

The complaint

Mr C and Mr C complain about how Admiral Insurance (Gibraltar) Limited (Admiral), dealt with liability for a claim under their motor insurance policy, following an accident involving their vehicle.

References to Admiral in this decision include their agents.

This decision covers a complaint about a claim under a policy held by Mr C with Admiral, involving an accident to his vehicle while it was being driven by his son (also Mr C) as a named driver under the policy. The complaint was made by both, so references to Mr C and Mr C in this decision cover both.

What happened

In November 2023 Mr C and Mr C's vehicle was involved in an accident in which the vehicle suffered brake failure and crashed. A statement from a driver of another vehicle described the vehicle going past at speed, with brake lights illuminated, before impacting heavily on a roundabout island, hitting a tree. The vehicle was bought from a manufacturer (M) main dealer in February 2019 and serviced to M's specifications. Mr C and Mr C contacted Admiral to tell them about the accident and lodge a claim.

Due to the severity of the damage and an engineer report (D) following an inspection in January 2024 concluding the damage to the vehicle was structural (Category B), Admiral deemed the vehicle a total loss. They valued the vehicle at £6,630 based on a valuation guide and the vehicle's pre-accident condition. However, the final settlement wasn't issued until June 2024 (although earlier payments totalling £6,030 were issued on a 'without prejudice' basis in February and March 2024, which Mr C and Mr C hadn't accepted).

Given the circumstances of the accident and the brake failure, Mr C and Mr C raised the issue with M and asked Admiral to retain the vehicle so it could be inspected by M to determine the root cause of the brake failure and, consequently, whether the failure could be held to be the responsibility of M.

However, Admiral instructed their salvage agent (where the vehicle had been stored following the accident) to dispose of the vehicle at the end of January 2024, which they proceeded to do at the beginning of February 2024. This meant it wouldn't be possible for a further inspection by M. The disposal also took place before Admiral made a total loss settlement offer to Mr C and Mr C (and so before they'd accepted any settlement).

Mr C and Mr C then complained to Admiral (February 2024). They were unhappy the vehicle was disposed of before, firstly, it could be inspected by M, which meant M wouldn't take responsibility for the accident. And secondly, before a total loss settlement was paid and the length of time to finalise the claim.

In their final response, in July 2024, Admiral upheld the complaint. They said D carried out a static brake test on the vehicle, which was satisfactory. However, D didn't receive any instructions from Admiral asking for additional checks on the brakes, so they didn't carry out

any checks beyond the standard static brake test. Admiral instructed the salvage agent to dispose of the vehicle at the end of January 2024, probably in response to a query from the agent given the vehicle had been in storage with them since the accident. Admiral also accepted the vehicle should not have been disposed of until the claim had been settled.

On the issue of the vehicle's disposal meaning M couldn't undertake an inspection, Admiral accepted the point. Their engineer didn't think total brake failure was likely, though it wasn't possible to conclude, had M inspected the vehicle, they wouldn't have found an issue (Admiral noted what Mr C and Mr C told them about a recall on similar vehicles for brake issues). Contact with M hadn't led to them accepting any responsibility for the accident. So, a claim had to be made under Mr C and Mr C's policy and recorded as such.

On the claim settlement,. Admiral accepted they initially issued settlement on an incorrect valuation of £6,330 – rather than £6,630 – which came to a net £6,030 after deduction of the policy excess of £300. But they increased their valuation to £6,952.50 which meant a final net settlement of £6,802.50 after deducting a policy excess of £150.

In recognition of the uphold of the complaint, Admiral awarded £400 compensation and a further £25 goodwill payment for the time taken to respond to the complaint. Admiral added interest (£224.24) to the claim settlement from December 2023 to June 2024 (the dates the claim should have been settled under Admiral's target date for total loss claims – 28 days - to the actual date of payment).

