

The complaint

Ms S complains about the handling of her motor claim by Admiral Insurance (Gibraltar) Limited.

Ms S's complaint was brought to us by the named driver, Mr S, but for ease of reading I'll refer to his comments as being made by Ms S.

What happened

The following is intended as a brief summary of events. Ms S held a car insurance policy underwritten by Admiral. Her car was stolen in early September 2022 – and she contacted Admiral to make a claim. As the car had been stolen, the claim was treated as a “total loss”, and a settlement was paid to Ms S.

The car was then recovered by the Police a day after the settlement was paid - and it remained at their Police compound. Ms S says she arranged to collect it from storage, but it was collected early by recovery agents – which she says was against her express permission to Admiral.

Ms S was able to inspect the car sometime later and says there was damage to the car that hadn't been there when the car was recovered by the Police. Ms S then contacted Admiral and asked for the car to be returned in exchange for the settlement paid to her, minus the cost of repairs. But Admiral said this wasn't possible - they said the car became their property when they settled the claim. And they said it was their standard approach that they wouldn't sell a recovered vehicle back to a policyholder.

Ms S thought this was unfair – she said the car was undamaged when it was recovered, and it was only damaged once the recovery agents collected the car. She complained to Admiral and said they had damaged the car in order to increase the costs needed to fix it in order to avoid having to return the car to her.

Admiral responded to the complaint and upheld it in part. They said while they were able to settle the claim as they deemed necessary – their communication could have been better, and they acknowledged there had been a poor customer journey for Ms S. They offered £400 compensation.

Ms S didn't agree with Admiral's response and brought the complaint to this Service. An Investigator looked at what happened and ultimately recommended the complaint be upheld. She agreed that Admiral could deal with the claim under the terms of the policy; but she felt they could have given the car back to Ms S instead of maintaining the claim. She also recommended Admiral increase their compensation by an extra £500.

Admiral and Ms S both disagreed with the Investigator's recommendation. Admiral said they didn't see how an additional £500 compensation was warranted. Ms S said the increased compensation was wholly inadequate for the ordeal which she felt Admiral put her through.

As both parties disagreed, the complaint has been passed to me to decide.

I issued a provisional decision of this complaint on 13 November 2024. I've set out my provisional findings below:

As I explained above, I've only provided a summary of what happened here as the details of this claim are well known to Ms S and Admiral. I appreciate Ms S has made detailed submissions; however, I'm not going to address each of these individually. This is not intended as a discourtesy to Ms S, but instead reflects the informal nature of this Service. I've therefore focused on what I consider to be the key issues of the complaint – however I assure both parties I have read and considered everything submitted carefully.

I also need to make it clear that I won't be considering any complaint points around the valuation of the car. An Ombudsman has previously addressed these points as part of a Decision issued in August 2024, in which they concluded the complaint issues surrounding the settlement value of the car were outside of the jurisdiction of this Service to consider. This means I won't be making any findings on these points as part of my decision.

The crux of this complaint comes down to the damage caused to the car after it was collected by the recovery agents. Ms S says this damage was done deliberately, in order to avoid having to return the car to her and therefore profit from the sale.

The starting point is to consider what the policy's terms require Admiral to do during a theft claim – they say:

"Defending or settling a claim

***We** are entitled to:*

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

*If **your vehicle** is a total loss **we** can also:*

- Stop cover immediately and cancel **your** policy*
- Take possession of **your vehicle** if **we** settle **your** claim on a total loss basis (the vehicle will become **our** property in those circumstances)."*

This term allows insurers to take a commercial decision about how to conclude the claim. And it also allows an insurer to take possession of the car in exchange for payment. It's a common term found in most insurance policies, so, I don't find this to be unreasonable – provided Admiral have applied this term fairly.

I can see settlement for the car was made prior to it being recovered, and Admiral have said this means they became the owners of the car. I know how strongly Ms S feels about this point, but I agree that Admiral became the owner of the car once the settlement was paid to Ms S. I've also considered the explanation Admiral has given around why they don't return recovered cars back to a policyholder. And I've considered Admiral's submissions around the information they provided to Ms S, advising she could potentially purchase the vehicle back through the recovery agent directly. Having done so, I'm not persuaded that Admiral have acted unfairly, so I'm not going to ask them to do anything differently here.

I also appreciate Ms S feels strongly about how Admiral categorised the claim – she's said Admiral decided to treat it as a "total loss", on the sole ground that the car had been stolen. But I find this would be correct in the context of a theft claim, so I don't think Admiral acted unfairly here either.

In relation to the additional damage done to the car while in the recovery agents care – I find this to be established based on the evidence provided. The photos of the car in the Police yard clearly show the car not to have the same damage that is shown in the later photos, after it was recovered. And I also find that Admiral haven't provided a satisfactory answer as to how this damage occurred.

