

The complaint

Mr W complains about how Admiral Insurance (Gibraltar) Limited (Admiral) has handled his claim on his car insurance policy and, in particular, says its cash-in-lieu settlement offer is unfair.

What happened

Mr W's car was damaged when it was hit by a tree that fell from his neighbour's property. He claimed on his car insurance policy and Admiral accepted the claim.

Mr W is unhappy about how Admiral and its agents have handled his claim. Mr W's concerns were, and are, many and wide-ranging. From reading Mr W's case file, I think his most pressing concern, however, is that Admiral hasn't offered him a fair cash-in-lieu settlement for the repairs his car needs. But he also has significant concerns about the service he's had throughout his claim from Admiral and its agents.

When Admiral responded to Mr W's complaint in February this year, it listed 20 complaint points Mr W had raised about how it had handled his claim in the preceding two months or so. Admiral upheld 10 of them. It agreed to allow Mr W's no claims discount and reimbursed him his policy excess of £450. Admiral also offered (and I believe has paid) Mr W:

- £120 for the loss of use of his car (this is because Admiral didn't give him the courtesy car his policy entitled him to for a period of time).
- £35 for his car to be valeted.
- £25 to reimburse his phone call costs.
- £300 in compensation for the distress and inconvenience it had caused him.

But Admiral said its cash-in-lieu settlement offer of £1,330.76 was fair and reasonable, being based on the recommendations of an independent assessor and its in-house engineer.

Admiral also didn't uphold Mr W's complaints about the courtesy car he was given (which he said was too small for him), about the location of his car (Mr W thinks there was a period when Admiral lost his car) and about the way it described the tree that fell on Mr W's car (one of Admiral's independent assessors said the damage it sustained was consistent with a large bush, rather than a tree).

So Mr W brought his complaint to us. The investigator who looked at it didn't think Admiral had treated Mr W fairly. From the evidence, our investigator thought Admiral's cash-in-lieu settlement offer was unreasonable. But she didn't think that Mr W was entitled to a bigger courtesy car, that Admiral had lost Mr W's car (although she said it had miscommunicated its location to Mr W) or that the description of the tree was made with any malice or intent to affect Mr W's claim.

Our investigator recommended Admiral increase its cash-in-lieu settlement offer to £6,326.83, being the average of two estimates there are for the repair costs to Mr W's car. She also recommended Admiral pay Mr W a further £150 in compensation for the trouble and upset its cash-in-lieu settlement offer and its miscommunication about the location of his

car had caused him.

Admiral responded to our investigator's view by saying it was investigating some new complaint points Mr W had made. It said some of these overlapped with those forming part of this complaint. And Admiral said it wanted to send Mr W's car for further tests, which might lead to its original cash-in-lieu settlement offer being confirmed or a new one being offered. Because of this, it didn't accept our investigator's view of Mr W's complaint and so it was referred to me.

When I looked at Mr W's case file, I thought it was reasonable for Admiral to carry out the further tests it wanted, because this might resolve Mr W's main complaint. Mr W booked his car in for the tests with a main dealer, as requested by Admiral. For reasons I don't fully understand (but which certainly weren't Mr W's fault), the main dealer refused to accept his car and so it was returned to him without any tests having been done.

Admiral said its complaint handler was in discussions with senior management about the complaint but accepted I might want to make a decision on it.

In my provisional decision of 24 October 2022, I explained why I intended to uphold Mr W's complaint (as our investigator had) but had reached a slightly different conclusion from her about how Admiral should put things right for Mr W.

Mr W has accepted my provisional decision.

After I'd issued my provisional decision, Admiral did a number of things, in the following order:

- Admiral wrote to Mr W asking him to book his car in again for inspection with his preferred repairer. Mr W showed us Admiral's letter but didn't respond to Admiral about it.
- Admiral then wrote to us saying it didn't accept my provisional decision. It said Mr W hadn't responded to its latest request for another inspection. It said that, due to the difference between the estimates, the car needed to be reviewed by a main dealer. It said this was its independent assessor's recommendation and one subsequently agreed to by me. It said it needed to ensure the estimates were accurate and in relation to the incident. And Admiral said while *"there may be concerns with how long this case has been ongoing, there has also been a lack of contact from the customer to help ensure the case moved forward amicably for both parties, and the recent issues with the main dealer have not helped the situation."*
- The day after Admiral wrote to us saying it didn't accept my provisional decision, it phoned Mr W and offered to write-off his car. On the same day, it then wrote to Mr W offering him a total loss settlement of £8,570, which Mr W told us he'd rejected.
- The day after Admiral wrote to Mr W offering him a total loss settlement of £8,570, it wrote to us again saying that, after a further review of the complaint, it accepted my provisional decision and agreed to pay Mr W a cash-in-lieu settlement of £7,681.44. It also said *"please note this makes the vehicle a total loss"*.

