounts is to be expected.

And, as Mrs C's argued, had both accounts been identical, I think that would have pointed to collusion between R and L. The fact the accounts aren't identical is, I think, simply evidence that the two gave their accounts as they remembered them. So some discrepancies are to be expected.

One such discrepancy is that R told Admiral he was asleep when woken by friends to say that his parents had arrived to tell him about the theft. But L said that Mrs C had phoned him to tell him about the incident and L had then woken R. But, as I've said above, these statements were made months after an evening in which a fair amount of alcohol was consumed. And it seems that neither R nor L remembers the exact sequence of events. But I don't find such a discrepancy damning.

Further, Admiral has referred to what it describes as a "significant" discrepancy concerning where R spent the night after learning about the theft and crash. R's statement indicates he spent the night at home. But L said R spent the night at his house. But I don't understand why Admiral thinks this discrepancy is so significant. It accepts that this statement related to a period after the crash. So it has no bearing whatsoever on the events leading to the claim. Also, when R initially gave his version of events to Admiral over the phone, he told it that he'd spent the night at L's house. R doesn't recall telling the investigator that he went home the same night. Although his signed statement does give the impression that's what he told the investigator. But I don't think it matters even if he did. He had nothing to gain by saying he went home rather than telling Admiral he'd stayed at L's house. And the fact he might have got some details confused while answering the investigator's questions two months after the event doesn't automatically mean he was lying about all the other events.

I've noted that the investigator didn't think R presented well at interview. He said R was nervous and agitated. But I think many people could be nervous or agitated while being interviewed by an insurer's investigators. And there can be many reasons for that. It doesn't of itself mean that the individual's account shouldn't be believed.

I understand the investigating officer initially gave Admiral good reason to investigate further before paying the claim, given that he told Admiral he felt R had been driving the car at the time of the accident. The implication being that R had crashed the car while drunk before leaving the scene and then claiming the car was stolen. And the investigating officer felt that DNA evidence would prove that to be the case. But apparently the forensic evidence was "inconclusive", although I note that the police report that I've seen doesn't refer to any forensic evidence at all. And the evidence that Admiral seems to be relying on from the police report isn't persuasive, as it doesn't even refer to R as a suspect.

It's clear that someone told the police officer that R was driving at the time of the accident. But there's no evidence from the police report to say who provided that information. They certainly didn't sign a statement to say that was the case, or – if they did – that statement hasn't made it onto the police report. And the investigating officer referred to the witness as being "dubious". So Admiral doesn't know who gave the investigating officer that information, or how they knew the information they were providing was true.

There's evidence on the police report that the shopkeeper, whose property was damaged in the crash, told the investigating officer that an anonymous source had told her R was driving

at the time of the accident. But the shopkeeper was clear that this was information given to her anonymously. And she doesn't know where that anonymous source got the information from; so at best the evidence is hearsay and at worst it's gossip. I certainly don't think it would be reasonable for Admiral to rely on that.

The police did get a signed witness statement from a neighbour of the shopkeeper who went to the scene after hearing the crash. He described hearing a young man on the phone telling someone he'd just written "me" (his own) car off. In other words the neighbour felt he'd heard the car's owner saying he'd just crashed his own car. So I can understand why Admiral believed that this was evidence R had been driving the car. But the witness statement is incredibly light on detail. In particular it provides very little in the way of a description of the driver.

Also, while the matter has been awaiting my attention Mrs C has identified this witness. He was happy to give a further statement to Mrs C's solicitor. In that statement the witness explained that he is hard of hearing and so was only a few feet away from the driver when he overheard the telephone conversation. But he also provided a description of the driver which doesn't match R's appearance. I appreciate the witness gave this statement over three years after the events took place. But it does cast significant doubt on the evidence that it was R that was driving the car. And it seems likely that the witness might have simply misheard what he thought the driver said. If indeed the individual concerned actually was the driver of the car at the time of the crash. So I don't think it would be fair for Admiral to rely on this evidence in order to decline the claim and accuse Mrs C or R of acting fraudulently.

So, while someone initially told the investigating officer R was driving the car at the time of the crash, Admiral remains unaware of who gave that information and how credible that evidence was. And ultimately the police chose not even to interview R let alone charge him with anything.

