

The complaint

Miss S has complained about the way Admiral Insurance (Gibraltar) Limited handled a claim against her by a third party's insurance company, who I'll refer to as D.

I've changed the business this complaint is about to Admiral Insurance (Gibraltar) Limited. This is because Miss S's policy is underwritten by a consortium of insurers and Admiral Insurance (Gibraltar) Limited are the lead insurer.

What happened

Miss S was involved in an accident in the car park at a retail outlet. She made a claim under her policy for the repairs to her car. Admiral arranged and paid for her car to be repaired and then let D know they held their insured driver (the third party) at fault and wanted to reclaim their outlay on Miss S's claim in full. Admiral obtained CCTV footage of the accident, with help from Miss S. And, in their communications with her, they indicated they thought the third party was to blame for the accident. D disputed liability and when Miss S found this out she said Admiral should send the CCTV footage to them. Admiral did this, but D came back to say it wasn't in a format that enabled them to view it. Admiral didn't respond to D about this. In October 2020 Admiral received an offer from D to settle on a 50/50 basis. They agreed to this and informed Miss S they'd done so on a without prejudice basis. Miss S was very unhappy about this and complained about the following things:

- It took too long for Admiral to apply for the CCTV footage of her accident and she had to contact the retail outlet herself to make sure it was saved.
- Admiral shouldn't have accepted D's offer to settle the claim 50/50, especially as they'd given her the impression they thought the third party was at fault and had asked her whether she'd attend court if necessary.
- Admiral failed to send the CCTV footage to D in a format that enabled them to view it.
- She felt she had no option but to renew her policy with an open claim and this had cost her more in premium.

Admiral didn't uphold Miss S's complaint. They said:

- The delay in getting the CCTV was due to the retailer.
- They were satisfied the decision to settle the claim 50/50 was correct.
- There would be no benefit in D viewing the CCTV footage, as they'd now agreed to settle 50/50.
- They couldn't do anything about the fact Miss S felt she had no option but to renew with them.

Miss S wasn't happy with Admiral's final response and asked us to consider her complaint. One of our investigators did this and explained why she thought it should be upheld. She thought it was likely that if Admiral had sent the CCTV footage to D in a format in which they could view it, they would have accepted liability in full. She didn't think Admiral had handled Miss S's claim well enough. She said they should pay her £100 in compensation for distress and inconvenience. She also said Admiral should re-open the claim and send the CCTV

footage to D in a viewable format and ask them to reconsider their position having done so.

I issued a provisional decision on 23 November 2022 in which I set out what I'd provisionally decided as follows:

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

As our investigator explained in her view on the complaint, Miss S's policy does give Admiral the right to handle third party claims against her as they feel is appropriate. But the rules Admiral are subject to state they have to handle claims fairly. I think this means they should defend third party claims against their policyholder where it is appropriate for them to do so. And they should make reasonable efforts to recover any outlay they make from a third party or their insurer if the evidence suggests it is appropriate to do so.

I agree with our investigator that Admiral handled the claim against Miss S badly – both in terms of the way they dealt with D and the way they dealt with Miss S.

It is hard to tell whether the retailer did make it difficult for Admiral to obtain the CCTV footage from the evidence I've been provided with. But, once Admiral had it, I think they should have sent it to D in a viewable format and made sure they'd viewed this before agreeing settlement. I think the footage shows the third party was at fault. Obviously, I cannot be sure what D would have decided if they had viewed the footage and it is not my role to actually decide who was responsible for the accident. But, in a case like this, I do have to give an opinion on whether Admiral's approach was reasonable. To do this, I need to give a view on whether the evidence they failed to provide to D would have made a difference. I think the footage is strong evidence in favour of Miss S, as it shows the third party was likely to be found to be at fault if the case went to court. And I think it's most likely D would have realised this and decided to settle in full. I also think Admiral would also most likely have recovered Miss S's excess for her in full. I understand she has only had half of this back.

I don't think there's any point in Admiral re-opening the claim and sending the CCTV footage to D in a viewable format now, as D are highly unlikely to agree to alter their position having agreed settlement with Admiral.

