

## The complaint

Mr B is a sole trader, trading as J. He complains Admiral Insurance (Gibraltar) Limited turned down a claim he made on his public liability insurance policy.

## What happened

In June 2021 Mr B carried out work for a customer at their property. In or around November 2022 the customer told Mr B there had been several leaks from plumbing he'd installed. These hadn't initially been apparent but had subsequently caused damage to kitchen flooring and units. The customer thought Mr B was responsible for this.

Mr B claimed on his policy. Admiral turned down the claim. It said the policy Mr B had with it started on 15 March 2022. And the policy only provided cover where the work carried out took place during the period of insurance. In this case the work that had given rise to the claim took place in June 2021 which was before Mr B took out cover with it.

Our investigator thought Admiral had acted in line with the policy terms in turning down the claim. Mr B didn't agree. He asked for an Ombudsman to review matters. And he queried why a previous policy he held (with a different insurer) had been lapsed. He thought Admiral was responsible for that and it should be considered as part of this complaint.

I issued a provisional decision on the complaint last month. In summary I said:

*The relevant rules and industry guidelines say Admiral has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.*

*I've looked first at the terms and conditions of Mr B's policy. This does include public liability cover'. And it provides cover for "claims against you arising from Bodily Injury or Property Damage to Property belonging to others, happening during the Period of Insurance regardless of when the claim is brought against You".*

*In its responses Admiral hasn't disputed there was property damage which occurred during the period of insurance. But it referenced a policy exclusion which says "We do not cover... Any actual or alleged act, omission or incident, unless committed during the period of insurance". It didn't think the policy covered the claim Mr B had made.*

*I think the act, omission or incident in this case would be the work Mr B carried out for his customer. And that took place in June 2021 which was before the policy start date and so not within the period of insurance.*

*However, having reviewed the policy terms it appeared to me the exclusion Admiral were relying on specifically applied to an additional cover within the public liability section for 'Health and safety defence costs'. The exclusion formed a list of items the policy didn't cover within that specific section only. It wasn't included within the exclusions or conditions applying to the public liability section or the policy more generally.*

*I asked Admiral to explain why it thought the exclusion did apply to the claim Mr B made. It said it was the intention the exclusion would apply to the public liability section of the policy*

*and not specifically to 'Health and Safety Defence Costs'. But I've seen nothing to show it was the agreed intention of both contracting parties the exclusion should apply in that way. And it simply isn't what the policy says. I'm clear from looking at the exclusion that it only applies to the 'Health and Safety Defence Costs' section. If Admiral had wanted it to apply more generally it wouldn't have been difficult for it to draft the policy so that was the case. In that event both parties would have been clear about what cover was being provided.*

*However, from the wording of the insurance contract Mr B actually entered into I think it's clear the exclusion doesn't apply to the public liability section of the policy more generally. And I don't think it's in line with those terms or fair for Admiral to now seek to apply an exclusion to Mr B's claim that his policy doesn't provide for. It therefore follows that I don't consider it was right to turn down his claim on that basis of that exclusion.*

*So Admiral will need to reconsider the claim against the remaining policy terms. I also think Mr B will have been caused some unnecessary distress over a sustained period as a result of the claim being wrongly turned down and has also been put to some unnecessary inconvenience in pursuing the matter. I recognise the impact of that is somewhat mitigated as he has a representative acting for him, but I nevertheless consider it would be appropriate for Admiral to pay him £200 in recognition of the impact on him of what it got wrong.*

*I appreciate Mr B has also raised concerns about what happened when this policy was taken out and why his previous policy had been lapsed. However, as those issues are separate from the decision Admiral reached on his claim I think it's right they are considered as part of a separate complaint which is being progressed.*

## **Responses to my provisional decision**

Admiral didn't agree with my provisional decision. It maintained the exclusion was intended as a standalone exclusion which applied to the whole of the public liability policy. And it disagreed the damage occurred during its period of cover. It provided a copy of a loss adjusters report and said it thought it likely the damage was ongoing prior to the start of its policy. And it said the policy didn't cover any claims which would be covered by any other insurance. In this case it thought Mr B's previous insurer should be responsible for the claim.