Admiral also told Mrs C that it found R's statement that a thief had taken his car key from L's kitchen implausible. It said that in order for that to happen, a thief would have had to enter L's house from a rear door while not being seen by any of the people at L's house, then find Mrs C's car which was parked around the corner. But that is wrong on a number of points. It might help if I explain that R, L and their friends were playing pool in L's "man cave", which is an outhouse at the foot of his garden. He'd left the side door to his property unlocked so that his friends could use the loo. The door is at the side of the property not the back. And the side door is clearly visible from the road. So a potential sneak thief could have seen the door open and walked in without being seen by the people in the "man cave" at the foot of the garden. They could then have grabbed the car key, which shows the manufacturer of the car, and then spotted a car matching the key-fob parked just round the corner before stealing it. I think that's an entirely plausible explanation for the theft.

In addition Admiral said that Mrs C together with R made a fraudulent claim. That is it believed she or R told a deliberate lie in order for Admiral to pay it. I need to make clear that it's not my role to determine if someone's acted fraudulently, as ultimately that's a matter for law enforcement agencies and the courts. But fraud is a serious allegation, it goes to someone's integrity, it alleges a criminal act (and might expose them to the risk of criminal investigation and prosecution) and it could have serious repercussions for an individual's ability to obtain insurance for years to come. So, before deciding a policyholder has most likely committed fraud, I think it's reasonable that an insurer like Admiral has enough evidence on which to base such an allegation. And for the reasons given above I'm not convinced that it has.

While I think that the investigating officer's comments gave Admiral legitimate reasons for it to be concerned and good cause to carry out further investigation, I think it should have

revisited those concerns once it received the police report. The evidence that R was driving at the time of the accident is flimsy at best. It boils down to hearsay evidence from anonymous sources that can't be tested. And the one signed statement is from a witness who's evidence is based on something he believed he heard, from an individual who, we now know, doesn't match R's description. And while there are some discrepancies between R's and L's statements I don't think that was sufficient evidence on which to fairly and reasonably say that the theft didn't take place, that R was driving at the time of the accident, or to support an allegation of fraud.

For completeness I know Mrs C was unhappy about Admiral's conduct of its investigation. But, the outcome aside, I think it generally handled things reasonably. As I've said above, the investigating officer gave Admiral legitimate cause for it to have concerns that the claim wasn't genuine. In those circumstances I think it was reasonable that it waited for the police to conclude their investigation and to see what the police report said. It took the police many months to provide that report. That was outside of Admiral's control. So I don't think it was responsible for the majority of the delay in concluding the matter.

Mrs C's also concerned that, owing to the passage of time, she lost the opportunity to present some evidence from phone records or other information held on mobile phones (for example a photo of R asleep). And she thinks Admiral could have given her more information about its investigation to prevent that. But I wouldn't expect insurers like Admiral to tell a policyholder it was investigating a potential fraud. And it wouldn't have known what evidence might or might not have been available on mobile phones or whether or not that might have been of any evidential use. That said, I can understand Mrs C's frustration when she learned, around 20 months after the event, that some of the evidence could have proved useful. But I don't think that was because Admiral did anything wrong in that respect. That said, for the reasons given above, I don't think Admiral turned down Mrs C's claim fairly. So I think it should pay that claim now. And, as Mrs C's been without the use of that money, it should add simple interest to its claim settlement at a rate of 8% a year from the date of claim to the date it makes payment to her.

Also, I'm aware that, after declining the claim and accusing Mrs C of fraud, Admiral cancelled Mrs C's policy that was in place at the time. Given that I don't think it had sufficient evidence to conclude that Mrs C or R had acted fraudulently I don't think that action would be fair. So, if Admiral cancelled her policy without providing a proportionate refund of any unused portion of the premium then I think it should provide Mrs C with that refund now. It should add simple interest to any refund paid from the date it cancelled the policy to the date it refunds her.

Further I'm aware that Mrs C's had to spend a great deal of time and effort in defending her position. And the denial of her claim has clearly been a source of immense distress and inconvenience for her over a number of years. I think some of that could have been avoided. So, to address this I think Admiral should pay her £1,000 compensation."

Developments

Both Mrs C and Admiral accepted my provisional decision. Both also confirmed that Mrs C's policy with Admiral lapsed; so Admiral didn't actually cancel it.

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.

As Admiral didn't cancel Mrs C's policy before it reached the end of its term, it follows that

there was no unused portion of it. So there is no refund for Admiral to pay. Otherwise, as neither Mrs C nor Admiral objected to my other provisional findings I see no reason to alter those.

My final decision

For the reasons set out above I uphold this complaint. I require Admiral Insurance Company Limited to:

- Settle Mrs C's claim for the theft of her car. It should add simple interest to that settlement at a rate of 8% a year, from the date she claimed to the date it makes payment.¹
- Pay her £1,000 compensation to address her distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 16 June 2021.

Joe Scott
Ombudsman

¹ If Admiral considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs C how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.