This means that I think Admiral's failure to make sure D had viewed the footage and their decision to settle without this happening has prejudiced Miss D's position. This is because she now has a fault claim against her record that shouldn't be there and she will always have a payment against this claim that shouldn't be there. She has most likely also paid more in premiums because the claim was recorded as fault, as opposed to non-fault. And this and the mixed messages Miss D received during the course of the claim on liability has caused her distress and inconvenience. And I think the level of distress and inconvenience she experienced was fairly significant in the circumstances and warrants an appropriate compensation payment.

In view of this, to put things right and to provide a fair and reasonable outcome to Miss S's complaint I think Admiral should do the following:

- *Mark Miss S's claim as non-fault (bonus allowed) on their records and on any external databases they have added it to.*
- *Pay Miss S £250 for the distress and inconvenience their poor claim handling caused her.*
- *Pay her the remaining half of her excess back.*

- *Recalculate the premiums under Miss S's policy with the claim as non-fault back to renewal in 2019 and refund the extra amount she paid each year because of this, plus interest at 8% per annum simple from the date she paid the premium to the date they make the refund.*

Miss S has told us she changed insurers in October 2021. So, once the claim has been marked as non-fault, she can ask them to amend her premiums retrospectively to reflect this.

I gave the parties until 7 December 2022 to provide further comments and evidence.

Miss S has said she doesn't have anything new to add, but she would like Admiral to have to prove her claim has been marked as non-fault on all systems and databases. She has also queried whether we've had recordings of the calls between Admiral and D, as she wonders if they simply settled the claim to 'get it off their books'.

Admiral have responded to confirm the following:

- They will mark Miss S's claim as non-fault (bonus allowed) on their records and any external databases.
- Miss S's no claims bonus was allowed on 8 August 2019. This means the premium Miss S paid at renewal in 2019 reflected the fact her claim was non-fault.
- They will pay Miss S the £250 in compensation I've suggested once she accepts my final decision.
- They will pay the remaining half of Miss S's excess to her once she accepts my final decision.

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 neither party has objected to what I've provisionally decided, I see no reason to deviate from what I provisionally decided.

I've noted Miss S's request for Admiral to have to prove they've marked her claim as non-fault (bonus allowed) on any systems and databases. However, I'm satisfied Admiral will do this and I am not going to require them to prove it to Miss S. This is because I don't think it is necessary as part of the fair and reasonable outcome to this complaint. The key thing is that Admiral must do it and that I'm satisfied they will do so, if they haven't done so already.

I have not had recordings of the calls between Admiral and D. I think Admiral's decision to settle on a 50/50 basis was simply a bad decision and I don't think it was part of any special agreement to settle a number of claims to get them 'off their books'.

I'm pleased Admiral have said they will do everything I provisionally decided they should do to put things right. And I've noted what they've said about the 2019 renewal. And this is fine provided the base premium without the no claims discount was calculated on the basis Miss S's claim was a non-fault claim. The fact her no claim bonus was reinstated prior to renewal does not necessarily mean this is what happened. So, Admiral should check this and – if the base premium for the renewal of Miss S's policy was calculated on the basis Miss S's claim was a fault claim, they should recalculate it on the basis it was a non-fault claim and refund any difference to Miss S, plus interest at 8% per annum simple.

Putting things right

I consider Admiral need to do the following to put things right:

- Mark Miss S's claim as non-fault (bonus allowed) on their records and on any external databases they have added it to.
- Pay Miss S £250 for the distress and inconvenience their poor claim handling caused her.
- Pay her the remaining half of her excess back.
- Admiral must check whether the base premium at the renewal of Miss S's policy in 2019 was calculated on the basis her claim was a fault claim. And – if it was - they should recalculate it on the basis it was a non-fault claim and refund any difference to Miss S, plus interest at 8% per annum simple¹ from the date she paid the extra to the date they refund it to her.

My final decision

For the reasons set out above and in my provisional decision, I uphold Miss S's complaint about Admiral Insurance (Gibraltar) Limited and order them to do what I've set out above in the putting things right section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 11 January 2023.

Robert Short
Ombudsman

¹ Admiral must tell Miss S if they have made a deduction for income tax. And, if they have, how much they've taken off. They must also provide a tax deduction certificate for Miss S if asked to do so. This will allow Miss S to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.