

The complaint

Ms E complains about how Admiral Insurance (Gibraltar) Ltd (Admiral) has handled a claim on her motor insurance policy.

Ms E's complaint has been brought by a representative. Any references to Ms E include the comments of her representative.

What happened

I understand that Ms E was involved in a collision with a third-party at a junction.

The accident was reported to Admiral by Ms E. Ms E said she was creeping out of a junction onto the main road when the third-party collided with her vehicle. Ms E said the third-party was arrested at the scene for driving under the influence and reckless driving.

As Ms E was creeping out of a junction onto the main road at the time of the collision, Admiral says it decided on the information it had available, that liability would attach to Ms E. Admiral dealt with the third-party claim on a without prejudice basis.

Ms E was unhappy with Admiral's liability decision and made a complaint. Ms E felt she wasn't at fault for the collision as the third-party was drunk and driving at high speed and Admiral could've done more to conclude who was at fault for the accident.

In response, Admiral said it wasn't upholding Ms E's complaint. Admiral said on the information it had available and considering the likely outcome of court proceedings, it was satisfied the correct liability decision had been made.

Unhappy, Ms E brought her complaint to this service.

Our Investigator didn't recommend upholding Ms E's complaint. She found Admiral's stance to be reasonable and in line with the Highway Code i.e., Ms E was the party creeping out of the junction into the third-party's lane.

Our Investigator asked Admiral why the matter couldn't be settled on a 50/50 split between the two parties. Admiral confirmed recovering 50% of its outlay would still have the same impact as dealing with the third-party's claim in full. Ms E's no claims bonus would remain affected, and she'd have a claim on her file.

Ms E disagreed with our Investigator. She said a thorough reassessment of liability was warranted and asked an Ombudsman to review her complaint.

It has now been passed to me to decide.

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.

Firstly, I'd like to acknowledge Ms E's strength of feeling on this matter along with the additional information she has provided.

However, I've decided to not uphold Ms E's complaint. I understand Ms E will be disappointed by this, but I'll explain why below.

To start, I'd like to explain the meaning of the terms "fault" and "non fault".

A "fault" claim is more colloquially used, but the actual terminology is "no claims bonus disallowed". It doesn't mean the policyholder is necessarily to blame for the accident but reflects the fact where a claim has been made and the insurer hasn't recovered its outlay. An insurer will be required to register the claim following the Claims and Underwriting Exchange ("CUE") guidance. When recording the claim, the insurer can select bonus disallowed. This doesn't mean the policyholder was to blame; it simply means the insurer has been unable to recover all its costs in full from another party.

When liaising with customers, rather than use the term bonus disallowed, insurers will often say "fault". Use of this term can make the policyholder think they were the party to blame for the accident, rather than the correct scenario of an insurer being unable to recover all its costs.

Alternatively, a "non fault" claim means "no claims bonus allowed". This will be where an insurer has been able to recover its costs in full from another party.

When providing my decision, I will use the term bonus disallowed as opposed to fault.

My role isn't to consider who was responsible for the accident and to reassess liability. It's to look at whether Admiral has carried out a fair investigation, reviewed all the evidence it has available and reached a reasonable decision.

Page 24 of Ms E's policy terms and conditions booklet, allowed Admiral, like other motor insurance policies to; -

"conduct the investigation, defence and settlement of any claim on your behalf..."

The policy term therefore allows Admiral to settle the claim on the best terms it felt possible and that it has the final say in how to settle a claim. The term doesn't mean that Admiral can do as it pleases when settling a claim. Its decision must be reasonable and based on the facts and evidence.

Decision to Settle

Ms E feels strongly she wasn't responsible for the accident as she says the third-party was drunk and driving at high speed. She says it's this reason why the collision occurred.

As stated above, it's not for me to decide who was responsible for the accident, but whether Admiral has taken Ms E's comments and all other evidence into consideration when deciding whether to concede liability or not.

Taking everything into account, I believe it was fair and reasonable for Admiral to have dealt with the third-party's claim on a without prejudice basis leading to the claim being recorded as bonus disallowed. I can see from Admiral's file there were no independent witnesses nor CCTV to support Ms E's version of events and therefore it was one party's word against that of the other. Photographs had been provided by Ms E to Admiral showing the location and aftermath of the collision. I can see Admiral, when considering liability, has taken these

factors into account along with the Highway Code and the likely outcome of any court proceedings.

Ms E doesn't dispute she was creeping out of the junction (minor road) onto the main road at the time of the collision. The file shows this admission has been highlighted to Admiral by the third-party insurer. Within Admiral's response to this service, it says that, as Ms E was the party "creeping" out of the junction (minor road) the onus would've been for her to ensure the way was clear. I don't think it was unreasonable for Admiral to conclude as such.

The third-party's insurer raised the speed of the third-party vehicle isn't a defence for Ms E and that the speed of the third-party can't be proven. From the file I can see Admiral acknowledges speed in itself isn't an act of negligence.

While I recognise Ms E strongly disagrees with the way Admiral has handled her liability dispute, I believe Admiral has followed a fair and reasonable process in assessing whether to deal with the third-party claim. Admiral utilised the terms it was afforded under page 24 of the policy terms and conditions booklet (referenced above), to ensure claim costs were kept to a minimum as it is entitled to do.

By Admiral agreeing to deal with the third-party claim on a without prejudice basis, Admiral has allowed the opportunity for Ms E to pursue the matter at her own cost if she so wishes.

As the Investigator set out, even if the liability decision were amended to be a 50/50 split between the two parties, this would still be recorded as bonus disallowed against Ms E's policy affecting her no claims bonus. This is because regardless of whether a liability decision is on a 100% or 50% basis, Admiral wouldn't recover its costs in full from the third-party, meaning the claim would remain as bonus disallowed.

Overall, I find Admiral has been reasonable in the way it has dealt with Ms E's claim and administered the policy.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 3 December 2024.

Lorna Ball
Ombudsman