DRN-5386987

The complaint

Mr B complains about how Admiral Insurance (Gibraltar) Ltd (Admiral) dealt with a claim under his motor insurance policy for damage to his vehicle in an accident.

References to Admiral in this decision include their agents.

What happened

In August 2023 Mr B was involved in a collision with a third party vehicle, which he said changed lanes and hit his vehicle. Mr B's vehicle was first recovered to a storage yard, then back to Mr B's property, and from there to an approved repairer (FAG) appointed by Admiral for them to inspect the vehicle and provide an estimate for the cost of repairs. FAG provided an estimate of the cost of repairs totalling just over £20,000 (including VAT). Admiral considered the quote compared to what they thought the market value of the vehicle (£24,885) and decided it was uneconomical to repair, so it should be considered a Category S total loss[1]. Admiral's valuation also made reference to deductions to be made for the vehicle previously having been declared a total loss (20%), not having a valid MOT (10%) and being an imported vehicle (5%). The valuation also included a salvage value of £9,954.

However, Mr B wanted to retain the vehicle and have it repaired, rather than written off. After discussion, Admiral agreed to return the vehicle to Mr B. Mr B subsequently obtained a repair estimate from a different garage, totalling £8,328 (excluding VAT). As well as being significantly less, the quote included items for repair not included in FAG's estimate. However, Admiral didn't accept the estimate as their in-house engineers didn't think it would return the vehicle to its pre-accident condition.

Mr B was also unhappy at the settlement offered by Admiral, thinking the valuation of his vehicle was too low. After discussion, Admiral arranged for a valuation of the vehicle by a separate firm (TEC). Mr B said the representative from TEC, when they visited to inspect the vehicle, told him the value would be some £31,000. However, the subsequent report from TEC only valued the vehicle at £24,520 (just below Admiral's valuation). TEC's report also included a salvage value of £4,904 (compared to the £9,954 in Admiral's valuation).

Unhappy at how Admiral had handled his claim and thinking their settlement too low, Mr B complained. Admiral issued a final response in December 2023, in which they upheld the complaint in part, awarding £100 compensation and £423.25 in interest (for not having access to the money from the settlement valuation between September 2023 and December 2023). They confirmed the settlement valuation of Mr B's vehicle (£24,885).

Mr B rejected the settlement, saying his particular vehicle model would cost £30,000 to replace on a like-for-like basis.. He also raised further complaint issues about his No Claims Discount (NCD) which had been reduced following the accident. But the other party admitted liability, so Admiral accepted they had erroneously reduced Mr B's NCD, issuing a revised

[1] A Category S total loss means the vehicle has sustained structural damage, making it uneconomical for the insurer to repair. While potentially repairable and roadworthy, the vehicle would require re-registration with the DVLA and inspected and approved by an accredited engineer after repair.

entitlement document. In the meantime, Mr B's policy came up for renewal in November 2023 and there was a significant increase in his premium,. So, he took out cover with another insurer. Mr B was also unhappy at the disparity between the repair estimates between his garage and FAG and the difference in salvage values. He also challenged the references in Admiral's valuation offer about the vehicle previously being a total loss, having no valid MOT and being an import.

Mr B asked that Admiral either: pay a settlement value of £30,000; or a settlement value of £30,000 less the salvage value in TEC's report (thereby enabling him to keep the vehicle); or Admiral not treating the vehicle as a total loss and pay him the repair estimate from his garage, for him to have the vehicle repaired (with no further liability for Admiral).

Admiral upheld part of Mr B's complaint. In a further final response, issued in April 2024, they accepted shortcomings in communication. On the question of liability for the accident, they said they'd initially recorded the claim as non-fault based on an admission of liability from the third party insurers. However, they changed their stance on liability in December 2023, saying the third party held Mr B at fault as he overtook the third party as they were turning right. Admiral said they challenged this, as the damage to the third party vehicle did not tally with this changed position. Liability discussions were ongoing.

On the valuation of Mr B's vehicle, Admiral referred to the earlier complaint outcome and their final response in December 2023, which included a valuation of £24,885 and Admiral didn't uphold Mr B's complaint issue about the vehicle valuation. Admiral issued the valuation – less the salvage valuation – to ensure Mr B received some funds without delay. If Mr B didn't wish to retain the vehicle, Admiral would arrange for their salvage agents to collect the vehicle, and they would issue payment of the salvage valuation (£9,456) to Mr B. Admiral said the vehicle salvage value was based on the value of the vehicle and category of loss and wasn't negotiable.

