DRN-4109824

The complaint

Mr N complains about the way his car insurance claim was handled and settled by Admiral Insurance (Gibraltar) Limited.

What happened

At the relevant times, Mr N had car insurance underwritten by Admiral. He made a claim in October 2021 after a tree fell on his car during a storm.

Admiral accepted the claim and declared Mr N's car a total loss. They paid Mr N £5,666 in settlement, less an excess of £360.

Mr N wasn't happy with this and made a complaint to Admiral. He said his car has been undervalued.

He also thought he shouldn't have to pay he excess – which applied based on who was in charge of the vehicle at the time - because he wasn't in charge of the vehicle at the time of the accident, it was parked on his drive.

And he wanted Admiral to pay for the cost of removing the tree.

Admiral accepted the car has been undervalued and paid Mr N a further £71 – plus interest on that amount (which came to 43p). But they said the excess had been properly applied. They had also refused to pay for the cost of removing the tree given that Mr N had removed it himself at no cost.

Mr N wasn't happy with this outcome and brought his complaint to us. Our investigator looked into it and upheld the complaint in part. He thought that even the second valuation Admiral came to was an undervaluation of the vehicle.

He said Admiral should value the car at £6,496.75. And pay Mr N the difference between that figure and what he'd already been paid (with interest). But he said the excess had been applied fairly and he didn't think Admiral should have to cover the cost (to Mr N) of removing the tree.

Admiral agreed with the proposed outcome. Mr N disagreed and asked for a final decision from an ombudsman.

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.

Mr N believes the car in still undervalued, at £6,496.75. He says he shouldn't have to pay the excess because of the way the policy terms are set out. And he wants Admiral to pay him for removing the tree so that the car could be salvaged. I'll consider each of those issues, in that order, below.

The valuation of the car

We believe that, where a vehicle has been written off, the correct way for an insurer to estimate the value of the car is by using the established motor industry trade price guides. These give valuations based on actual sale prices for vehicles in the current market.

Admiral say they used one of those guides (Glass's) to arrive at their original valuation of Mr N's car. When he queried that, they upped the valuation by £71 after consulting another guide (CAP). This matched the highest of the two valuations.

Our investigator looked at two further guides (Cazoo and Autotrader) and asked Admiral to match the average price of the four guides. Admiral have agreed to do this.

That's now entirely in line with what we would expect from an insurer when valuing a vehicle that's been written off.

Mr N says he found a similar car for sale at £8,900 (it's not clear from the information we have whether Mr N actually purchased that car).

That car was two years younger than Mr N's written-off car. Mr N thinks that because the wording in the policy says Admiral will pay for him to replace his car with a "similar" one (not "the same", but "similar"), he should be paid the market value of the younger car – which is "similar" but not "the same".

The policy actually says that Admiral will pay the market value of the vehicle, defined as:

> *"… the cost of replacing your vehicle with one of a similar make, model, year, mileage and condition…"*

Mr N goes so far as to suggest he could have replaced his vehicle with any car at all – all cars being "similar" – and expected Admiral to pay for it.

I don't accept Mr N's argument, which is somewhere beyond optimistic and somewhere beyond any reasonable reading or understanding of the policy terms.

Any reasonable reading of the policy terms suggests Admiral will look to pay for a car which is a match for the vehicle being replaced. And they've done this by estimating – using the accepted trade guides – the market value of Mr N's car at the time of the accident.

As I've said, that's exactly what we would expect them to do. But it's quite right that our investigator has asked them to re-assess their valuation looking at the full range of accepted industry guides rather than just two of them. And Admiral have now accepted that and agreed to pay the valuation that we came to.

The excess

The excess charges relating to Mr N's policy are set out in the policy schedule. It's arguable that these are rather more complicated than in most policies, though I suspect Admiral would say that gives better value and/or more choice for at least some of their customers.

There are three different claim situations set out in the section on excess charges. One relates to windscreen repairs and another to claims relating to fire or theft. Neither therefore applies in Mr N's case.

The other sub-section says that where a claim is made (by implication at least any other claim than those specified in the two irrelevant – in this case - sub-sections) and the policyholder has comprehensive cover (which Mr N does), than an excess is payable based on who is in charge of the car at the time of the accident.

If that person is over 25 years of age (as is Mr N) and has had a full licence for more than a year (as has Mr N), there's a compulsory excess of £60 (there are higher compulsory excesses for younger and/or less experienced drivers).

Mr N chose a voluntary excess of £300 on top of that. So, the total excess to be applied in the specified circumstances is £360 – which is the excess Admiral have charged Mr N in this particular case.

Mr N says no-one was in charge of the vehicle at the time of the accident. He was inside his house, his car was parked on the drive, a tree fell on it because of the storm. Mr N says because no-one was in charge of the vehicle, no excess should be charged.

