

complaint

Mr M and Miss C complained about Admiral Insurance Company Limited's handling of their car insurance policy.

background

In May 2017, Mr M was driving when he was involved in a minor accident with another car. Mr M accepted responsibility for the accident. At the time of the accident, Mr M was driving while unfit through alcohol.

Admiral said that because Mr M was unfit during the accident, no cover was provided under the policy. But they sent him a form to complete and sign giving Admiral the authority to deal with the other driver's claim on his behalf. Admiral said that if Mr M gave them the authority, he would have to pay any settlement amount Admiral agreed on his behalf with the other driver. Admiral said if he didn't give them the authority, they wouldn't get involved and the other driver's insurer would pursue him directly and that he may end up being taken to court.

Mr M didn't complete the form and didn't give Admiral the authority to settle the claim. But Admiral went ahead and settled the claim. They then asked Mr M and Miss C to pay the total amount claimed by the other driver, which was £2,562.16. That was made up of £677.82 for 11 days of hire car; £1,555.79 for repairs to the car; and £328.55 for a child car seat.

Mr M and Miss C felt that the amounts claimed were unreasonable, so they asked Admiral to provide them with evidence to prove the damage claimed for the car and child seat, and to justify why a hire car was necessary for 11 days given the accident and resulting damage was minor.

Mr M and Miss C complained. But Admiral didn't uphold their complaint. Mr M and Miss C didn't think that was fair so they brought their complaint to us. One of our investigators looked into the complaint. She felt that Admiral's service was poor and she suggested that Admiral should pay £150 compensation for that. Admiral accepted their service was poor and offered £200 compensation. Our investigator also felt that part of the claim for damage to the other driver's car wasn't justified. She suggested that Admiral should reduce the amount they were asking Mr M and Miss C to pay. That amounted to just under £20, which Admiral agreed to reduce from the total. But our investigator felt that the remaining costs were justified. As Mr M and Miss C didn't agree with our investigator, the complaint was passed to me to decide. In order to settle the dispute, Mr M and Miss C offered to pay half of the total amount Admiral claimed and to deduct the £200 compensation from the balance.

My provisional decision was issued on 21 May 2019. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I'm intending to uphold Mr M and Miss C's complaint in part. I'll explain why.

My role is to decide if Admiral have dealt with Mr M and Miss C in a fair and reasonable way.

Admiral accept they settled the other driver's claim on Mr M and Miss C's behalf even though Mr M and Miss C didn't complete and return the consent form giving Admiral authority to act in the way they did. But Admiral said they acted in that way in Mr M

and Miss C's best interests and to avoid the other driver's costs further increasing. Admiral said that if they didn't settle the claim, the other driver could have taken Mr M and Miss C to court and got a court judgement against them. Admiral said that if that happened Admiral could have still been liable to pay the judgement to the other driver, but later Admiral could have taken action to claim the judgement amount from Mr M and Miss C.

While I think Admiral were well intentioned and they wanted to keep costs down, Mr M and Miss C did repeatedly ask for evidence relating to the claim. Mr M and Miss C have always accepted they would pay the other driver's costs, but they wanted to ensure the costs claimed were reasonable. So I think they were entitled to see the information they asked Admiral to provide.

When Admiral asked Mr M and Miss C to sign the consent form, the information Admiral sent them included the following assurances:

"We will only compensate the [other driver] for those expenses that have been reasonably incurred as a consequence of an accident."

"If you consent to us acting on your behalf we will conduct a full investigation into the accident circumstances..."

Admiral knew they were going to ask Mr M and Miss C for the costs paid to the other driver, so they had a duty to ensure those costs incurred by the other driver were reasonable and justifiable.

The evidence provided by Mr M and Miss C is convincing in showing that some of the damage claimed for by the other driver was unlikely to have been caused during the accident. The evidence showed a large difference in height between the cars, Mr M and Miss C's car being much lower. For example, when looking at the photos of the two cars parked side by side it's difficult to see how Mr M could have caused the damage to the door handle claimed by the other driver. And when looking at the very minimal damage caused to Mr M and Miss C's car, it's difficult to understand how the damage claimed for by the other driver could have been caused by the accident. I note that Admiral agreed to deduct the cost of the door handle and door handle cover from the costs they claimed from Mr M and Miss C, which I think adds support to Mr M and Miss C's case that the accident wasn't the cause of all the damage claimed for by the other car. Mr M and Miss C also obtained the written opinions of two garages who both questioned the claim made by the other driver. So unlike their assurances to Mr M and Miss C, I can't say that Admiral conducted a "full investigation" or that the costs claimed were "reasonably incurred as a consequence of an accident".

And most of the evidence I have seen is evidence that Mr M and Miss C themselves have gathered, such as the photos of their car parked side by side with a car identical to the other driver's car to show the large disparity in height, rather than being evidence obtained by Admiral during an investigation. It follows that if some of the damage claimed for wasn't caused to the other driver's car as a result of the accident, Mr M and Miss C shouldn't be asked to pay for it. It's possible that the other car had pre-existing damage or that the damage happened after the accident.

