

The complaint

Mr M has complained that an approved repairer (AR) of Admiral Insurance (Gibraltar) Limited caused additional damage to his car when it carried out repairs. Mr M made a claim for damage to his car under his car insurance policy with Admiral.

What happened

In October 2023 Mr M made a claim for damage to the rear of his car. Before his car went in for repair he discussed a price with the AR to repair some unrelated damage to the front driver side of his car at the same time. Mr M decided not to proceed with the repairs to the front of the car with the AR.

Mr M's car was collected in November 2023 and the rear of his car was repaired. But when Mr M's car was returned to him, he complained about new damage to the front passenger side of the car – separate to the front driver side damage he'd previously asked for a quote for.

Admiral didn't uphold Mr M's complaint. It said the damage was already on Mr M's car and provided photos from the AR to show this.

Mr M didn't agree and asked us to look at his complaint. He said the photos taken by the AR were taken the day after his car was collected. (This isn't in dispute.) So he said it didn't prove the damage was pre-existing.

Mr M said it isn't logical that he would call in November 2023 to ask about front damage repairs and not include this damage if it was already on his car.

Our Investigator agreed with Mr M that this seemed illogical. But he explained that it wasn't unusual for an AR to take photos of a car on first inspection – nor was it unusual for this to not necessarily happen on the day it arrived at their premises. And while he didn't dispute what Mr M said, he couldn't say it was more likely than not that the AR caused the additional damage to the front of Mr M's car. There had been a gap of around six weeks between Mr M's initial enquiry about the previous front damage repairs and the new front damage. So he said it was possible the additional front damage had happened during this time – while in Mr M's care.

So the Investigator didn't recommend upholding the complaint.

Mr M disagrees. In summary he says the responsibility of the AR was to take photos of his car at handover. He collected a courtesy car on the same day. Mr M says if he used photos taken the following day as a defence to having not caused damage to the courtesy car, the AR and Admiral wouldn't have accepted this. But this service has accepted the same evidence to not uphold his complaint, which he says is unfair.

Mr M says he continued to email and speak to the AR about the existing unrelated damage to the front driver side of his car right up until it went in for repair. He says it doesn't make any sense for him to have continued to do that if there was further new damage to the front of his car and not include it. And it doesn't make sense for him to have not taken photos of any newer damage to the front of his car after the photos he took and shared with the AR in November 2023. He says if there was new damage, he would have taken more photos and asked the AR to include this damage when quoting for repairs Mr M intended to pay for.

Mr M asked for an ombudsman to decide. I issued a provisional decision on 15 August 2024 and I intended to uphold the complaint and ask Admiral to deal with front scratch repairs to Mr M's car.

Admiral said it would obtain comments from its AR. Mr M accepted the provisional decision.

As the time has passed to provide comments, the case has been passed back 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.

As I haven't received any new information, my final decision is on the same lines as my provisional decision.

I note that in Admiral's response to Mr M's complaint, it says that the damage to Mr M's car was there "*prior to the approved repairer receiving it*". But I don't think Admiral can say this. Admiral didn't mention that the photos the AR and Admiral were relying on when making this statement were taken a day after the car was in the custody of the AR.

There is no way for me to be able to decide for certain whether the scratch damage to the front passenger side of Mr M's car was there before or after collection/arrival for repair. What I can do is decide on balance what I think is more likely than not to have happened.

There seems to be three possibilities: that the front passenger side damage was there before recovery, caused during recovery, or on or after delivery to the AR. Mr M would be responsible for the damage under the first possibility. Admiral would be responsible for the damage under the other two possibilities as the recovery agent and AR act as agents of Admiral for Mr M's claim.

When any business collects a vehicle, I think it's reasonable to expect it to evidence any pre-existing damage promptly – in other words on collection or arrival. And if a business doesn't do this, it leaves open the possibility that it cannot prove any new damage claimed for wasn't caused by them.

It isn't the only reason why I intend to uphold Mr M's complaint. I find Mr M's arguments compelling and persuasive. He was transparent about separate damage to the front of his car with the AR before his car went in for repair. His intention was to have this repaired at the same time subject to being happy with the quote. So it doesn't seem likely that if new damage occurred during this time, Mr M wouldn't mention this.

There seems to be no suggestion that this claim was an attempt to have the pre-existing front damage repaired by the AR. From the photos provided, the damage is to opposite sides of the front of Mr M's car.

If Mr M had caused damage to a courtesy car after collection and provided photos a day after collection as evidence he didn't cause the damage – I agree that it's not likely this evidence would be accepted.

This is a finely balanced case. But taking everything into account, I think a fairer outcome is for Admiral to meet the costs to repair the scratch damage to the front passenger side of Mr M's car. Admiral can decide to do this by way of an AR or a cash settlement in line with the remaining terms of the policy.

My final decision

My final decision is that I uphold this complaint. I require Admiral Insurance Company (Gibraltar) Limited to meet Mr M's claim for scratch damage to the front passenger side of his car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 October 2024.

Geraldine Newbold
Ombudsman