However, I'm not ultimately persuaded that the impact of this is directly relevant to the claim Ms S has presented. I say this because Ms S's testimony is that Admiral and the recovery agents must have deliberately damaged the car in order to profit from its sale. I've thought very hard about this but I'm not persuaded this is likely to be the case. Admiral wasn't required to return the car following the total loss settlement being paid in any event. So, I'm not persuaded there would have been a need for them to deliberately damage the car in order to create a further reason not to return it.

Additionally, I'm not persuaded the damage, which I accept remains unaccounted for, can be shown to have been done deliberately in order to create a profit from the car's sale. I can see Admiral were paid £4,469.50 for the salvage of the car. And the car ultimately sold for £7,400 in its damaged state – which means the salvage agent made £2,930.50 more than they paid Admiral. I appreciate Ms S refers to this as a profit and has added these figures together – but Ms S was paid a total of £12,770 from Admiral for the theft claim – which is more than Admiral received for the car. So, I'm ultimately not satisfied it can be shown there has been any profit made here – nor is there any evidence that Admiral damaged the car in order to increase the sale price.

In respect of the issues Ms S identified in corresponding with the recovery agent, I also don't find that Admiral would be responsible for how the recovery agent, or its legal department corresponded with Ms S, given they are two separate companies. And while I appreciate Admiral instructed the recovery agent to collect the car and was ultimately paid for its salvage value, I think any actions the recovery agent took that caused a loss to the value of the car would be considered Admiral's loss – and not Ms S's, given the car had become Admiral's property at that point. As such, I'm not persuaded that Admiral have acted unfairly, so I'm not going to ask them to do anything differently.

Ms S is also unhappy her insurance record shows a write-off of the car, when she says the car was recovered undamaged by the Police and written off because of damage caused by the recovery agent. As I explained above, when the claim was made, the car had been stolen, so it would be correct for Admiral to record this as a "total loss".

Given the car is now recorded as recovered, the outcome to Ms S would still be the same - because if the vehicle was recorded as a damaged total loss, the same payment would be provided to Ms S for its pre-loss value, and this would be the cost of the claim that is recorded. As such, I don't intend to make a further finding on this point as I'm satisfied there is no loss to Ms S and I'm not going to ask Admiral to do anything differently here.

What was the impact

I do appreciate Ms S is concerned that Admiral have been unable to explain the damage to the car that occurred after it was collected. But as I'm unable to make a finding on the value of the car, and as I'm satisfied the car would have been Admiral's property at the point of the damage, I'm not persuaded there is a loss to Ms S I can make an award for.

Admiral have already confirmed there have been errors and a poor customer journey in their final response to Ms S's complaint. So, I don't need to make a finding on whether Admiral have acted unfairly here, because they have already confirmed this. Instead, I need to consider what the impact of the mistake was and what steps they've taken to address this.

I do recognise the inconvenience Ms S would have experienced as a result of this claim – and having considered everything, it's my opinion that a lot of the issues were caused as a result of Admiral not putting clear claim's procedures in place and providing conflicting information. Admiral also continued to involve Ms S in the claim's process after the car had been recovered, despite them explaining they don't return stolen and recovered cars to policy holders. I think this created a loss of expectation for Ms S and I think Admiral should pay compensation for this.

Based on what has happened, Admiral has already made a total offer of £400 compensation. And I can see the Investigator has recommended Admiral increase this by a further £500. I've thought about whether Admiral's offer is enough compensation to reflect the impact on Ms S of the shortcomings in their service. I don't think it is – but I also think the Investigator's recommendation is excessive in the circumstances - given my finding that Admiral have acted fairly in settling the claim the way they did.

Despite Ms S's comments around Admiral committing fraud – this isn't something I'm able to consider. And I can't comment on the actions of the recovery agent's legal department or what information they provided. I'm also unable to punish Admiral for any issues they've caused. This Service is not the regulator of the industry – that's the role of the Financial Conduct Authority. My role as part of this complaint is to look at the individual issues and decide what I consider a fair and reasonable outcome to be.

I've weighed up Ms S's testimony, the available evidence, and the duration of the incident. Overall, I consider £550 is a fairer and more reasonable sum of compensation. While I appreciate this is not what Ms S might hope for and that this will not fundamentally change matters - I consider this to be in line with the level of compensation appropriate to these issues and the evidenced impact on Ms S. And I'm satisfied this produces a fair and reasonable outcome in the circumstances of this particular complaint.

My provisional decision

For the reasons given above, I'm minded uphold this complaint in part. If I do, I'll require Admiral Insurance (Gibraltar) Limited to pay an extra £150 compensation (in addition to the £400 already paid).

