DRN-5203510

The complaint

A limited company, that I will refer to as S, complains about the settlement of its commercial motor insurance claim by Admiral Insurance (Gibraltar) Limited.

What happened

The following is intended only as a brief summary of events. Additionally, even where the claim process involved third parties, for the sake of simplicity, I have largely only referred to Admiral and S.

S acquired a vehicle through a finance agreement provided by a third party which I will refer to as M. The vehicle was insured by a policy underwritten by Admiral. In February 2024, the vehicle was involved in an accident and suffered damage. S contacted Admiral to claim.

The claim was accepted. However, Admiral determined that the damage to the vehicle was so extensive that it was uneconomical to repair. Admiral therefore settled the outstanding amount due under the finance agreement, less the excess, and made the payment to M. Even though the amount due under the finance agreement was less than the market value of the vehicle at the time of loss, Admiral said that no payment was due to S.

In reaching this outcome, Admiral relied on the following term in S's policy:

> "If your vehicle is subject to a hire purchase agreement, we will pay any money owed to that company first and then pay any remaining money to you. If your vehicle is on lease or contract hire, we will pay the lease or contract hire company either the market value of the vehicle, or the amount required to settle the agreement, whichever is less."

S was unsatisfied with this, saying that the lease agreement included a term allowing it to sell the vehicle on M's behalf once the duration of the finance agreement had been reached. And that this would then entitle S to 95% of the sale price. S also said that, following the settlement of the claim, it had identified the vehicle in question being sold after having been repaired.

S referred its complaint to the Financial Ombudsman Service. However, our Investigator did not recommend the complaint be upheld. He said that, as the finance agreement was a lease agreement, Admiral had correctly applied the above term to the claim and settled it in accordance with this.

As S remained unsatisfied, its complaint was passed to me for a decision. I issued my provisional decision on 14 November 2024. The following is an extract from that decision:

> "Both parties have provided detailed submissions. Whilst I have considered these in full, I do not intend to refer specifically to each of these individually. This is not intended as a discourtesy, but rather reflects the informal nature of the Ombudsman Service. Instead, I will focus on what I consider to be the key issues.
>
> <u>The insured party</u>

The first issue I will focus on is who the complainant is in the circumstances. The policy was taken out in the name of one of S's directors, rather than S itself.

However, not only was it S that was responsible for maintaining and paying for the vehicle under the finance agreement, it is clear the vehicle was being used by S for its own purposes. The named drivers on the policy were the two directors of S. So, whilst the policy was set up in the name of the director, I consider it was taken out for the benefit of S itself.

As a result, I consider the complainant in this case to be S, rather than the director.

What this means is that I am considering the impact of the situation on S, rather than on its director(s). I am unable to consider a complaint brought by the director(s) directly, as a director would not be an eligible complainant in their own right; they would be acting for purposes not outside their trade, business or profession. As a result, they would not meet the definition of an eligible complainant as set out in the Dispute Resolution: Complaints part of the Financial Conduct Authority Handbook, specifically DISP 2.7.3 R.

This also means that I am unable to consider any distress caused by the circumstances. S, as a limited company, is unable to suffer distress. I can still consider the inconvenience caused and any financial loss though.

I should say that neither party has raised this as an issue to date. But I feel it is important to summarise this situation at this point.

Admiral's total loss decision

The second key issue is whether Admiral has demonstrated its claim decision to treat the vehicle as being uneconomical to repair was fair and reasonable.

I do note S's comments that it identified this specific vehicle was being offered for sale. And this suggests that it was repaired and was being sold, presumably, for less than the cost of this repair. I can appreciate S, and its directors, will have been surprised by this. However, this is not unusual in circumstances where a vehicle is "written-off" in certain categories. It is also not clear who carried out this repair.

Sometimes a vehicle is so badly damaged that it cannot be safely repaired. In other situations, the damage is severe enough to mean that the cost of repair will come close to the value of the vehicle – and often later issues can arise which means it is more costly to repair the vehicle than to write it off as a total loss. In these circumstances, the salvage will usually be sold to a third party – either for scrap or potentially for repair.

It may be that the salvage of the vehicle was sold to a third-party, who was capable of carrying out the repairs relatively cheaply. For example, a vehicle repair company would not have to specifically pay labour costs and the cost of repair in those circumstances would be limited to replacement of any parts required. For them, the cost of repair would be much less than an insurer would need to pay, and so it might be economical for a vehicle repair company to do something that would be uneconomical for an insurer.

So, whilst I appreciate the concerns that this may have raised with S, I do not consider that the fact the vehicle was ultimately repaired and offered for sale to demonstrate Admiral did not act appropriately.

That said, I do not consider the same applies to Admiral's decision to consider this particular vehicle uneconomical to repair. By treating a vehicle as uneconomical to repair, an insurer considers the vehicle a total loss. This is what Admiral has done in this case.

