

The complaint

Mr W's complaint is about the handling of a claim under his legal expenses insurance policy with Admiral Insurance (Gibraltar) Limited.

Admiral is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Admiral has accepted it is accountable for the actions of the agent, in my decision, any reference to Admiral includes the actions of the agents.

What happened

Mr W purchased a car from a private seller, which he later found was not as described. The engine that was in the car did not match the engine number that was on the service records and there were a number of faults. Mr W contacted Admiral to make a claim for the costs involved in taking action against the seller of the car, to recover the amount he paid for the car and the costs he has incurred in investigating faults.

Admiral passed the matter to one of its panel of solicitors to assess. The solicitors advised that they did not consider there were reasonable prospects of Mr W's claim succeeding. The solicitors also said the claim would not be proportionate to pursue and it was unlikely that any award could be recovered, as the seller had no capital assets.

Mr W is very unhappy with this and says the solicitor's assessment is wrong. Mr W says Admiral gave the panel solicitors the wrong address for the other party (giving them details of a property owned in the other party's company name) whereas he has several times provided proof of the other party owning a different property in his own name. This meant the solicitors incorrectly deemed that there was not a reasonable chance of recovering any award from the other party, on the basis he has no assets. In addition, he says the solicitors based their assessment on the cost of repairing the car, whereas he wants to pursue his rights to return the car and recover the purchase price.

Mr W made a number of other points in support of his complaint. I have considered everything he has said but have summarised his main points below:

- Why did the solicitors only make reference to the service booklet and not any of the other supporting evidence he provided? Even on this limited basis they reached 50% probability, only just short of the 51% needed.
- Admiral repeatedly delivered incorrect or misleading information to the panel solicitors, which meant they made an erroneous decision that impacted his claim against the other party.
- Admiral repeatedly failed to tell the panel solicitors that the claim was based on the Misrepresentation Act 1967, and not the Consumer Rights Act 2015.
- Admiral failed to provide the panel solicitors with all the documents and information he had provided that would support his claim for misrepresentation: advert for the car service invoice, registration documents which all cite an engine number different from the one actually on the engine.
- He has stored and maintained the car (in order to return it in the condition it was sold to him) due to Admiral's mishandling of the claim, and has had to buy a replacement car.

One of our Investigators looked into the matter. She initially did not recommend the complaint be upheld. She said Admiral had provided the solicitors with all the information Mr W had submitted, both before and after their assessment and Admiral is entitled to rely on the solicitor's advice.

Mr W did not accept the Investigator's assessment. He asked that we insist the qualified solicitor review the assessment based on the other party's correct address.

The Investigator then reviewed the matter again and told Admiral that, while it had provided information to the solicitors about the second property owned by the seller of the vehicle, the panel solicitors' most recent opinion still only referred to the property owned in the company name and said the seller had no assets from which to pay any award. It also said that they needed more information about the sale of the vehicle. The Investigator therefore said it was unclear if the solicitors had considered all the evidence provided by Mr W about the second property and around the representations made to him during the sale process, which would support a claim for return of the car. The Investigator therefore asked Admiral to arrange for the panel solicitors to review its advice based on the correct address and all the evidence provided by Mr W about the sale.

Admiral said it agreed to the updated assessment and that the panel solicitors would review everything afresh. This was in December 2024 but Mr W says despite sending all the relevant information requested again, the solicitors have still not completed the review.

As the Investigator was unable to resolve the complaint, it was passed to me.

I issued a provisional decision on the matter in March 2025. I agreed with the Investigator that the complaint should be upheld. I have copied my provisional findings below:

"Mr W's policy, like all other legal expenses insurance policies, requires any legal case to have a reasonable chance of succeeding in court in order to be covered under the policy. We would therefore consider this to be a 51% or more chance of the legal case succeeding, throughout the life of the case. This is not unfair or unreasonable.