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, and for the reasons I gave in my provisional decision, I've decided to uphold Mr W's complaint. In my provisional decision, I explained my reasons for doing so by looking at Mr W's main complaint points in turn, as follows:

"The cash-in-lieu settlement offer

Under Mr W's policy, Admiral can choose how it settles Mr W's claim. And his policy says if Admiral deems his car is repairable but it's unable to complete or guarantee the repairs, it will offer him a cash sum to cover the reasonable costs of parts and labour. So Admiral is entitled to offer Mr W cash instead of carrying out repairs itself. What I have to consider, though, based on the evidence I have, is whether Admiral's cash-in-lieu settlement offer of £1,330.76 is fair and reasonable.

What makes this issue difficult to decide is that the evidence I have from Admiral on the damage to Mr W's car caused by the fallen tree, which is set out in three independent assessor's reports, is contradictory. I'll briefly summarise each report.

The first report

This is the report on which Admiral relied to make its cash-in-lieu settlement offer. It's dated 5 January 2022 and is based on an inspection by an independent assessor that took place on 30 December 2021.

The report gives a reserve of £1,780.76 (from which Mr W's excess of £450 (now reimbursed) was deducted to give Admiral's cash-in-lieu settlement offer amount). Among other things, it says the roof and boot showed dents consistent with storm damage, along with debris inside the car. It lists a number of new parts, repairs and specialist repairs that are needed. It says the car had no mechanical issues other than "normal serviceable items" and there is pre-incident damage that would cost around £450 to repair. It also concludes that: "if we were to allow what the owner felt was storm damage it would render this vehicle a total loss..."

The second report

This report is dated 24 April 2022, the same date as a second assessor inspected the car. The report is by a different assessor. But he works for the same independent assessment company as the assessor who gave the first report. The second report is described as a "post-repair inspection" (although, if my understanding is correct, no repairs to Mr W's car had (or have) been carried out by Admiral or its agents). It seems likely the assessor who made this report was unaware of the first report.

This report doesn't give a reserve for repairs. But it identifies more new parts, more repairs and more specialist repairs than the first report. It says the car has damage to the right-hand side, the roof and the boot, as well as suspected suspension damage. It says there's additional damage to the near side front wing and door and to the rear bumper that Mr W says wasn't there when the car was first taken to Admiral's authorised repairer.

The assessor's recommendation is that a new survey is carried out to look at what caused the additional damage Mr W was claiming for and at whether the suspension issue was incident-related or due to wear and tear. The report says, given the car's age and mileage, wear and tear would need to be considered generally.

The assessor's final conclusion is that Mr W's car is not roadworthy because of the distortion

to the panels which could fall off, or inadvertently open when used, causing injury to others. The assessor also notes repair costs have been estimated by an engineer but he hasn't agreed them. Mr W sent us this engineer's estimate, which is £8,131.44. It includes costs for repairing the nearside front wing and door and rear bumper and investigating the "creaking" noise from the suspension.

The third report

This report is dated 30 May 2022. But it gives the same inspection date as the first report, 30 December 2021. It seems this report is an update by the first assessor to his original report, and followed an email from Admiral's in-house engineer, possibly after Mr W disputed the original findings. I don't know if the first assessor had seen his colleague's second report when he gave his updated comments on the first report.

This time, the report gives an increased reserve of £4,522.21 (rather than the original £1,780.76). As you might expect given the increase, it identifies more new parts, more repairs and more specialist repairs than in the first report. It continues to show pre-accident damage costing £450 to repair. The report also lists 12 specific areas of additional damage – presumably issues identified by Mr W, which include the nearside front wing and door and rear bumper – and gives the assessor's view that it's unlikely this damage was caused by the fallen tree. In conclusion, he says he stands by his first report.

