

## The complaint

Mr H is complaining that he's out of pocket after he contacted Admiral to claim through his car insurance policy after he was involved in a non-fault accident.

## What happened

In May 2022 Mr H's wife (Mrs H) – a named driver on the policy – was involved in a car accident with a third party and his car was damaged. So he contacted Admiral to look to claim for the damage to his car. The claim was subsequently handled by a third-party company – who I shall refer to as A.

Mr H is unhappy with the way A's approved repairer repaired his car. He said there was an issue with the car's bumper, scratches on the car and peeling paintwork. He said he raised it with the repairing garage at the time and was told it was down to the way the cleaning company used the pressured spray. However, A later said it was down to a defect with the paintwork, so it didn't think it was liable for this.

Mr H then complained to Admiral and asked it to cover the repairs. Admiral initially arranged for an independent inspection, which confirmed the damage Mr H had referred to. However Admiral said it wasn't liable for A's actions and said he would need to raise this with A directly. However, it acknowledged it had given some misleading information and offered to pay Mr H £150 in compensation.

Mr H didn't think Admiral wasn't liable for the damage. He said it didn't explain he wasn't claiming through his insurance policy and said Admiral instructed A, so it's liable for its actions.

I issued a provisional decision partially upholding this complaint and I said the following:

*"I also need to make clear that, in this decision, I'm only considering Admiral's liabilities towards Mr H. I'm aware that there have been a number of other business's involved in this incident – particularly A. But, apart from where A could reasonably be held to be agents of Admiral, I'm not able to comment on anything it did or did not do.*

*A is not a party to this complaint, so I can't comment on the way it has handled Mr H's claim. We also do not have jurisdiction over the provision of credit hire services, as these are not 'regulated activities' covered by our dispute resolution rules. Mr H entered into a credit hire and repair agreement with A. This is an entirely separate contract to his insurance policy. He didn't claim through his insurance policy. And, as I said, I can't comment on A's actions.*

*We can, however, look at how a consumer entered into such an arrangement instead of claiming through their insurance policy. In short, I need to think about whether Mr and Mrs H were given enough information to make an informed choice about whether they wanted to claim through Mr H's insurance policy or to have the repairs carried out through the use of credit hire and repair. In particular I would have expected, as a minimum, that Mrs H would have been told the following:*

- *In entering into a credit hire agreement, Mr H wasn't claiming through his insurance policy, but he had the option to do so. And he should have been given a clear choice about whether he wanted to claim through his insurance policy instead.*
- *The credit hire provider was a separate business to the insurer.*
- *He may be liable for any outlay – including hire charges – if they're unable to recover the costs from the third party.*
- *As he was stepping outside of his regulated insurance policy, he may not be able to refer any complaint he may have to this Service.*

*In short, I would have expected Mr H to have had explained to him what the benefits and risks of using credit hire were, as well as explaining his rights under the insurance policy. In addition to this, I would expect there to have been a consideration of whether Mr H had a need for credit hire. In particular, it should have considered whether Mr H needed to be provided with a like for like replacement car, taking into account what he was entitled to under his own policy.*

*It's important to set out that, when Mr H first contacted Admiral following the accident, he was doing so with the intention to claim for the damage to his car through his insurance policy. However Admiral set out to Mrs H she had two choices:*

1. *She could use the non-fault credit repair service which was provided by a separate company – A. It explained A would repair the car at one of its approved repairers. However, it explained that this Service may not be able to consider every complaint raised. Instead, it explained she could use a different alternative dispute scheme. It further explained that Mr H wouldn't have to pay his £350 excess; or*
2. *Mr H could claim through her insurance policy where she would have to pay her excess. But it then explained she could recover this from the third party's insurer if it accepted liability.*

*However, I'm not persuaded it would have been reasonably clear to Mrs H that, using the "non-fault service" meant that she wasn't using her insurance policy. It seems Mr and Mrs H were under the impression A was acting on Admiral's behalf. I recognise Admiral says that it was provided by a separate company but it didn't reasonably explain that this was outside of the policy and Admiral wasn't a party to this contract. I also haven't seen anything to show Admiral explained to Mrs H that Mr H could be liable for A's outlay in providing the hire car and carrying out the repairs if it's unable to recover the costs from the third party's insurer.*