Mr B (through his representative) also provided further comments. In summary he said:

- He agreed with my position in relation to the policy exclusion and thought Admiral had been unprofessional in seeking to rely on this. And he thought cover should be provided for his claim under the terms of his policy.
- He drew attention to the time taken by Admiral to deal with the matter and in particular a report from the loss adjusters in January 2023 which concluded the claim should be settled. He thought any further delay in doing so was likely to increase the damage and associated repair costs.
- He was unhappy the solicitors dealing with the claim on behalf of Admiral had advised they were only representing it in doing so and wouldn't provide him with information.
- And he highlighted previous contact with Admiral in support of his position that it should be directed to settle the claim in full and that the solicitors dealing with the matter on its behalf should be removed from the claim.

So I need to reach a final decision.

## 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 note the comments Admiral has made about the policy exclusion. However, I've already explained why I'm satisfied the policy terms mean this only applies to the 'Health and Safety Defence Costs' section. If Admiral had wanted it to apply more generally it should have worded the policy differently. So I don't think Admiral can rely on this exclusion to turn down Mr B's claim.

Admiral also says the damage is likely to have begun prior to the start date of its policy. And it says there's no cover under its policy for any claims which would be covered by any other insurance. It thinks Mr B's previous insurer should be responsible for his claim which means cover wouldn't be available under its policy.

I don't agree with Admiral's position here. It's relied on a policy term which says "*we do not cover any claim, loss or liability... that would be covered under any other insurance if this Policy did not exist. This does not apply to any amount over the amount that would have been payable under the other insurance if this Policy did not exist*". But that term doesn't say no cover is available for a claim covered by another policy; it makes clear it doesn't apply to any amount that would be payable over the amount covered by the other policy.

In any event we've already considered a complaint against the insurer of Mr B's previous policy. Another Ombudsman issued a final decision last month and concluded that insurer had acted correctly in turning down the claim Mr B made on its policy. That means Admiral are wrong to say Mr B's claim would be covered by his previous insurer; we've determined that isn't the case. So it can't rely on this term to turn down his claim either.

Turning to the points Mr B has raised I appreciate he would like me to direct Admiral to pay his claim. However, I think it's fair Admiral has the opportunity to consider the remaining terms and conditions of his policy when determining what cover is available for it. But, as I recognised in my provisional decision, I do think Admiral's handling of the claim has caused Mr B some unnecessary inconvenience. I agree that could have been avoided if Admiral had correctly considered the claim at an earlier stage. I appreciate that will also have caused difficulties for his customer but it's only the impact on Mr B I can consider as he's the 'eligible complaint' in this case. Given that I think the £200 I recommended in my provisional decision is an appropriate way of recognising the impact on him of what Admiral got wrong.

Mr B would also like Admiral to instruct different solicitors to deal with the claim. That's at least in part because those solicitors advised they were acting for Admiral and not him. However, as Admiral didn't believe the claim was covered by his policy then its legal advisers wouldn't have been acting for him. If Admiral does now accept the claim then it will need to decide how that should be dealt with in line with the terms of Mr B's policy. And if Mr B is unhappy with any actions it then takes (including the actions of any claims handlers it's responsible for) that's something he can raise as part of a fresh complaint.

Mr B has also made reference to Admiral not responding to a request for agreement to stay the legal proceedings which his customer had brought against him. Given Admiral doesn't appear to have been directly involved with those proceedings (it's not specifically named as one of the parties in the draft consent order) I'm not clear those proceedings relate to the subject matter of this complaint. In any event I can see those proceedings have now been stayed by consent so I don't consider this is an issue I need to consider further.

### **Putting things right**

Admiral isn't entitled to rely on the exclusions it's cited to turn down Mr B's claim. So it will need to reconsider the claim against the remaining terms and conditions of the policy. It will also need to pay Mr B £200.

### **My final decision**

I've decided to uphold this complaint. Admiral Insurance (Gibraltar) Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B (on behalf of J) to accept or reject my decision before 11 December 2024.

James Park  
**Ombudsman**