It is normally for a claimant to establish they have a valid claim under an insurance policy, so this would mean Mr W would have to establish the likelihood of success of his legal case. However, ordinarily legal expenses insurers will ask one of its pre-approved panel of solicitors to advise at its own cost.

Admiral did just this. The panel solicitors said the claim did not have reasonable prospects of success. The panel solicitors said in February 2024, that based on the loss of around £750 being the cost of repairs Mr W had to have carried out on the car, the claim was not proportionate to pursue. It also said that as the seller did not own the address provided, it was unlikely they'd recover any award and there were therefore no reasonable prospects.

We do not assess the merits of the legal claim, or the conduct of the legal case, that is not within our expertise. Our remit is to assess complaints about regulated activities, such as carrying out an insurance contract. Therefore, in a case such as this, we can only assess whether the insurance claim has been dealt with fairly.

We would usually agree that an insurer is entitled to rely on a solicitor's opinion provided there is nothing that would mean it was patently flawed or inadequate. Like us, Admiral is not qualified to assess the legal claim itself.

However, Mr W says the panel solicitors did not consider all the evidence he provided, in particular that there was a property in the seller's own name, misrepresentations made to him in the course of the sale and that his claim is for the purchase price of the car, not the cost of repairs. I have therefore considered whether the panel solicitors considered everything it should and, if they didn't, whether Admiral should reasonably have been aware that they did not.

The panel solicitors said the third party owns a house in a company name only, so has no financial means to pay any award, but Mr W says he has a property in his sole name as well.

I can see that in April 2024, Admiral sent the solicitors details of the other property and the panel solicitors subsequently said that this did prove the third party had financial means. However, in the second written opinion of October 2024, the panel solicitors referred only to the property in the company name again and said again that the third party therefore has no financial means and there would be problems with recovery. It seems to me, unclear at best, whether the panel solicitors did consider the prospects of recovery based on the evidence provided by Mr W of home ownership.

The second written opinion also says that the solicitor couldn't reach an opinion on prospects under the Sale of Goods Act, as they needed more information about the sale. They also said that under the Misrepresentation Act, prospects were 50% but if more information was provided about the conversations Mr W and the seller had around the sale, this might increase. The solicitors refer to having seen the service book, the sales advert and other documents provided at the sale but it is not clear if they saw all the info Mr W provided.

Given this, it does appear that the solicitors may not have considered all the available material evidence and information Mr W provided. I therefore agree that it is appropriate that Admiral arrange for further assessment of the case with particular reference to these points.

I am pleased to note that Admiral has agreed to this but it is disappointing that it agreed to this three months ago and as yet it has still not been completed. It seems to me that if the original panel solicitors cannot complete this review within a reasonable time then Admiral should appoint another firm.

I think some additional compensation is appropriate for the fact Admiral did not arrange the review itself because, while Admiral is generally entitled to rely on expert legal advice about the merits of a claim, I think it should have been aware that the solicitors had not considered all the evidence provided and should have asked them to reassess the claim before December 2024. I think the sum of £200 is reasonable for this.

Any delays in obtaining that review now would have to be the subject of a new complaint, although in order to manage Mr W's expectations, we do not have jurisdiction over the solicitors and any delays on their part are not usually the responsibility of the insurer instructing them.

Mr W has said he has had to store and maintain the car and buy another car and these costs are higher than they would otherwise have been because of Admiral's delay in progressing his claim. These costs could be part of the claim against the seller and may potentially be recovered from them. I am unable to determine in this decision if Admiral is reasonably responsible for any of these costs, as it has not been established that it should have accepted the claim yet. If the revised legal opinion is that Admiral should have accepted the claim and these costs are not recovered from the third party, then they can be the subject of a further complaint."

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or evidence they want considered.

Admiral has confirmed it accepts my provisional decision.