Admiral also upheld the complaint issue about the issue of Mr B's NCD entitlement, although with liability in dispute, Admiral could not confirm whether the entitlement should be three years or four years. On the differing repair estimates, Admiral confirmed the view of their in-house engineers that the estimate from Mr B's garage wouldn't fully return his vehicle to its pre-accident condition.

Admiral also clarified that references in their valuation offer to deductions for the vehicle being a total loss, not having an MOT and being an import were standard references and hadn't been applied to the valuation of Mr B's vehicle. But they accepted the communication could have been clearer on this point.

In recognition of the complaint points upheld, Admiral awarded £125 compensation to Mr B.

Mr B then complained to this Service. He was unhappy at Admiral's handling of his claim, including their wanting to treat his vehicle as a total loss, but undervaluing his vehicle. His premium had increased by more than 101% and he hadn't been able to provide his new insurers with proof of his NCD. He wanted Admiral not to treat his vehicle as a total loss and be recorded a such on databases. He was prepared to accept liability for any further repairs, and he wanted his vehicle back on the road, having sat in his garage for over a year.
Our investigator didn't uphold the complaint, concluding Admiral didn't need to take any action. He noted Mr B had raised complaint issues about the valuation of his vehicle with this Service in September 2024, more than six months after Admiral's first final response issued in December 2024. Being more than six months after the date of the final response, this meant the issues could not be considered by this Service, under the Financial Conduct (FCA) rules (DISP). Specifically DISP 2.8.2.

On the other issues raised by Mr B, the investigator noted the policy terms and conditions meant Admiral were entitled to conduct the investigation, defence and settlement of any claims on behalf of Mr B. This meant they were entitled to decide the repair estimate provided by Mr B's garage wasn't acceptable as in the view of their engineers it wouldn't return the vehicle to its pre-accident condition. The policy terms also provided for Admiral to determine liability for the accident. As the third party insurer had changed their position on liability and were now contesting it, it was now likely to be settled on a split liability basis (rather than, as initially thought, non-fault). In the absence of any independent evidence, this was likely to be the best outcome achievable.

But the investigator did conclude Admiral's handling and communication during the claim had been poor, for example the confusion from their settlement letter. The investigator thought the offer of £125 compensation was fair.

Mr B disagreed with the investigator's view and asked that an ombudsman review the complaint. He didn't think the investigator had fairly considered the issues he'd raised in his complaint. He maintained his view it was unfair for Admiral to deem his vehicle a total loss, given his own garage's repair estimate was significantly less than the estimate from FAG (and would make it economically viable for the vehicle to be repaired). He wanted to keep the vehicle without it being recorded as a total loss.

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 B.

Admiral issued a final response to Mr B's initial complaint on 18 December 2023. The response covered several issues, including Admiral's valuation of Mr B's vehicle as a total loss. Admiral's subsequent final response, issued on 3 April 2024, referred to the earlier final response in respect of the issue of the valuation of Mr B's vehicle. So, the second final response did not consider the issue of the vehicle valuation.

The first final response included reference to Mr B's right to refer his complaint to this Service, but that he must do so within six months of the date of the response. The response goes on to say that if a complaint isn't made to this Service within that time, Admiral did not give permission for this Service to consider the complaint, only in very limited circumstances (such as the delay being due to exceptional circumstances).

The rules on time limits, where a business doesn't agree we can consider a complaint, are set out in the FCA Handbook under DISP 2.8.2R and are as follows:

The Ombudsman cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman* Service:

(1) more than six *months a*fter the date on which the *respondent* sent the complainant its *final response, redress determination* or *summary resolution communication*; or

(2) more than:

(a) Six years after the event complained of; or (if later)
(b) Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received:
unless:

(3) in the view of the *Ombudsman*, the failure to comply with the time limits in *DISP 2,8.2R*…was a result of exceptional circumstances; or

(4) the *Ombudsman* is required to do so by the *Ombudsman Transitional Order*; or

(5) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limits in *DISP 2.8.2R* or *DISP 2.8.7R* have expired (but this does not apply to a "relevant complaint" within the meaning of *section 404B(3) of the Act).*

Looking at the requirements of DISP 2.8.2R (1), Mr B made his complaint to this Service more than six months after the date of Admiral's final response in December 2023 (Mr B made his complaint to this Service in September 2024). So, the complaint should have been made by June 2024 to fall within the six month period.