Mr C and Mr C then complained to this Service. They said Admiral agreed to liaise with M to investigate the cause of the vehicle's brake failure, but they'd unlawfully disposed of the vehicle without their consent before M could carry out an investigation. As a result, M couldn't investigate any further or accept any liability for the accident. Consequently, Mr C and Mr C had lost their NCD, and Mr C (the son) had a total loss fault claim recorded against him. This made obtaining insurance significantly more expensive in the future and certain additional covers couldn't be obtained.

While Admiral accepted they unlawfully disposed of the vehicle, the compensation they'd offered wasn't sufficient to offset the additional cost of obtaining insurance. Mr C and Mr C wanted Admiral to settle the claim themselves, as a proxy for M. This would mean the claim no longer being recorded as a fault claim against Mr C and against the policy. Or Admiral should compensate them for the additional insurance costs they would incur in the future.

Our investigator didn't uphold the complaint. He noted Admiral accepted their handling of the claim fell far below the standard expected. Their disposal of the vehicle was without Mr C and Mr C's agreement and prevented any inspection of the vehicle by M, so it wasn't possible to conclude whether brake failure caused the accident. However, having made a claim under the policy it would have been recorded as such and as a fault claim as Admiral hadn't been able to recover their outlays from any third party (as no other vehicle was involved in the accident and M didn't accept any liability). And there was no guarantee that even if M had inspected the vehicle, they would have found a brake failure issue and/or accepted liability (given D's report indicated no issues with the static brake test). The investigator thought the compensation offered by Admiral was fair.

Mr C and Mr C disagreed with the investigator's view and asked that an ombudsman consider the complaint. They maintained Admiral's disposal of the vehicle was unlawful and their actions had a significant impact on them. Not knowing definitively what caused the accident meant significant emotional distress. Mr C and Mr C also provided evidence of increased renewal premium for a family member due to the recording of a fault claim.

A full inspection and investigation of the brake failure might have indicated a cause that would mean M was responsible (such as a design or manufacturing defect or servicing fault).

A static brake test wouldn't have identified any of these potential causes. Had M inspected the vehicle, it was possible they would have settled the costs of the claim, even if they didn't accept liability. Disposal of the vehicle before an inspection also compromised their ability to take legal action against M.

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.

My role here is to decide whether Admiral have acted fairly towards Mr C and Mr C. It's important to note my role isn't to consider the actions of M as the manufacturer of the vehicle, as they aren't a financial services business. Mr C and Mr C have provided copies of the correspondence with M, starting shortly after the accident, in particular their concerns about the brake failure and M's liability/responsibility, either as the manufacturer or their agents who supplied and serviced the vehicle. The most recent correspondence indicates M haven't accepted any liability or responsibility for the accident and saying if Mr C and Mr C aren't happy with their response to their concerns, they can contact the Motoring Ombudsman.

The key issues in Mr C and Mr C's complaint are, firstly, Admiral disposing of their vehicle before it could be inspected by M, thereby precluding any definitive conclusion on the brake failure issue and likely cause (and whether M would accept liability for the failure). A second issue is the recording of the claim as a fault claim against Mr C and Mr C (against Mr C as the driver and Mr C's policy and NCD).

What doesn't seem to be an issue, as far as Mr C and Mr C's complaint to this Service is concerned, is the valuation of the vehicle as a total loss. So, I haven't considered this aspect in any detail, although I've noted Admiral increased their valuation from the figure they initially determined and they've paid interest on that figure from the date they should have settled the claim under their 28-day target, to the date they made settlement in June 2024.

On the first issue, Admiral accept they wrongly instructed their salvage agent to dispose of the vehicle at the end of January 2024, when settlement hadn't been either offered or issued and they wanted to 'safeguard' the vehicle for further inspection by M to assess the brake failure issue and what may have caused it. Where a vehicle is deemed a total loss, then when the claim is settled by the insurer the vehicle becomes their property as ownership is transferred to them. At that point they decide what to do with the vehicle, which usually means disposal through their salvage agent.