In order to demonstrate that it made a fair and reasonable decision on this aspect of

a claim, an insurer will need to show that made an assessment of the value of the vehicle at the time of the loss, and that it made an assessment of the likely cost of the repairs. It is then a comparison of the cost of repair with the value of the vehicle that will determine whether these repairs are uneconomical or not.

For the avoidance of doubt, it is not necessary to show that the repairs need to cost more than the value. It is fair and reasonable to allow some scope for insurers to make an informed commercial decision, taking into account the potential that repair costs can climb. For example, further necessary work can be discovered following the commencement of repairs. However, whilst there is some tolerance here, it is necessary for the insurer to actually make the relevant assessments of value and cost, and to compare these.

In this case, Admiral has provided some evidence that it carried out an assessment of the value of the vehicle at the time of loss. However, it has not provided any evidence that it actually quantified the likely cost of repair.

It seems that Admiral automatically determined the vehicle uneconomical to repair as the accident had involved the vehicle's airbags being deployed. I do appreciate that repairs involving deployed airbags can be expensive. However, I do not consider it is fair and reasonable to conclude that this means the repair will be uneconomical without actually quantifying this cost. And then comparing this to the value of the vehicle.

Admiral has said its "system is able to determine when vehicles are uneconomical to repair based on the damage reported. This takes into consideration the cost to repair a vehicle with manufacturer parts and approved repair methods". However, I am not overly persuaded by these comments alone. Not only is [it] not clear manufacturer parts would be required, Admiral has not provided the figures used or produced by its system. Nor how these compare with the market value of the vehicle. It has not even provided an engineer's report detailing the extent of the damage.

So, I do not consider Admiral has demonstrated that its decision to consider S's vehicle a total loss was fair or reasonable.

The settlement of the claim

Whilst Admiral has not demonstrated that it made its decision appropriately, it is possible that the extent of damage to the vehicle did mean that it was uneconomical to repair. However, regardless of whether Admiral's decision to consider the vehicle a total loss was appropriate, it also needed to make a settlement of the claim that was fair and reasonable.

I have taken into account the wording of the policy, including the term set out above. I have also considered the wording of the relevant finance agreement.

The finance agreement is a lease agreement. It makes it clear that the vehicle is being hired, and that it will not become the property of the customer either during or at the end of the duration of the agreement. So, according to the terms of the policy, Admiral has seemingly settled the claim appropriately.

However, my role is to consider all of the circumstances of the complaint. In this case, this includes the clear provisions in the finance agreement about what can happen at the conclusion of hire period.

Essentially, three options are provided. The period of hire can be renewed, the vehicle can either be returned to M for sale at auction, or S can sell the vehicle as M's agent. The agreement indicates that it is for S to choose between these options.

S has said that, had the agreement reached its conclusion – either because the accident hadn't occurred or because Admiral had paid for the repair of the vehicle

rather than considering it a total loss – S would have opted to sell the vehicle as M's agent. I have no reason to doubt that S would have chosen this option. But even if S did not choose this option, unless S chose to renew the period of hire, it seems that M would have sold the vehicle at auction.

The finance agreement says that if the vehicle is sold, S will be entitled to 95% of the sale price that is achieved. It seems that this applies regardless of whether S sold the vehicle as M's agent or whether M sold the vehicle at auction.

This would not result in S having ownership of the vehicle (at least not without buying it subsequently from the third party it would have been initial[ly] sold to). So, this agreement cannot be accurately described as a hire purchase agreement. However, the fact that a customer would be entitled to 95% of the sale price, would have effectively allowed S to obtain a beneficial interest in the vehicle. And I consider that it is fair and reasonable that Admiral take this into account when settling a claim relating to such a vehicle.

The finance agreement does include some provisions relating to the sales process should S act as M's agent. The sale must take place within 30 days, the buyer must be a commercial customer, and the sale price needs to be the open market value of the vehicle. No real details are provided about the sales process should a customer return the vehicle for M to sell at auction.

I consider that it is more likely than not that S would have attempted to sell the vehicle as M's agent, had the finance agreement reached its full duration. But it is not clear that S would have been able to achieve this sale, at retail market value, within the required timeframe. So, I consider it most likely a sale by S would only have achieved the trade value.

Alternatively, the vehicle may have been sold at auction. I consider that it is also more likely than not that, had this process been required, the vehicle would have been successfully sold. But again, this would only have achieved the trade market value.

I have consulted the industry valuation guides, looking at the estimated retail and trade market values of the vehicle both in early February 2024 and around the time the finance agreement would have reached its full duration. It is notable that the finance agreement was due to come to an end only a few months after the accident. I have had to estimate the mileage for the latter, taking into account the vehicle's previous usage.

Based on these, I think the trade market value of the vehicle would have been around £23,500 at either of these points in time.

However, achieving a sale at this price would have been dependent on third parties not involved in this complaint. This includes both the finance company and the ultimate purchaser of the vehicle. The sales process would also likely have included some cost to S.