As the rules state [DISP 2.8.2R(3)] I can look at a complaint that's late if exceptional circumstances are responsible.

Mr B hasn't provided any evidence of exceptional circumstances that would have prevented him from bringing his complaint about the valuation of his vehicle to this Service by the date set out above. So, I've concluded the valuation of Mr B's vehicle isn't a complaint issue I can consider.

However, with the second final response being issued on 3 April 2024 and Mr B bringing his complaint to this Service on 30 September 2024, then I can consider the other issues in Mr B's complaint and Admiral's response to those issues in their second final response, as Mr B's complaint to this Service within the six-month period.

There are several main issues in Mr B's complaint for me to consider. These include, firstly, Admiral's decision to deem the vehicle a total loss, based on their estimate of the vehicle repair costs compared to the value of the vehicle making it uneconomical to repair. Mr B challenges this decision, referring to the much lower repair cost estimate from his own garage, which he says makes it economical to repair the vehicle and not deem it a total loss.

A second, linked issue is the salvage value Admiral have offered for Mr B to retain his vehicle. Admiral's valuation included a salvage value of £9,954 whereas the report from TEC included a lower salvage value, £4,904.

Third, there are the issues about liability for the accident and the impact on Mr B's NCD. Mr B says Admiral haven't provided him with a clear NCD entitlement statement, which he says should be four years. This is based on the accident [initially] being deemed to be non-fault.

Fourth, there's the issue of deductions in respect of what Admiral's valuation offer refers to as the vehicle previously having been declared a total loss, the vehicle not having a valid MOT, and the vehicle being an import.

Finally, there's the overall handling of the claim, including the communication with Mr B.

(a) The vehicle being deemed a total loss

Admiral deemed the vehicle to be a total loss based on their engineer's inspection of the damage and an estimated repair cost of £20,037. Compared to a vehicle valuation of £25,245 meaning the repair costs represent 79.37% of the vehicle value. Looking at the full engineer's report, it includes a detailed estimate covering the parts required, together with an estimated labour charge for mechanical work and for painting, using estimated times and a standard cost per hour. The report concludes the vehicle is beyond economical repair and also states, under a section heading of 'Total Loss Details' that the salvage category is 'S – Structural Damage'.

Based on the engineer's report, Admiral deemed the vehicle to be a total loss.

In contrast, Mr B's garage produced a repair estimate of £8,328.04 (plus VAT, which at 20% would add £1,665.61). The estimate lists parts and a total figure for labour and paint. Admiral's engineer's reviewed the estimate and concluded it wouldn't restore the vehicle to its pre-accident condition, so they rejected the option to approve the estimate. That's a decision for Admiral to make, as the policy gives them the ability to decide how to settle a claim, including whether to deem a vehicle a total loss. Under *Section 2: Damage to your vehicle* the policy booklet states:

> *"What we will pay*
>
> *We will decide how to settle your claim and will either pay:*
>
> - *to repair your vehicle*
> - *a cash sum to replace the damaged vehicle...*
>
> *A decision will be made based on the garage/engineer's recommendation."*

So, in deeming the vehicle to be a total loss, Admiral were acting on the basis of the report from their engineer (and repair estimate from FAG) and their assessment of the repair estimate from Mr B's garage. And the above policy terms make it clear the decision is for Admiral to make. So, I can't conclude their decision was unfair or unreasonable.

Given the salvage category as 'S' this means the vehicle can be repaired, but has sustained structural damage, making it uneconomical for the insurer to repair. While potentially repairable and roadworthy, the vehicle would require re-registration with the DVLA and be inspected and approved by an accredited engineer after repair. So, while Admiral would not choose to repair the vehicle, should Mr B accept settlement of the claim as a total loss and elect to retain the vehicle, after deduction of the salvage value, then it would be open to him to have the vehicle repaired (at his garage or elsewhere) and certified by an accredited engineer as roadworthy and re-registered by the DVLA.

(b) The salvage deduction for the vehicle

In their valuation communication, Admiral included a salvage value of £9,954. In their final response they say the salvage value is based on the value of the vehicle and category of loss and aren't negotiable. Admiral say that a salvage value is deducted from the vehicle valuation where a policyholder elects to retain the vehicle. Not to deduct a salvage value would put the policyholder in a better position than before the accident. That's reasonable, because were a salvage value not deducted, a policyholder would have had the full market value of the vehicle and retained the vehicle, for them to repair or to dispose of. Where a total loss settlement is made, ordinarily the vehicle ownership then passes to the insurer and they can dispose of the vehicle, typically through their salvage agents and receive the salvage value of the vehicle.

