

## The complaint

Mr T has complained about his car insurer Admiral Insurance (Gibraltar) Limited in relation to an incident where a pedestrian alleged he was caused injury by the car Mr T was driving. Admiral settled the pedestrian's injury claim and sought to recover its outlay from Mr T, which Mr T feels is unfair.

## What happened

Mr T, in his car, was in a designated drop-off/pick-up spot when a security guard asked him to move. Mr T did move but whilst he was doing so the security guard ended up on the ground. The police became involved and whilst Mr T was initially charged with dangerous driving, he later pleaded guilty to a lesser charge of driving without due care and attention.

Admiral said it wouldn't offer indemnity to Mr T under the policy. It sought his consent to deal with the injury claim from the guard but when Mr T did not give it, Admiral obtained a form of assignment from the injured party. This meant that the injured party passed his right to claim against Mr T to Admiral. Admiral then settled the guard's injury claim with a payment of £5,000.

Admiral noted its total outlay for the claim was £6,802.50. It asked Mr T to repay that to it. Mr T was unhappy about that, for a number of reasons. Essentially, he felt Admiral had no legal basis for this and that to ask him to do this, in the circumstances here, was unfair and unreasonable. When Admiral wouldn't provide other detail or a further review which Mr T had asked it for, he complained to us.

Our Investigator felt Admiral had acted reasonably. So she didn't uphold the complaint. Mr T disagreed with her findings, so his complaint was passed to me for an Ombudsman's decision. I felt it should be upheld so I issued a provisional decision to explain my views and what I felt was needed to put things right. My provisional findings were:

*"I know that Mr T has asked some very specific questions of Admiral in his complaint. But I think it's fair to say that, at the heart of all of this, sits Admiral's recovery request.*

*Mr T's car was not damaged in this incident and nor did he make a claim on the policy. The costs Admiral is looking for Mr T to reimburse were incurred by it in settling the injury claim from the guard. Mr T thinks Admiral had no right to do that. He notes it did not get consent from him to act on his behalf. He also notes that Admiral settled the claim without a court judgment requiring it to do so – and the Road Traffic Act which Admiral has sought to rely on as a reason for it settling the claim, requires a judgment to have been made.*

*The strict interpretation of the Road Traffic Act is that a judgment is required. But in practice most insurers will not let matters progress so far. In reality most insurers will be able to spot incidences that are likely to lead to judgments being achieved that would then force them, under the Act, to make payments to others. And they will also know that letting matters progress to the point of court action and judgments means costs increase. So, in practice, insurers may, early on, look to get a form of consent from their policyholder or a form of assignment from the claiming party. If one form is agreed to then the other is not required as*

*either allows the insurer to assume liability for the claim, taking it on and settling it as it sees fit, and then approaching its policyholder for reimbursement. Here Admiral felt the Act might ultimately apply and it obtained a form of assignment from the complaining party. So, in practical terms, I think Admiral acted fairly and reasonably, as this service would expect it to, in relation to potential liability under the Road Traffic Act.*

*But the Road Traffic Act only comes into play at all when the policy won't respond. If Admiral provides indemnity to Mr T under the policy, then it won't have liability as the Road Traffic Act insurer at all and can't reasonably look to Mr T to reimburse its outlay. Clearly Admiral felt it was within its rights to refuse indemnity for this incident – meaning it would potentially have to respond as the Road Traffic Act insurer to any judgment, causing it to act practically as I've detailed above. So I've looked at whether Admiral's view in that respect is fair and reasonable.*

*As Mr T's car was not damaged and he was not claiming under his policy, the applicable section of cover was that regarding liability to others. As with other sections of cover, there are related exclusions. But Admiral did not base its decline of the claim on any of them. Rather Admiral said Mr T had acted in contravention of his licence and or deliberately to cause injury – both of which form part of the general exceptions to cover section. It also referred to General Condition 3 of the policy.*

*I'm not sure why Admiral has sought to rely on General Condition 3. This condition does refer to "inappropriate" acts of the driver mitigating its liability. But is not about injury to others. It is entitled "Care of your car". And refers specifically to Admiral's liability, and mitigation thereof, for loss of or damage to the insured vehicle. That does not seem to apply in this circumstance where Mr T's car was not damaged and the claim has come from a pedestrian regarding personal injury. So, even given the criminal motoring conviction which may well indicate that Mr T acted inappropriately, I don't think Admiral had grounds to decline Mr T's claim on the basis of a breach of General Condition 3.*

*Turning to the general exception for acting in contravention of the driving licence, I similarly am not sure why Admiral has sought to rely on this. Admiral did not explain its reason for attempted reliance on this exception. To my mind, that exception, for example, would normally be applied if someone drove a class of vehicle they were not permitted to drive by their licence classification. I don't think Admiral had grounds to decline the claim on the basis of a breach of this general exception.*