From internal notes I've seen, Admiral asked the second assessor for a full explanation of the findings in his report, which it describes as putting Admiral in an "unwelcome" position. And Admiral's in-house engineer notes the second report may have given Mr W the impression it didn't investigate the claim properly initially – something the engineer doesn't think is correct.

So far, I haven't seen any evidence from Admiral to invalidate the findings of the second report. If Admiral now has further information on this, please could I see it.

In any case, I believe it was because the conclusions in the second report were at variance with those in the first, and because the second assessor recommended it, that Admiral asked for Mr W's car to be re-assessed. But, as I've already said, that inspection (scheduled for earlier this month) didn't take place.

So I have to decide, based on the contradictory evidence I have, what a fair and reasonable cash-in-lieu settlement offer for Mr W's claim should be. Given that the first assessor subsequently increased his reserve in his updated report, I don't think Admiral's original offer of £1,780.76 (reduced to £1330.76 because of Mr W's excess) was fair.

My starting point therefore has to be the first assessor's second reserve of £4,522.21. But then I have to consider the second assessor's report and the repair estimate of £8,131.44, which I believe was based on it.

I've already noted the second assessor says he hasn't agreed the costs in this estimate. But, at the same time, they're all I have following the second report – which is also when Mr W's car was most recently inspected. And the estimate clearly includes costs that Admiral disputes relate to the fallen tree.

As I've said, this is difficult. But my current thinking is that a fair and reasonable cash-in-lieu settlement offer for Mr W's claim is £7,681.44. I've reached this figure using the estimate of £8,131.44. From this amount, I've deducted £450. This is what the first assessor estimated were the repair costs for what he calls pre-incident damage.

I know this deduction will be contentious for Mr W. He says this additional damage was caused by Admiral's authorised repairer after the incident. But, so far, he's given us no evidence – apart from his own testimony – to support his view. And both assessors agree the additional damage isn't related to the fallen tree. So unless Mr W can give me more evidence to support his view that the authorised repairer caused the additional damage to his car, I think it's fair and reasonable to make this deduction from the settlement amount.

I know Mr W has also said a fair and reasonable resolution to his claim would be for Admiral to write-off his car. I can see why this would be attractive to him after such a protracted process to settle his repair costs. But the car would need to be re-inspected to get a write-off value, which would then need to be agreed by the parties. That would take more time and could well lead to more disputes. I don't think that's the right thing to do here.

So, as I've said, based on what I've seen so far, it's my current intention to direct Admiral to settle Mr W's claim in the amount of £7,681.44. But I must emphasise to Mr W and Admiral that further evidence from either of them could change my provisional findings on this part of Mr W's complaint.

The location of Mr W's car

In her view on Mr W's complaint, our investigator sets out the timeline of events that led to Mr W believing Admiral had lost his car, so I don't need to repeat that timeline here. I'm satisfied the car was actually with a main dealer at the relevant times and not lost. But there were at least two times when poor communication by Admiral led Mr W to believe it didn't know where his car was. This has clearly been upsetting and worrying for him and I think it's fair and reasonable for Admiral to pay Mr W compensation for this, as I'll set out below.

The description of the tree that fell on Mr W's car

I know Mr W is upset Admiral's first assessor described the damage to Mr W's car as having been caused by "a tree of a kind ...but more in keeping with a large bush, not a typical tree". I'm not sure I know what a "typical tree" is. But the photos Mr W has sent us of the tree before it fell leaves me in no doubt that it was a tree, although thickly covered in ivy as well.

I don't think the assessor's description was malicious. I think he probably referred to the large bush to back up his findings that the damage it caused to Mr W's car it wasn't as extensive as Mr W said. In that sense, I don't think it affected the assessment of the claim.

The courtesy car

Mr W's policy didn't entitle him to a like-for-like replacement for his own car and said it would "typically be a small hatchback". So I don't uphold Mr W's complaint about the courtesy car he was given initially.

I note, though, that Admiral has since upgraded Mr W's courtesy car to one that's more comfortable for him. And I believe it's most recently said he'll be able to keep the car – even though he's taken out a new car insurance policy with another insurance company – until his own car is repaired. I think that's fair and reasonable, especially since Mr W has been unable to drive his car for a number of months following the second assessor's finding that it wasn't roadworthy.