Given the uncertainties in what would have happened in any sale process, and the involvement of third parties, I consider the fair and reasonable outcome is to consider S's beneficial interest in the vehicle amounted to around 75% of the 95% return it was like to have received on the vehicle's trade market value. This takes into account the fact that the loss to S is a loss of chance. I consider the loss to S to be the loss of the chance of selling the vehicle at a value of £23,500, and then retaining 95% of this.

Calculating this loss of chance with any certainty is difficult. But, I consider this loss of chance to be more likely than not, but less than certain. So, I do not consider it is fair or reasonable to award the full sum that might have been due to S. And I

consider that 75% of this is a fair and reasonable award.

I consider the vehicle would have achieved a sale price of £23,500, and S would have been provided with 95% of this (£22,325). 75% of this is £16,743.75. Admiral has settled the outstanding finance to the sum of £9,075, after the deduction of the relevant excess. So, I think it is fair and reasonable that Admiral pay S the remainder of its beneficial interest in the vehicle. This works out as £7,668.75.

I also think this should have been paid to S on 21 February 2024, when the settlement to M was made. S has therefore been without funds that it ought reasonably to have had since this date. And I consider it is reasonable that Admiral pay S interest on this sum of £7,668.75, from this date to the date of settlement. The rate of interest ought to be calculated as 8% simple per annum.

S has said that not having this money had a detrimental impact on its operations. However, it has not provided evidence of any direct financial loss that it suffered, that could not have reasonably been avoided. I appreciate that S would not have been able to use this vehicle. But I would expect a business to mitigate its losses. And, in order to say that any financial losses S can evidence as a result of not having received this settlement in February 2024 should be met by Admiral, I would need to be persuaded that S could not have acted to mitigate these.

I do though consider that Admiral's failure to settle the claim fairly and reasonably has caused S material inconvenience above that which it otherwise would have experienced. Any actions S had to take to mitigate its losses would have involved some level of inconvenience. And the fact that S has had to pursue this matter has itself caused avoidable inconvenience. So, I think Admiral should pay S £400 in recognition of this."

I asked both parties for any additional comments or other evidence they wanted me to consider. S had nothing further to add. However, Admiral said it felt the policy was clear on how it would deal with the vehicle if there was a lease agreement, and S had accepted this policy.

Admiral also said:

"The terms and conditions of the customer's lease agreement are between the customer and the lease company, and we have no involvement in these and any dispute over the lease agreement would be between the customer and the lease company. We would only act on the terms and conditions of the policy the customer has taken out with us to cover the vehicle.

In this case we maintain we have correctly settled the claim in line with the terms and conditions of the vehicle being on a lease agreement."

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.

Having done so, I have come to the same conclusions as in my provisional decision for the reasons set out above.

I do note Admiral's comments. However, there is no dispute between S and the finance company. The issue at hand is whether S claim has been appropriately dealt with and settled.

I also note that the terms of S's policy do set out what will happen where there is a lease agreement. And that the finance agreement is a lease agreement. But I disagree that this is where the situation ends. I consider it is necessary to consider why the policy differentiates between hire purchase and lease agreements.

With a hire purchase agreement, the item subject to the agreement – i.e. the vehicle – remains the property of the finance company until the term of that agreement has concluded. However, the customer is acquiring a beneficial interest in the vehicle throughout the agreement. And, once the agreement reaches its conclusion, the customer will become the owner of the vehicle. It is therefore appropriate that the insurance the customer takes out to cover that vehicle recognises this interest in the vehicle that the customer has, and that any settlement of a claim for total loss includes the customer's losses.

With a normal lease agreement, the customer is not acquiring any beneficial interest in the vehicle. At the end of the term of the finance the vehicle is handed back and that is the end of the customer's interest in it.

This is not how the finance agreement that S had works though. At the end of the term of the finance, S would have acquired a beneficial interest in the vehicle. They would not become the owner of it. But they would become entitled to 95% of its sale price. In essence they would become the 'owner' of 95% of the vehicle's value. And I consider it is fair and reasonable to recognise this situation and for S's insurance to provide cover for the loss of this beneficial interest in the vehicle. This is up to a maximum of the vehicle's retail market value, as that is the maximum the policy covers.

I have set out in my provisional decision, and above, how I consider it is appropriate for this beneficial interest to be treated in this case. And I am not persuaded by Admiral's comments, or the rest of the circumstances of this case, to alter this.

Putting things right

Admiral Insurance (Gibraltar) Limited should pay £7,668.75. It should also add interest to this amount from 21 February 2024 to the date of settlement, at a rate of 8% simple per annum.

Admiral Insurance (Gibraltar) Limited should also pay S £400 in recognition of the inconvenience caused to it.

My final decision

My final decision is that I uphold this complaint. Admiral Insurance (Gibraltar) Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 13 January 2025.

Sam Thomas
Ombudsman