

## **The complaint**

Mr H and Mrs H complain about how Admiral Insurance (Gibraltar) Limited (Admiral) dealt with a claim under their motor insurance policy following a collision with a lorry, deeming it to be a fault claim.

References to Admiral in this decision include their agents.

## **What happened**

In August 2024 Mr H and Mrs H were involved in an accident, involving a collision with a lorry, as they moved down a slip road to join a dual carriageway, filtering in slow-moving traffic. Their vehicle was stationary at the point the collision occurred. Mr H and Mrs H contacted Admiral to tell them about the incident.

Mr H and Mrs H maintained the lorry drove into their vehicle while they were stationary, and the driver could see their vehicle. However, the lorry driver said Mr H and Mrs H's vehicle was in their blind spot, so wasn't visible.

Admiral reviewed dashcam footage of the incident provided by Mr H and Mrs H, concluding the circumstances indicated Mr H and Mrs H to be at fault, as they pulled into a gap, into the path of the lorry. Mr H and Mrs H said there was dashcam footage from the lorry supporting their view their vehicle was visible to the driver. They asked Admiral to request the lorry dashcam footage. Admiral maintained their initial view on liability but said that might change if the lorry dashcam footage supported Mr H and Mrs H's version of what happened.

Mr H and Mrs H were unhappy at Admiral's decision on liability, maintaining the lorry driver would have known their vehicle was there, but still [deliberately] drove into them. They also said the lorry driver breached several requirements of the Highway Code. They wanted Admiral to pursue full liability against the lorry driver. So, they complained to Admiral.

In their final response Admiral didn't uphold the complaint. They said where there was a dispute over liability between the parties involved, they had to consider the likely outcome should the matter proceed to court and assess the prospects of success. So, Admiral had to reach a decision based on the information available, from the respective parties. From the evidence available, Admiral concluded Mr H and Mrs H pulled into the path of the lorry, meaning the onus was on them to ensure the way was clear for them to complete their manoeuvre. Admiral had requested the lorry dashcam footage and a response was awaited. But on the current evidence and information, Admiral concluded they acted correctly.

Mr H and Mrs H then complained to this Service. They were unhappy at Admiral deeming the claim to be a fault claim, which had led to them losing part of their NCD, affecting their claims history and their premiums. They didn't see how a collision involving a lorry driving into their vehicle when they were stationary was their fault, when dashcam footage from the lorry showed their vehicle was visible to the driver. They also didn't think their complaint to Admiral was properly assessed if the dashcam footage wasn't reviewed, given it was critical to understanding the circumstances of the collision and therefore the issue of liability. They

provided copies of the dashcam footage from their vehicle and footage from the lorry to support their view.

Our investigator upheld the complaint, concluding Admiral shouldn't have agreed to settle the third-party claim without reviewing the dashcam footage from Mr H and Mrs H's vehicle. The investigator noted it wasn't the role of this Service to determine liability or which party might be at fault for an accident, rather it was to decide whether an insurer had acted reasonably in reaching their decision on liability. He thought Admiral should review the dashcam footage. As he concluded Admiral reached their decision without reviewing all the relevant evidence, the investigator thought Admiral should pay Mr H and Mrs H £100 compensation for distress and inconvenience. They should also review the dashcam footage and let Mr H and Mrs H know their final decision on liability.

Admiral disagreed with the investigator's view and asked that an ombudsman consider the complaint. They maintained their view Mr H and Mrs H pulled into the path of the lorry, meaning the onus was on them to ensure the way was clear to complete their manoeuvre. They had requested the dashcam footage from the lorry, but this hadn't been received. If the matter was to proceed to court, it was unlikely they would be able to support a non-fault outcome in favour of Mr H and Mrs H.

### **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 H and Mrs H. The key issue in Mr H and Mrs H's complaint is whether Admiral acted fairly and reasonably in holding them liable for the accident. They say the evidence from the dashcam footage from their vehicle supports their view the lorry driver was at fault for the collision and Admiral should have considered it before reaching a decision on liability. Admiral say they assessed the circumstances of the incident, including both parties' version of events, before concluding liability rested with Mr H and Mrs H.