*The other general exception that Admiral thinks applies here is that related to deliberate acts of the driver. Mr T points out that he was not charged with or convicted of any act which included any intent from him. And I note that Admiral has mistakenly recorded on its file, at around the time it was considering its liability for this incident, that Mr T was convicted of dangerous driving. However, it's important here to remember that there is a difference between the criminal matter and the parties' rights and obligations under the car insurance policy. The latter is a civil issue. As such Admiral is not bound by the findings of the court in the criminal matter. Admiral is free to reach its own conclusions, based on the balance of probabilities, about how Mr T acted and how that action sits against the policy terms. So, just because Mr T was not convicted of any deliberate act, does not mean that Admiral can't determine Mr T most likely acted deliberately – which would mean that he falls foul of the policy exception and it could reasonably decline liability under the policy for this incident.*

*However, this service is aware that any allegation by an insurer of a deliberate act on the part of its policyholder has significant and sometimes severe consequences for them. As such we expect any insurer intending to rely on a deliberate act 'defence' to support its allegation with strong evidence. An insurer 'feeling' that its policyholder acted deliberately will likely not be sufficient to support an attempt to rely on a deliberate act exclusion to*

decline liability for cover. So I've looked at how Admiral came to conclude that Mr T had acted deliberately, to see if I think that was a fair and reasonable conclusion for it to make.

Admiral's argument centres on it believing that Mr T acted deliberately, once the car had started, to turn the wheel towards the curb, before then moving in that direction and then correcting the car's angle to drive away. Admiral primarily reached its conclusion about what Mr T did having viewed CCTV footage of the incident. Admiral was provided with footage taken from cameras sited at positions on the street ahead of and behind the drop-off/pick-up spot. So the views from the front and rear of the car were seen. But Admiral has confirmed it had not relied on the view from the front when making its decision. Having seen the footage myself I think that is likely because at the moment, just before the car starts to move but after the engine was switched on, for a second, the camera pans away. The camera only turns back to the car as it moves away from the curb (having moved towards it since the engine was started and the camera moved).

But I think this angle does hold the best view possible of the front tyres. That said I don't think they are that clear – the image is somewhat grainy and I don't think it's possible to know which way the front tyres were facing before the car moved off. Visibility of the front tyres is worse in the footage from the rear – the image is also grainy and the angle is from above, meaning the car, including the rear wheels, mostly hides the front tyres from view. Further, following the point when the engine is switched on, a pedestrian and the injured party, further obscure the front left tyre from view.

So I don't think it's possible to reasonably determine from the CCTV footage what position the front tyres were most likely in before the car started to move. Clearly the car does move to the left, towards the curb, before the angle is changed to drive away. But I don't think the CCTV shows that Mr T did that deliberately.

I know Admiral has also suggested that Mr T hasn't been truthful in his recollection of events because he said he indicated to move away to the right before starting to move (at which point the car, as described, moved momentarily to the left), but this isn't supported by the CCTV footage. I think Admiral is wrong in that respect. From the front it isn't clear if the indicator comes on before the car moves away. But it was sunny and even as the car moves, the blink of the indicator is difficult to pick up. However, I think the footage from the rear does show the blink of the right-hand indicator before the car starts to move. So I'm not persuaded that Admiral's concern in this respect, which I think it sees as adding weight to its conclusion that Mr T acted deliberately, is valid.

Admiral's claims handler has explained that, having seen the car move to the left and then sharply to the right, it is their opinion that the car was moved deliberately by Mr T. I don't think that seeing the car move speaks at all to Mr T's intention. As far as I can see the only two points that have otherwise gone towards that finding are the angle of the tyres before the car moved, which Admiral believes were straight, and that Mr T did not indicate as he said he had. However, as I've said, I don't think the footage shows the angle of the tyres and I'm satisfied that Mr T did indicate. So I'm not satisfied that Admiral reached a fair and reasonable conclusion that Mr T acted deliberately to move the car towards the curb, and the injured party, before driving away.

Which means that Admiral, in my view, can't fairly and reasonably refuse to provide indemnity to Mr T under the policy. Which also means that Admiral can't expect Mr T to reimburse its outlay for the third-party's claim. Admiral should confirm to Mr T that its outlay is covered under his policy and cease chasing him for payment.