I invited both parties to respond to my provisional decision with any further information or

evidence they wanted me to consider. Admiral responded and said they agreed with my findings. Ms S responded and did not accept my provisional decision and made a number of comments. I have considered everything but I've summarised the main points below:

- My refusal to consider Ms S's complaint on valuation is wholly unfair in the broader circumstances of this case.
- Admiral has failed to exercise their rights under the terms of the insurance policy fairly.
- Ms S did not accept the total loss sum offered, which was increased and the subject of two separate but related complaints.
- Admiral actively considered returning the car in return for a repayment of the settlement sum.
- Admiral's actions varied the terms of the insurance policy by conduct and/or created an estoppel.
- All material damage occurred while in the custody of Admiral's agents and subcontractors, for whose negligence Admiral is vicariously liable.
- Admiral asked Ms S to provide evidence of when the damage occurred – the implication of this request being that the claim would be reconsidered.
- It's unfair for Admiral to consider returning the car to Ms S but then decline to do so on the basis of damage for which they were responsible.
- Ms S's premiums are now higher, being set on the basis that she suffered an insurance claim of £12,770 whereas the actual costs of repair were unlikely to exceed £2,500.
- My proposed compensation level appears to be determined by Admiral's refusal to accept the Investigator's award rather than by the actual level of inconvenience and trouble caused.
- The conclusions of fact and law in my provisional findings are determined by the level of compensation to which Admiral might agree, rather than on principle.

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've considered everything Ms S has said in response to my provisional decision. Despite my sympathy for the impact this matter has had on Ms S, I'm not persuaded to change my provisional findings. I'll explain why below.

I do appreciate how important this matter is for Ms S and I understand the significance of the valuation dispute to the wider context of the claim's history. However, as I've already explained, an Ombudsman previously addressed these points in a separate Decision, where they concluded the complaint issues around the settlement value of the car were outside of this Service's jurisdiction to consider. This means I'm unable to make any further findings on this point.

I understand Ms S feels Admiral has failed to exercise their rights under the terms of the insurance policy fairly. She says she did not accept the total loss payment offered, and Admiral actively considered the option of returning the car and requesting evidence of when

the damage occurred. She says the implication of this request was that the claim would be reconsidered, and Admiral's actions have created an estoppel.

As I set out in my provisional findings, I recognise the inconvenience Ms S would have experienced as a result of this claim. Admiral confirmed there were errors and a poor customer journey, and I've found that Admiral failed to put clear claim's procedures in place and provided conflicting information at times.

However, the fact remains that the original claim was dealt with as a total loss, and Ms S agreed and accepted the claim on that basis. And Admiral settled the claim on this basis. This is the point I would consider the car became Admiral's property – despite any subsequent disputes over the final valuation.

I recognise Ms S didn't agree with the steps she needed to take to get her vehicle back. But, Admiral provided information to Ms S on how she could purchase the car back through the recovery agent directly, which I find to be fair. And I'm not persuaded they acted unreasonably in this regard. As Ms S chose not to use this avenue to recover the car, I'm not persuaded Admiral acted unfairly.

I do agree that the cause of the damage to the car not being fully explained or accounted for would have caused distress for Ms S – and I've considered this within my compensation award. But as I consider the car would have been Admiral's property at the point of the damage and she opted to not buy the vehicle back, I'm not persuaded there is a loss to Ms S I can make an award for.

Despite Ms S's explanation of how Admiral have made a profit by declaring the car a total loss due to the damage, I'm not persuaded this can be demonstrated on the evidence I've considered. The car ultimately sold for £7,400 in its damaged state – which means the salvage agent made £2,930.50 more than they paid Admiral. I appreciate Ms S refers to this as a profit and has added these figures together – but Ms S was paid a total of £12,770 from Admiral for the theft claim – which is more than Admiral received for the car.

And while I appreciate Ms S remains unhappy her insurance record shows a total loss claim – this would have always been the case, given the original claim was for a stolen car, and this is recorded as a total loss. I also haven't seen any evidence that shows me the repairs would have cost £2,500 – and I'm not persuaded Ms S's insurance record should show this to be the cost of the claim.

Putting things right

I've considered what Ms S has said about the proposed award of compensation. I note she says I've awarded an amount that is determined by Admiral's refusal to accept the Investigator's award rather than by the actual level of inconvenience and trouble caused.

A compensation award isn't intended to fine or punish a business, it's to recognise the impact the business' unreasonable actions have had on their customer in a particular complaint. When deciding what amount would be fair, I need to consider how Ms S was affected.

I appreciate this situation has clearly left Ms S feeling stressed and upset, given her concerns over how Admiral dealt with the claim. But I consider the compensation to be appropriate in the circumstances. And while Ms S may be disappointed with this decision, and I appreciate the level of compensation may not be what Ms S had hoped for, I remain satisfied it provides a fair and reasonable outcome in this particular case.

My final decision

My final decision that I uphold this complaint in part and require Admiral Insurance (Gibraltar) Limited to pay £150 compensation (in addition to the £400 already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 31 December 2024.

Stephen Howard
Ombudsman