Mr W has also responded. He says that while he understands and agrees with the logic in my provisional decision, he does not accept that it adequately addresses the impact of this matter on him and is concerned about Admiral's future progress of the claim. He has made a number of points in response. Have considered everything he has said and have summarised his main points below:

- The proposed compensation of £200 does not adequately reflect the time he has had to spend pursuing this matter with Admiral and this service. In addition, he has had the cost and inconvenience of storing the car for 15 months and has still not been able to pursue his claim for the recovery of the cost of the car.
- My findings only mention a random cost of £750, which is an example of Admiral misrepresenting the costs he was seeking to recover.
- Admiral was told to review the claim in January 2025 but it still has not done so and it is only him that is impacted. He doesn't consider the compensation I have proposed will change the situation he is in because it does not serve as any incentive for Admiral to act promptly on his case from now on. Admiral could simply ignore any solicitor's review and he would have to restart the complaint process. He suggests awarding £200 for each month that this is not resolved, as an incentive for it to act promptly.
- Admiral has a responsibility to use solicitors that provide a reasonable level of service and it is not reasonable for it to take 15 months for the solicitors to reach a decision on this straightforward case.

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 mentioned in my provisional decision that the panel solicitors had advised that Mr W's claim might not be proportionate to pursue based on the cost of repairing the car being £750. I went on to set out that Mr W has said he wanted to return the car and claim the amount he had paid for it back. I also set out that I considered the solicitors should be instructed to review the advice again in part because of this and because Mr W had also provided evidence that the seller of the car did have an asset that could be used to meet any award made in his favour. I remain of this opinion.

Admiral has instructed the panel solicitors to review the claim but as Mr W points out this has still not been completed. As stated in my provisional decision, I have no jurisdiction over the solicitors and cannot therefore stipulate a time limit by which this must be done. However, Admiral should use its best endeavours to ensure it is completed within a reasonable time. Given the delays thus far, I would expect Admiral to ask the solicitors appointed to progress it as promptly as possible; and if the original panel solicitors cannot complete this review within a reasonable time then Admiral should consider appointing another firm.

I can see that the panel solicitors asked for some more information on 25 March 2025, so I would hope that is progressing.

While I appreciate Mr W's concerns about the future progress of his claim, I cannot award compensation in the way he has suggested, with more awarded for the longer the claim takes to resolve. I can only consider the impact on Mr W up to this point of anything Admiral has done wrong. Admiral is not responsible for any failure on the part of the solicitors to consider the matter properly initially. We expect legal expenses insurers to take care to appoint solicitors that are suitably qualified and experienced to deal with the legal case in question, however, once they are appointed, the insurer has no right to interfere with how the legal claim is run; it is only responsible for indemnifying their fees, subject to the terms of the policy. There is no evidence that the panel solicitors are not suitably qualified or experienced to deal with Mr W's case.

Having said that, we do expect an insurer to assist where there are issues such as in this case. I provisionally determined that, once it was made aware the solicitors had not considered the material information provided by Mr W, Admiral should have asked the solicitors to reassess the claim. Any compensation is to reflect the fact it didn't do so when Mr W made it aware the solicitors had not considered all the evidence he had provided. I have no power to fine or penalise Admiral, only to award compensation I consider commensurate with the trouble caused to Mr W. Therefore I can not make an award designed to incentivise, or act as a disincentive, to Admiral, as Mr W has requested. And it is not intended to compensate him for the time the solicitors have taken. We also do not generally award compensation for the fact that a policyholder has had to make a complaint. Having considered everything again, I still consider that £200 is appropriate.

Mr W has raised again that he has had to store and maintain the car while this has been ongoing. However, I am still of the opinion that this would need to be the subject of a new complaint, if the revised legal opinion is that Admiral should have accepted the claim and these costs are not recovered from the third party.

My final decision

I uphold this complaint and require Admiral Insurance (Gibraltar) Limited to do the following:

1. arrange and pay for another legal opinion on the claim Mr W wants to make.
2. Pay Mr W the sum of £200 compensation for the distress and inconvenience caused by its handling of the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 May 2025.

Harriet McCarthy
Ombudsman