My understanding of the salvage value is that it reflects contractual arrangements between the insurer and their salvage agents. That being the case, then I've concluded it's reasonable for Admiral to deduct that value from a total loss settlement where a policyholder elects to retain the vehicle. While TEC included a different salvage value (lower than that in Admiral's valuation) that doesn't mean Admiral are obligated to use that value rather than that agreed with their salvage agents, particularly as it would mean them receiving a lower sum than would be the case had the vehicle not been retained by the policyholder (where Admiral would receive the salvage value from their salvage agents).

(c) Liability for the accident and NCD issues

Liability for a claim (an accident) is a decision for insurers to make based on their assessment of the circumstances of an accident. Admiral's policy booklet under the *General Conditions* section includes the following statement:

> *"Defending or settling a claim*
>
> *We are entitled to:*
>
> - Conduct the investigation, defence and settlement of any claim on your behalf…"

From what I've seen, initially the claim was deemed to be non-fault on the part of Mr B. But the third party insurer then changed their position, in December 2023, saying Mr B was overtaking the third party vehicle when it was turning right. Admiral have challenged this change of position as the damage to the third party vehicle isn't consistent with the change in position. I can see Admiral have chased the third party insurer but haven't received a response. The indications are that a final outcome may take time and (in the absence of clear, independent evidence of the accident circumstances) may ultimately result in a split of liability.

While liability is in dispute, Admiral cannot finally determine the impact on Mr B's NCD, which I recognise is not the position he would wish to be. But as the issue is due to the third party insurer disputing liability, which Admiral are challenging, I can't hold them responsible for the uncertainty this creates for Mr B. Although I note Admiral accepted in their final response issued in April 2024 that they upheld this complaint point as the process and communications with Mr B might have seemed disjointed and cause him confusion.

(d) Deductions from Admiral's valuation

In their valuation communication to Mr B issued in December 2023, there is a section headed 'Deductions explained'. This then sets out deductions, of varying percentages of the market value, for the vehicle recorded as a previous total loss, having no valid MOT at the time of the incident, and the vehicle being recorded as an import. However, none of these things were true in respect of Mr B's vehicle. Admiral say in their final response that no actual deductions were made from the valuation. Looking at the communication, the only monetary deduction from the vehicle market value figure of £24,885 was the vehicle salvage value figure of £9,954 which left a net amount payable to customer figure of £14,931. So, no actual deductions for the former issues was made.

However, the wording of the descriptions does imply these deductions are relevant to Mr B's vehicle, so I can understand why he was confused at what he was being told, and then obtained the evidence that showed none of the factors were relevant to his vehicle. Admiral, in their final response, accept the communication was confusing and I agree. I'll take this into account when considering what Admiral have done to put things right.

(e) Handling of the claim and communication with Mr B

I've also considered the overall handling of the claim by Admiral and their communication with Mr B. It's clear the claim has been ongoing for some time, reflecting the issues involved, the disputes over whether the vehicle should be considered a total loss, the valuation of the vehicle (including the salvage value) and liability for the accident. Each of these issues was always likely to mean the claim taking longer to resolve, particularly in aggregate. Admiral also acknowledge specific communication issues around the settlement of the claim in December 2023 and not providing a call back to Mr B. In their final response issued in April 2024, they acknowledge shortcomings in communication (together with other aspects of the complaint upheld) and awarded £125 in compensation. This was in addition to £100 compensation awarded in their earlier final response issued in December 2023.

As I've said earlier, I can't consider the first final response as Mr B complained to this Service more than six months after it was issued. But I have considered those aspects of the complaint after that point and those included in Admiral's second final response, as set out in my consideration of the complaint aspects listed above.

It's clear Mr B has suffered distress and inconvenience from what's happened in this case and through Admiral's handling of the claim. I've considered my findings and conclusions in the context of the published guidelines on awards for distress and inconvenience published by this Service. Having done so, I've concluded the £125 awarded by Admiral is fair and reasonable, so I won't be asking them, to make a further award.

My final decision

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

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

Paul King
Ombudsman