Putting things right

I've already said my current view is that a fair and reasonable settlement amount for Mr W's claim is £7,681.44. I believe Admiral has already paid Mr W its initial settlement offer

(£1330.76). If I'm right (and please could Admiral or Mr W confirm it), Admiral can deduct this from the final settlement amount.

I also believe Admiral has already paid Mr W £300 for the distress and inconvenience it's caused him. I think a further award of £150 is fair and reasonable for the additional distress and inconvenience Admiral has caused Mr W. This is firstly because he had the stress of thinking his car was lost (although I don't think it was). And secondly because Admiral insisted on maintaining its original cash-in-lieu settlement offer – even when a later report and a later estimate showed increased repair costs.

Before I conclude this decision, I would like to say my aim in making these provisional findings is to find a way to bring this claim – and all of Mr W's complaints about its handling – to a final close. Mr W's case file has been difficult to unravel in places. So if Mr W or Admiral thinks I've got something wrong – or if Mr W has outstanding complaint points he thinks I haven't dealt with – it is important to let me know before I make a final decision on this complaint."

As I've already said, Mr W has accepted my provisional decision.

Admiral's final position is that it accepts my provisional decision and agrees to pay Mr W a cash-in-lieu settlement of £7,681.44. But, to avoid any further confusion, I think it makes sense for me to respond to the points Admiral made in its first response to us, when it didn't accept my provisional decision (as I've outlined them above).

Admiral's letter to Mr W asking him to book his car in for another inspection was sent a few days *after* I'd issued my provisional decision. And that decision didn't include any direction for the car to be inspected again. Mr W was waiting for a final decision from me on this complaint, so I'm not surprised he didn't respond to Admiral's letter.

When I first looked at Mr W's case file, it was clear his claim had been ongoing for a considerable time – more than I would expect for the type of damage for which he was claiming. But I also thought, in fairness to Admiral, I should give it one more opportunity to carry out the inspection it wanted of Mr W's car. I did this hoping a resolution to Mr W's complaint could be agreed by the parties.

That last inspection didn't happen – from what I can see, through no fault of Mr W's. Admiral's assessors have already inspected the car twice and given Admiral three reports into the damage it sustained. Admiral didn't take advantage of the opportunity I gave it to get a final assessment. At this very late stage and given that I've already issued a provisional decision, another inspection would at the very least further delay the resolution of Mr W's complaint. This doesn't, now, seem to be what Admiral wants anyway. But, for the avoidance of doubt, I don't think it would've been fair and reasonable and it isn't something I'd have directed.

To put things right for Mr W, Admiral must pay him a cash-in-lieu settlement amount of £7,681.44 in total, together with an additional £150 in compensation for the distress and inconvenience its handling of his claim has caused him. To be clear, the settlement amount of £7,681.44 is the cash settlement Admiral must make in lieu of carrying out the repairs to Mr W's car itself (as per the terms and conditions of Mr W's policy). For the avoidance of doubt, this cash-in-lieu settlement amount does not represent the write-off value of Mr W's car, so Admiral is not entitled to treat Mr W's car as a write-off or to categorise it as such.

My final decision

For the reasons I've given here and in my provisional decision (which now form part of this final decision), I uphold Mr W's complaint and direct Admiral Insurance (Gibraltar) Limited to pay Mr W a cash settlement amount in lieu of carrying out repairs itself to Mr W's car totalling £7,681.44.

I believe Admiral Insurance (Gibraltar) Limited has already paid Mr W a settlement amount of £1,330.76. If that's correct, then this (or any other amount Admiral has already paid Mr W) can be deducted from the settlement amount of £7,681.44. Admiral Insurance (Gibraltar) Limited must also pay interest on the outstanding settlement amount it owes Mr W at the rate of 8% a year simple from the date of the claim to the date of payment.*

I also direct Admiral Insurance (Gibraltar) Limited to pay Mr W a further £150 in compensation for the distress and inconvenience it has caused him (in addition to the £300 it has already paid him). Admiral Insurance (Gibraltar) Limited must pay the compensation within 28 days of the date on which we tell it Mr W accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at the rate of 8% a year simple.*

*If Admiral Insurance (Gibraltar) Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 January 2023.

Jane Gallacher
Ombudsman