

The complaint

Mr H has complained that a claim under his motor insurance policy has been marked as a fault claim by Admiral Insurance (Gibraltar) Limited.

What happened

Mr H had an accident in which he went into the back of another vehicle. He made a claim for his vehicle which was settled by Admiral. Admiral marked the claim as 'bonus disallowed' (fault) on the basis it was not going to be able to recover what it had paid out on the claim. Mr H wasn't happy about this, as he thought the evidence suggested there was a fault with the brakes on the vehicle when he bought it, which led to his accident. In view of this, he does not think the accident was his fault. And Mr H thinks Admiral should be able to recover what it has paid out on the claim from the dealer who sold him the vehicle.

Mr H complained to Admiral about this amongst other things. Admiral said that it was satisfied it would not be able to recover its outlay and the claim would remain on record as a fault claim. Mr H asked us to consider his complaint about this. One of our investigators did this. He didn't uphold it on the basis he was satisfied Admiral's decision to mark the claim as fault was reasonable.

Mr H doesn't agree with the investigator's view and has asked for an ombudsman's decision.

I issued a provisional decision on 7 March 2024 in which I set out what I'd provisionally decided and why as follows:

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

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr H's complaint.

The issue I am considering is not about how Admiral dealt with Mr H's claim, although he has made a separate complaint about part of this, which we have also been dealing with. It is about whether Admiral's decision not to pursue recovery of its outlay on Mr H's claim and leave it on record as a fault claim is fair.

I've referred to the claim being recorded as a 'fault claim', although the actual record on the Central Underwriting Exchange (CUE) where insurers record claims is 'bonus disallowed'. This means it is a claim which will either affect the policyholder's no claim bonus/discount (NCD) or count as one of the claims allowed if the NCD is protected.

If Admiral settles a motor insurance claim for damage to an insured vehicle following an accident it should consider whether it could recover its outlay from another party it can hold responsible for the accident. If it decides it can't then this should be on the basis it has no prospect of doing this successfully. And if it can't this will mean the claim is recorded as

bonus disallowed, i.e. a fault claim. But this doesn't necessarily mean the driver of the vehicle was actually at fault. It just means Admiral has no way of recovering its outlay. I've noted Mr H wasn't prosecuted for driving with undue care and attention, but this really has nothing to do with whether Admiral can recover its outlay or not. Although, I take Mr H's point that the court may have considered his evidence the brakes on his vehicle were faulty in reaching this decision.

I have seen what Mr H has said about the brakes on his vehicle. And I can of course understand his concern. And he has recently provided a copy of a report from the proprietor of a garage, who is a current MOT nominated tester. In the report, which is dated 31 May 2023, he has said he carried out a brake test on Mr H's vehicle. And that the braking efficiency on a decelerometer was 23%. And the tester has explained that this reading is way below the minimum requirement to pass an MOT. He's also explained that the vehicle suffered from 'brake pedal creep' and sustained pressure to the braking system for 30-60 seconds resulted in the pedal making contact with the vehicle's floor. And that this would result in complete brake failure. He goes on to say that the most likely reason for the defect is the master cylinder leaking internally due to defective seals. I have asked our investigator to provide a copy of this report to Admiral.

I have a report and comments from the assessor Admiral appointed to inspect Mr H's vehicle. He inspected the vehicle and noted the brake pads were wearing thin, but were not below the legal limit. But Mr H has said he does not think there was a problem with the brake pads. But he does think the brakes in his vehicle weren't checked properly by the dealer he bought the vehicle from. And that they were faulty.

So, it does seem from what Mr H has said and the report by the MOT tester that it is most likely the brakes on Mr H's vehicle were faulty when it was sold to him, and did eventually fail, resulting in the accident he has claimed for. In view of this, it does seem Admiral should have pursued recovery of any outlay on Mr H's claim from the dealer who sold Mr H the vehicle on the basis of negligence.

However, Admiral chose not to pursue recovery. And it is of course hard to know whether it would have been able to make a full recovery if it had. But I do not consider it is fair and reasonable for Admiral to mark Mr H's claim as bonus disallowed or fault when it didn't at least try to recover its outlay. I do of course appreciate Admiral didn't have the tester's report. But Mr H made it very clear that he thought the brakes on his car were faulty and I think Admiral should have made sure its assessor checked the whole brake system properly, which he clearly did not.

In the circumstances, I think as part of the fair and reasonable outcome to Mr H's complaint Admiral should alter its records and any external databases to show Mr H's claim as bonus allowed or non-fault. This means if it has impacted Mr H's premium or premiums on any motor insurance policies he has had since his policy with Admiral ended, he can contact the insurer or insurers concerned and ask them to amend the premium on the basis the claim has been changed to non-fault.

I also consider Admiral's approach was unreasonable and that this caused Mr H distress and inconvenience. And I think Admiral should pay him £200 in compensation for this.

I gave both parties until 21 March 2024 to provide further comments and evidence.

Mr H has responded to say that he agrees with my provisional decision, but would also like an apology from Admiral. Admiral has responded to say it did not have a copy of the report Mr H obtained from the MOT tester, but it accepts it was aware it existed and that it should have followed up on this and asked for a copy. It's said in light of this, and the report, it

agrees it should do what I set out in my provisional decision. It has also referred to allowing Mr H's no claim discount.

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'm pleased Admiral and Mr H agree with the outcome I set out in my provisional decision. And I think Mr H's request for an apology is reasonable in light of Admiral's admission it knew Mr H had the report from the MOT tester, but didn't follow up on this and reconsider its decision not to pursue recovery. So, I agree Admiral should also provide Mr H with a suitable apology, as well as reinstating his no claim discount if it was affected by his claim.

Putting things right

For the reasons set out above, I've decided to uphold Mr H's complaint and make Admiral Insurance (Gibraltar) Limited do the following:

- Alter its records and any external databases to show Mr H's claim as bonus allowed or non-fault.
- Reinstatement Mr H's no claim discount if it was affected.
- Pay Mr H £200 in compensation for distress and inconvenience.
- Provide Mr H with an email or letter apologising for not following up and asking for a copy of the report from the MOT tester and reconsidering its position in light of this.

My final decision

I uphold Mr H's complaint and order Admiral Insurance (Gibraltar) Limited 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 Mr H to accept or reject my decision before 15 April 2024.

Robert Short
Ombudsman