While the accident was minor, Admiral have said that irrespective of the force of the impact the child car seat's safety would have been compromised, therefore it had to

be replaced. Mr M and Miss C pointed to the information on The Royal Society for the Prevention of Accidents (ROSPA) website, which says that "It may not be necessary to replace the child seat if:

- It was a very low speed impact
- There was no, or very little, external damage to the car
- There was no child in the child seat when the impact occurred."

I can understand why Mr M and Miss C seek to rely on the information provided by ROSPA. But where child safety is concerned, it's insurance industry practice to replace child car seats when an accident happens, even a minor one. So I think Admiral were reasonable in not challenging the other driver's claim for a replacement seat. It follows that I think it's reasonable for Admiral to expect Mr M and Miss C to pay the full cost of the replacement child car seat.

Mr M and Miss C also disputed the hire car charges claimed by the other driver. The other driver was provided with a hire car for 11 days while their car was at a garage. Mr M and Miss C said that as the damage was very minor, the other driver's car could have still been used so it didn't have to be at the garage for 11 days, it could have just been taken to the garage on the day the repairs were going to be done.

The other driver's car had all the areas of damaged repaired which they claimed happened as a result of the accident. I've already said above that I find Mr M and Miss C's evidence convincing in that it's unlikely the accident caused all the damage claimed for. So part of the 11 days the other car was at the garage was for repairs to damage that I don't think was caused by the accident. I therefore agree with Mr M and Miss C that they shouldn't be responsible to pay for 11 days of hire car. I think their offer to pay half is reasonable.

Given all the circumstances of this complaint, I think Mr M and Miss C's offer to pay half the costs of repair and hire car charges is reasonable. I don't think Admiral reasonably investigated the accident circumstances to ensure the costs claimed were reasonably incurred as a consequence of the accident. But for reasons given above, I think it's reasonable to expect Mr M and Miss C to pay the full cost of the replacement child car seat.

Admiral didn't get Mr M and Miss C's consent or authority to settle the other driver's claim on their behalf. I have considered what may have happened if Admiral didn't settle the claim on Mr M and Miss C's behalf. I think the other party would have pursued Mr M and Miss C for their costs and would have threatened court action. Mr M and Miss C would have been able to challenge the claim and ask for evidence. One possibility is that when challenged, the other driver might have accepted a reduced settlement. But it's also possible that the other driver might have pursued the full costs and taken the matter to court. After all, Mr M accepted an accident happened and that he was responsible. So even if Admiral didn't settle the claim, I think Mr M and Miss C would have ended up paying at least part of the other driver's costs. And if it went to court it's likely that the other driver would have included Admiral as a co-respondent, which is common practice.

Finally, Admiral have accepted that their service could have been better. As with any accident where a third party is claiming costs, Admiral had a duty to ensure the costs claimed for were justified and reasonable. Especially as they were expecting Mr M and Miss C to pay for those costs. Mr M accepted liability for the accident and both

he and Miss C accepted to pay the other driver's reasonable costs. But they were entitled to question the costs claimed and to ask to see evidence. Admiral should have cooperated with Mr M and Miss C, but they didn't. Admiral refused to provide certain information which caused Mr M and Miss C to make a subject access request to get the information they wanted. I think that caused unnecessary delay to the process and inconvenience to Mr M and Miss C. To address the inconvenience Mr M and Miss C experienced I think Admiral should pay them £200 compensation. As suggested, that compensation should be deducted from the balance Mr M and Miss C are required to pay."

The parties were invited to comment on my findings. Mr M and Miss C didn't comment on my provisional decision. Admiral said:

- The other driver's repair costs were reasonable and were supported by the photos of damage and other documentation.
- They agreed to deduct the cost of the damage to the door handle as a gesture of goodwill, not as an admission that the damage wasn't caused during the accident.
- Even though Mr M and Miss C didn't sign the consent form, Admiral had the right of recovery once the other driver signed the Assignment & Agreement, passing the right of recovery to Admiral.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my findings remain the same.

Mr M and Miss C submitted photographic and expert evidence in support of their argument that all the damage couldn't have been caused to the other driver's car by the accident. Admiral should have investigated the accident circumstances and followed up on Mr M and Miss C's comments, but they didn't.

my final decision

For the reasons set out above, I uphold this complaint in part and require Admiral Insurance Company Limited to stop pursuing Mr M and Miss C for the total costs claimed by the other driver amounting to £2,562.16.

Mr M and Miss C should pay: half of the claimed costs for the repairs (£1,555.79 / 2 = £777.89); half of the claimed hire charges (£677.82 / 2 = £338.91); and the full cost of the replacement child car seat (£328.55). Admiral can deduct the £200 compensation from this amount, therefore the total amount Mr M and Miss C should pay is £777.89 + £338.91 + £328.55 – £200 = £1,245.35.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss C to accept or reject my decision before 20 July 2019.

Mehmet Osman
ombudsman