I know Mr T disputes part of Admiral's outlay. He thinks it unreasonable settled with the third-party for £5,000. But I'm satisfied that Admiral made the offer it did having taken into

*account what the third-party was looking for, relevant medical evidence received and considering what a court would likely award given that medical evidence. I note that Admiral's settlement was less than what had been claimed for. So I don't think it could fairly be said that it just agreed to the claim and settled it without consideration. I'm not persuaded that Admiral did anything wrong in this respect. As such I'm not going to ask Admiral to review this further – the claim outcome will reflect this settlement amount.*

*I'm aware that Mr T thinks Admiral caused delays in the criminal proceedings. I haven't seen any evidence of that. It did take a long time for the criminal case to be heard in court – in the end the trial took place in February 2020 (the incident having occurred in 2017). And Admiral did want to attend the trial. But it had no part to play in organising it. I know Mr T's solicitor did contact Admiral and Admiral, as far as I can see, assisted with its enquiries. So I don't think I can fairly say Admiral likely caused delays in this respect. And whilst it isn't clear to me why Admiral felt the need to put its decision on the third-party claim on hold pending the outcome of the criminal trial, I don't think Mr T's position was negatively affected as a result.*

*Mr T did not have a claim under the policy for this event. So he wasn't waiting on any decision by Admiral to find out if he had cover for his own losses or damages. And Admiral's file shows that regarding Mr T's liability for the third-party's claim, he had been told in 2017 that whilst it would consider whether his fault in this matter could be defended to any degree, it was not hopeful of a successful outcome. Further, whilst I think Admiral had formed an idea about how it might settle the third-party's claim in 2019, it didn't make any settlement until after it had obtained the agreement from the third-party in 2020. It was then only October 2020 that it chose to seek recovery from Mr T, with it first contacting him in this respect in November 2020. It was after Mr T had received the recovery letter that he resumed challenging Admiral's decision. So I don't think that Admiral, handing the claim as it did, caused Mr T any additional distress and inconvenience.*

*Clearly Mr T was upset by that notice of recovery action. And given what I've said above about Admiral's decision on the third-party claim, that was upset it was responsible for and which could have been avoided. That resulted in Mr T complaining to Admiral. Admiral then, whilst it was meant to have answered Mr T's complaint within eight weeks, took six-months to provide a final response to him. During which time Mr T was living with the worry of being asked to pay Admiral over £6,000 (the settlement amount plus its costs). As I understand it though, recovery action of this nature will not result in Mr T's credit history being affected. I think Admiral should pay £500 compensation to Mr T for the upset it has caused him.*

*I know Admiral, at times, referred to Mr T as having been convicted of dangerous driving. But I see Admiral accepts that it made a mistake by referring to that. Admiral is aware that Mr T was convicted of driving without due care and attention (careless rather than dangerous driving) and it's confirmed this, and the fact of its previous error, in a letter to Mr T. I think that sufficiently resolves this particular issue. I'm not going to ask Admiral to do anything more in this respect."*

Mr T said he accepted my provisional decision. Admiral said it disagreed with it. Admiral asked that I review the CCTV footage again. It said it clearly shows the car's wheels moving to the left, hitting the pedestrian, and turning to the right to move away. It said "our opinion on watching the footage a number of times is the footage does show [Mr T] turned his wheels towards the third party given the angle the vehicle is originally at and the view of the wheels available." Admiral said it is further concerned this was intentional because Mr T did not stop at the scene even though he must have felt the impact.

### **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.

I have reviewed the footage again. I'd first say that I don't think it is clear that Mr T hit the guard with any force – and not with the front wheel. So I don't think Mr T would necessarily have felt the impact. Even if he did, that does not mean he left because he had deliberately hit the guard. I am not saying Mr T did the right thing in driving away – merely trying to highlight that there is more than one likely outcome for what happened.

As for what the footage shows about the direction of the wheels, I still think that is unclear. Their angle, from the front or rear perspective, whilst the car is stationary, given the vantage point of each camera and its distance from the car, is not visible. And, in the rear footage, as the car begins to move, the front left wheel is mostly obscured by pedestrians between the camera and the car. Clearly the front wheels did take the car towards the curb, allowing the contact with the pedestrian but I still don't think the footage shows us why, or when, the wheel was turned in that direction. And I'm mindful that Mr T, all along, has said the wheels were angled that way and he just hadn't corrected their direction before setting off.

I come back to what I explained provisionally – Admiral, if it wants to show that Mr T acted deliberately, reasonably needs more than opinion to support its position. Clearly Admiral believes the CCTV footage supports it in this respect – but, as explained, I am satisfied that is not the case. And I've also explained why the other concerns Admiral gave also don't support its position. I remain of the view that Admiral has not shown that Mr T most likely acted deliberately to cause the accident. As such Admiral's decline of liability under the policy for this incident was not fair or reasonable.

### **Putting things right**

I require Admiral to:

- Change the record it has made for the third party claim to show it was accepted and that settlement under that claim was paid.
- Cease viewing Mr T as owing it the sum of its outlay and end the recovery proceedings.
- Pay Mr T £500 compensation.

### **My final decision**

I uphold this complaint. I require Admiral Insurance (Gibraltar) Limited to provide the redress set out at "Putting things right". Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 April 2023.

Fiona Robinson

**Ombudsman**