I'd first want to say I recognise what Mr H and Mrs H have told us (and Admiral) about the circumstances of the accident and that they weren't at fault for the accident. I don't doubt the strength of Mr H and Mrs H's feeling on this issue. But it's not for this Service to determine liability for an accident and whether a claim should be deemed a fault claim (or a non-fault claim). It's to decide whether Admiral acted fairly in the circumstances of – and following - the incident.

The policy terms, as they do in motor insurance policies more generally, provide for Admiral to assess claims and determine liability. Under a heading *Defending or settling a claim* in the *General Conditions* section of the policy it states:

*"We are entitled to:*

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

Looking at the evidence available about Admiral's handling of the incident, it does indicate their consideration of the circumstances of the accident, including Mr H and Mrs H's version of what happened with the accident. On the specific issue of whether Admiral reviewed the dashcam footage of the incident, there's a note of a call from Mr H and Mrs H to Admiral five days after the incident, in which Mr H and Mrs H say they've provided dashcam footage and ask whether it has been reviewed. The notes record the call handler placing them on hold

while they review the footage. After which the call handler advises Admiral would still be looking at holding Mr H and Mrs H at fault as the lorry driver was stating there was a blind spot and could not see Mr H and Mrs H's vehicle. The call handler adds that established traffic on the carriageway isn't obliged to let in vehicles joining from the adjoining slip road.

What isn't clear from this is whether Admiral reviewed the dashcam footage from the lorry, which Mr H and Mrs H provided to this Service as part of their complaint. The notes from the call referred to above indicate Mr H and Mrs H saying the lorry should have dashcam footage and they would like to see it if it's received – which suggests it wasn't available at that point. Admiral say they requested dashcam footage from the third party, and should they receive it would review it. I've seen nothing to confirm they did receive any such footage or whether it was reviewed.

Looking at the footage from both Mr H and Mrs H and the lorry, it does show their vehicle moving slowly from the slip road to join the carriageway, where the lorry is positioned. The lorry dashcam shows Mr H and Mrs H's vehicle moving slowly onto the carriageway into what appears to be a gap. However, their vehicle drops out of the footage as it is adjacent to the lorry and beneath its nearside. It then emerges as it edges forward, partway onto the carriageway, before stopping and then the lorry moves forward, brushing the side of Mr H and Mrs H's vehicle.

As I've said, it isn't the role of this Service to determine liability or who was at fault for an accident. However, given that it's not clear Admiral have received or reviewed the dashcam footage from the lorry (not just that from Mr H and Mrs H's vehicle) when coming to their decision and what they've said about reviewing any such footage in their final response, then I can't conclude they've reviewed all the available evidence when coming to their decision on liability. And so, they haven't acted fairly and reasonably in this respect.

Of course, reviewing the lorry dashcam footage alongside that from Mr H and Mrs H's vehicle, Admiral may still reach the same conclusion and decision on liability – and it's important to note that a claim will still be recorded as a fault claim unless Admiral was able to obtain an acceptance of liability from the third party (insurer) and recover all their outlays on the claim (including the repair costs they incurred on Mr H and Mrs H's vehicle).

I also note Mr H and Mrs H's concern that their complaint to Admiral didn't include a review of the dashcam footage. They've provided a recording of a call with Admiral in which the call handler (dealing with their complaint) states they've reviewed the case file, but not the dashcam footage itself. While it's not my role to tell Admiral how they should consider complaints, I can understand why Mr H and Mrs H, believing the dashcam footage supports their version of events that they weren't to blame for the accident, consider their complaint wasn't properly assessed.

Taking all these points into account, given my conclusion Admiral haven't acted fairly and reasonably in respect of the dashcam footage, then to put things right, they should review all the dashcam footage – including that from the lorry – and reconsider their decision on liability for the accident.

I also think Mr H and Mrs H have suffered some distress and inconvenience from what has happened. Considering the circumstances of the case, I think £100 compensation for distress and inconvenience would be fair and reasonable.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr H and Mrs H's complaint. I require Admiral Insurance (Gibraltar) Limited to:

- Review all the dashcam footage – including that from the lorry – and reconsider their decision on liability for the accident.
- Pay Mr H and Mrs H £100 compensation for distress and inconvenience.

Admiral Insurance (Gibraltar) Limited must pay the compensation within 28 days of the date we tell them Mr H and Mrs H accept my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 11 April 2025.

Paul King  
**Ombudsman**