In this case, given Admiral accept they wrongly instructed their salvage agent to dispose of the vehicle before settlement was offered or made, then I've concluded they acted unfairly and unreasonably towards Mr C and Mr C. I'll come back to what I think Admiral should do to put things right in the circumstances of the case.

Disposal of the vehicle precluded any further inspection of the vehicle by M to determine the root cause of the accident and the extent to which brake failure occurred and the cause. In the absence of any such further investigation, it's not possible to conclude on this issue and consequently whether M could reasonably have been held to be responsible for the brake failure and therefore the accident. As well as the testimony of Mr C about what happened in the accident (he describes the brakes feeling 'spongy') and the witness statement, the only other evidence I've seen is the static brake test undertaken by D as part of their inspection, the result of which is recorded in their report as 'satisfactory'. As the vehicle was undriveable as a result of the damage sustained in the accident, then it wouldn't have been possible to carry out any further test of the brakes, such as while the vehicle was being driven.

Mr C and Mr C also refer to recall notices in respect of the make and model of their vehicle, indicating potential brake issues. However, that wouldn't be an issue for Admiral as it relates to an issue between M and the owner(s) of the affected vehicles, for example whether any recall notices were acted upon by the owner(s) of the vehicle at the time and the relevant checks and/or work carried out on a particular vehicle (including that of Mr C and Mr C, if affected). I've also seen a letter from the Driver & Vehicle Standards Agency to Mr C which indicates their vehicle wasn't one affected by a particular recall notice for brake issues.

That being the case, then it's a matter of conjecture and speculation whether any further, detailed inspection of the vehicle might have revealed a root cause of the accident, and the extent to which brake failure occurred and was responsible. And, in turn, whether this could be held to be the responsibility of M. Given this, I can't reasonably reach a conclusion about what might have happened had there been a further inspection, and whether it would have changed the outcome.

But based on what happened in this case, as opposed to what might have happened, it wouldn't be possible for Admiral to look to recover any of their outlays on the claim (principally the total loss settlement) from M, as the only other party from who potentially Admiral could seek reimbursement (as there was no other vehicle involved in the accident).

In considering the second issue, that of recording the claim as a fault claim, it's important to note it's standard practice within the insurance industry where a claim is made, insurers will record a claim as a fault claim if they aren't able to recover all of their outlays (the costs they incur) when settling a claim. If they recover their outlays, they will record a claim as non-fault. This is not the same thing as whose 'fault' an accident was, in this case Mr C and Mr C maintaining they weren't at fault for the accident.

And given M haven't accepted responsibility for any brake failure that may have caused the accident, then I don't think Admiral could have recorded the accident other than as a fault claim against Mr C and Mr C. And even had M accepted responsibility for what happened, then a claim would have to have been recorded (as non-fault) because there had been an accident and a claim. In either scenario, there would have been an impact on Mr C and Mr C's insurance premiums and the terms under which they would be offered insurance in the future (although a non-fault claim is likely to have a less significant impact than a fault claim, all other things being equal).

Taking these points together, including the earlier conclusion about Admiral acting unfairly in disposing of the vehicle before a settlement was offered or made, I've concluded Admiral didn't act fairly and reasonably towards Mr C and Mr C. And that this caused Mr C and Mr C distress and inconvenience. I also recognise what Mr C and Mr C have said about the emotional distress of not knowing definitively the reason for the brake failure and its cause.

Admiral awarded £400 compensation as a consequence of their uphold of the complaint (in addition to £25 for the time taken to respond to Mr C and Mr C's complaint). I've also considered what Admiral have accepted were delays in assessing the claim, including inspection of the vehicle by D, and a lack of communication with Mr C and Mr C. Looking at the circumstances of the case alongside the published guidance from this Service on awards for distress and inconvenience, I think £400 is fair and reasonable compensation for the distress and inconvenience suffered by Mr C and Mr C. So, I won't be asking Admiral to make a further award.

My final decision

For the reasons set out above, it's my final decision not to uphold Mr C and Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mr C to accept or reject my decision before 26 March 2025.

Paul King
Ombudsman