

## **The complaint**

Miss A has complained that Admiral Insurance (Gibraltar) Limited unfairly and unreasonably held her to be 50% negligent for causing an accident.

## **What happened**

Miss A was involved in an accident on a multi-lane roundabout or rather a large intersection. She said that she was in the correct lane for her exit off the roundabout but that the other driver was in the wrong lane for their exit. This meant that the other driver hit the middle and rear of Miss A's car as Miss A was exiting the roundabout. Miss A was adamant that she was not at fault for causing this accident. She said that Admiral initially agreed that they would settle the claim in her favour. But later the claim was settled on a 50/50 basis. Admiral admitted that it had delayed and caused Miss A some trouble and upset, so it paid her £150 compensation.

As Admiral wouldn't change its stance on the liability aspect, Miss A brought her complaint to us. The investigator recommended that it should be upheld. She thought that Admiral should record the accident as a non-fault accident, reinstate Miss A's No Claims Discount (NCD), refund any overpayments Miss A might have paid for having a fault claim logged on her insurance record and pay her an additional £150 compensation.

Miss A agreed but Admiral didn't, so Miss A's complaint has 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.

I consider that there is no dispute that Miss A was indeed driving in the correct lane of the roundabout for the exit that she wanted to take. The photographs and the dash cam stills clearly show this. The accident occurred because the other driver was attempting to continue around the roundabout incorrectly given the lane that they were driving in. Admiral's file notes are clear on this issue. The damage to Miss A's car which was on the side going towards the rear of her car indicate that Miss A was ahead of the other driver, not behind. This service is not a court of law and therefore cannot decide who might have been liable for causing an accident. Our role is to assess whether Admiral came to its decision on liability reasonably and fairly in relation to the terms and conditions of the policy.

Like every other motor policy, this policy has a clause which states the following:

### ***'Defending or settling a claim***

#### ***We are entitled to:***

- *conduct the investigation, defence and settlement of any claim on **your***

*behalf.*

...

- *bring a claim in your name against any third party responsible for any loss or damage.'*

This is a standard clause in all motor policies, so I don't find it significant or unusual. Therefore, my role is to assess whether Admiral came to its decision reasonably in holding Miss A 50% liable for causing this accident. I don't consider that Admiral has come to a reasonable decision here.

Within the facts of the matter of how the accident occurred which is not in dispute, Admiral needs to show that Miss A has actually done something wrong. Whilst liability in relation to accidents that occur on roundabouts is often difficult to ascertain and are very often settled on a 50/50 basis, I don't consider that Admiral has taken enough care in its consideration of the facts here. More so when it is also insuring the other driver, too.

Given the particular circumstances of this accident and the fact that Miss A was in front of the other driver and driving in her correct lane, I would have expected Admiral to have sought some legal advice in relation to the case law it's now saying it's relying on. There is no evidence to show me that Admiral took any legal advice at all. Had it done so, it's more than possible that it would have been explained that the facts in the matter of *Grace -v- Tanner* (2003) decided on appeal, are quite different than what occurred in the accident involving Miss A.

In *Grace -v- Tanner*, the motorist in the same position on the road as Miss A was, had missed the correct turning off the roundabout she wanted to take, so had subsequently hesitated, slowed down and virtually stopped at the exit of the roundabout where the accident occurred. So, by stopping, that motorist made an error which made it more difficult for the motorbike following behind, not to crash into the side and back of her car. Hence in that case both parties were considered to be 50% to blame for causing the accident.

But in the facts of the matter between Miss A and the other driver in this complaint, there is no evidence such hesitation by Miss A occurred when she was exiting the roundabout. It seems to me that she knew precisely where she was going and she also appeared to know precisely which lane she needed to be in to effectively get off the roundabout at the right time, as there is no indication that she was in the wrong lane, given the road layout and the various signs seen on the dash cam stills. Therefore, I don't consider it was reasonable to rely on this court case in order to say that Miss A had a duty to take any more care than she did do, in exiting the roundabout. It's far more likely on balance that the other driver in Miss A's case was actually driving in the wrong lane for the exit that she wanted to take off the roundabout, which was further on than Miss A's exit, hence the other driver driving into the side and rear of Miss A's car, causing the accident to occur.

So, I don't consider that Admiral has come to a view on liability on the facts of this case that is fair and reasonable, given its reliance on this court case. Consequently, I don't consider it fair that Miss A's insurance record should show this is as a fault claim. Nor indeed is it fair that her NCD should be affected. I am unaware of any evidence that Miss A has had to pay an increased premium due to the manner in which this claim was recorded, but if that is the case, Admiral should refund any such overpayment with interest.

I consider that Admiral has caused Miss A additional trouble and upset given its decision on liability. I can see that Miss A went to considerable trouble to explain and show using maps and photographs of the road layout how the accident occurred and indeed that she wasn't at fault. Therefore, it's reasonable in my view that Admiral should pay further compensation to Miss A. I consider the amount of £150 suggested by the investigator to be fair as it is in line with our stated guidance on compensation, as detailed more fully in our website.

## **My final decision**

So, for these reasons it's my final decision that I'm upholding this complaint.

I now require Admiral Insurance (Gibraltar) Limited to do the following:

- Amend all internal and external databases to show that this accident is recorded as non-fault for Miss A, reinstating her NCD.
- In the unlikely event that Miss A has had to pay further premium, refund that extra premium paid adding interest of 8% simple per year from the date Miss A paid any such extra premium to the date it refunds her. If income tax is to be deducted from the interest, appropriate documentation should be provided to Miss A for HMRC purposes.
- Pay Miss A the further sum of £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 22 November 2024.

Rona Doyle  
**Ombudsman**