Again, I don't agree with Mr N. Although in this case, I can see why he thinks no-one was in charge of the vehicle.

Even if he's right about that – and I don't think he is, for reasons I'll explain – I think most readers would assume that the intention of the policy wording is clear. In cases where a claim is made and it's not about windscreens or about fire or theft, then an excess *will* apply. And then the policy tries to set out *which* excess will be applied. I don't think, in other words, it would be a natural reading of the policy terms to suggest no excess applies at all.

More fundamentally though, I think it's mistaken to say Mr N wasn't in charge of the vehicle in the circumstances he sets out. I know he wasn't driving it – or indeed, in it at the time.

But if we take an everyday meaning of being "in charge" of something, that means having control of or responsibility for that thing. And Mr N was of course responsible for his car at the time.

Legally, there's no absolutely clear definition of what being "in charge" of a thing means. But many legal commentators or experts suggest that being "in charge" of a vehicle means being the legal owner and/or being in possession of the vehicle (whether driving it or not) *unless* it's being driven by someone else or control of it has been relinquished to someone else.

In other words, if no-one's driving a car, it's in the charge of the owner. I think Mr N may - understandably perhaps - be thinking about what it means to commit an offence of being drunk (or otherwise intoxicated) in charge of a vehicle. But that's not entirely relevant when it comes to insurance claims, rather than criminal proceedings. And in any case, those proceedings will only be brought where the car is on a road or other public place.

In summary, I don't think it's unreasonable for Admiral to apply an excess charge in Mr N's case. I think it would be relatively clear to anyone buying the policy that an excess would apply where a claim was made. And Admiral have applied the smallest excess from the range set out in their policy schedule on the basis of Mr N's age and experience as a driver.

The tree removal

Mr N told Admiral he'd got a quote from a company to remove the tree and dispose of it. The proposed cost being £600 plus VAT. But because that company couldn't give hm a definite time and date for the work, Mr N removed the tree himself.

He thinks Admiral should pay him for the time and effort involved in carrying out the work. And it appears he thinks the starting point for any discussion about that payment would be the £600 plus VAT quoted by the company he spoke to.

Where a vehicle is written off, it becomes in effect the property of the insurer – who will often defray some of the cost of settling the claim by selling the vehicle for salvage. That's the position reflected in Mr N's policy. And it's what happened to Mr N's car in this case.

The policy says nothing about recovery of the vehicle so that it can be passed to the insurer. The terms set out what Admiral will cover – which is the damage to or loss of the vehicle and/or its contents.

There's no indication that Admiral will cover the cost associated with making the vehicle recoverable. There's clearly no intention in the policy terms to remove trees or any other debris from Mr N's property after a storm.

I don't think it's unreasonable or unfair then for Admiral to refuse to pay for the cost of removing the tree. And in this particular case, Mr N incurred no costs in any case.

When Admiral put this to Mr N, he said that his company (he has an aviation business) had moved the tree and incurred the costs. As Admiral pointed out, it would be difficult for an aviation business to price the removal of a fallen tree, which is presumably not a part of their actual business activity.

So, I don't think Admiral need to cover any cost to Mr N (or his business) of removing the tree, which would have had to be done anyway irrespective of whether there as a car under it at the time or not.

Putting things right

I'm partly upholding this case because it's only after our involvement that Admiral agreed to pay the valuation of the car estimated by our investigator.

That being the case, I'm going to require Admiral to pay the difference between what they've already paid Mr N (which was less the excess) and the valuation we came to after researching the four trade guides (again, less the excess).

Admiral were right to add the interest – at 8% simple – when they first reviewed Mr N's settlement figure, from the date the claim was closed (23 November 2021) to the date the additional payment was made. And I'm going to require them to do the same again in respect of the further amount we're now telling them to pay.

For the reasons I've gvien above, I'm satisfied it was reasonable for Admiral to charge the excess. I'm also satisfied Admiral didn't act unfairly in refusing to pay Mr N for the removal of the tree. So, I'm not going to ask Admiral to do anything more in relation to those aspects of Mr N's complaint.

My final decision

For the reasons set out above, I uphold Mr N's complaint in part.

Admiral Insurance (Gibraltar) Limited must now pay Mr N the difference between the sum already paid to him and £6,496.75 – less the excess of £360. They must also add interest at 8% a year simple to that amount – calculated from 23 November 2021 to the date the payment is made.

If Admiral Insurance (Gibraltar) Limited considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr N how much they've taken off. They should also give Mr N a tax deduction certificate 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 N to accept or reject my decision before 7 June 2023.

Neil Marshall
Ombudsman