*I also agree with the Investigator that it was unreasonable for Admiral to ask Mrs H "did you want to use the non-fault service where there is no excess to pay". I find this question to be unreasonably leading and not giving Mrs H a real choice. It's unfair to say "there's no excess to pay" given, as Admiral acknowledged in the script, it's likely Mr H would have recovered any excess he would have paid under the policy from the third party's insurer.*

*I, of course, can't know for certain what Mr and Mrs H would have told had Admiral given them a fully informed choice. But, I'm not persuaded they would have chosen to use the credit hire and repair service if they'd fully understood what it would have entailed. So I think they have lost out because of what Admiral did wrong.*

*The issue for me to decide, now, is whether Admiral reasonably can be held liable for all of Mr H's losses.*

*Mr H has set out A's appointed garage didn't repair his car properly and it caused further damage. Firstly, I need to make it clear that the garage was not appointed by Admiral, nor is Admiral responsible for the actions of the garage. The garage was an appointed agent of A*

*and it was for A to put things right. However, I have also thought about Admiral is liable for the costs as a consequence of Admiral's actions in referring Mr and Mrs H into credit hire in the first instance.*

*It's a fundamental principle where a consumer has suffered consequential losses that they need to take reasonable steps to mitigate their losses. Further to this, under the Consumer Rights Act 2015, where a service hasn't been provided with reasonable care and skill, the remedy upon this act is that the consumer should ask the service provider to carry out the work again – i.e. "repeat performance".*

*So, with this in mind, I think I can only reasonably require Admiral to cover the losses Mr H says he's incurred if I'm satisfied the losses are a direct result of the claim and repairs itself and Mr H has looked to reasonably resolve this matter with A in the first instance. I don't think I can say this and I'll explain why.*

*I think there are two distinct issues with Mr H's car – paint peeling and damage to the bumper. A has advised that it was willing to have its appointed garage rectify the damage to the bumper, but Mr H didn't allow this to happen. Mr H said he'd had a significant break down in relationship with the garage so he wasn't willing to allow the car to go back to the garage. However, while I have considered and understand his position regarding this, it is for Mr H and A to come to an agreement as to how to resolve this matter. A is willing to rectify the bumper damage, so I can't reasonably require Admiral to carry out this repair. Mr H will need to contact A directly if he wishes to pursue this further.*

*While A has said it's willing to carry out the repairs to the bumper, it has said it won't cover the damage to the paint. However, I also don't think Admiral is liable for this. Mr H says he was told the paintwork was damaged by the garage's cleaners using a high pressure water hose too close to the vehicle. I think it's likely some further damage has arisen as a result of the cleaning process. However, A has provided Admiral with the original check-in report for when Mr H's car went into its appointed garage and Admiral has provided this report to this Service. I've reviewed this and there were clearly pre-existing issues with the paintwork before the car arrived at the garage. I recognise that this damage may have gotten worse while at the garage, but it seems to have just further highlighted a pre-existing issue with the paintwork. So I can't reasonably say this damage/loss is a direct consequence of the way Admiral referred Mr H into the credit hire arrangement. It follows, therefore, that I don't think Admiral needs to pay to put this right.*

*That said, I do think Mr H has suffered more distress and inconvenience than he should have done with the handling of the claim as a result of the way Admiral referred him to A. He's not had the protection of his insurance, resulting in the effect that she's not easily been able to easily get the issues resolved. The presence of numerous businesses involved has also caused a significant degree of confusion. I note Admiral has already offered to pay £150 in compensation, but I think £300 is a fairer amount of compensation."*

Admiral didn't agree with my provisional decision. It maintained it had given Mr and Mrs H enough information when referring them to A. It said it made Mrs H aware she would be using a different service if she chose to use A. It also disagreed that it was guaranteed Mr and Mrs H would have gotten their excess back from the third party. So it said it didn't think its call handler had unreasonably misled Mr and Mrs H.

Mr and Mrs H didn't reply to my provisional 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 Admiral's comments in response to my provisional decision, but I don't think it's said anything it hadn't said previously. I don't think it gave Mr and Mrs H enough information to make an informed choice. And I think it unreasonable led Mr and Mrs H into choosing the credit hire process.

So taking everything into consideration, I see no reason to reach a different conclusion to the one I reached in my provisional decision.

### **My final decision**

For the reasons I've set out above, it's my final decision that I partially uphold this complaint and I require Admiral Insurance (Gibraltar) Limited to pay Mr H £300 in compensation. It should pay this to him directly if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 January 2025.

Guy Mitchell

**Ombudsman**