

The complaint

Mr P complains that Admiral Insurance Company Limited declined his claim made on his motor insurance policy. He wants it to settle the claim and compensate him for his stress and anxiety.

What happened

Miss L, a named driver on Mr P's policy, was involved in a collision whilst driving Mr P's car. Miss L left the scene and went home where she said she drank alcohol. The police later arrived at her home and said she was drunk, and a blood sample was later taken for testing. A court later found Miss L not guilty of drink driving. But Admiral declined the claim because of the drink driving and fraud exclusions in the policy.

Our investigator didn't recommend that the complaint should be upheld. He thought the court's decision was based on the standard of "beyond reasonable doubt". But he thought Admiral had made its decision that Miss L was over the drink driving limit at the time of the accident on the basis of probabilities. It had also considered that there were inconsistencies in Miss L's statements. So he thought Admiral had fairly and reasonably applied the policy exclusions and declined the claim.

Mr P replied that insufficient weight had been given to an independent forensic report that said, based on what Miss L reported, that she was under the drink driving limit at the time of the accident. He disagreed that there were inconsistencies in Miss L's statements. He thought if the police had found Miss L to be drunk, they would have breathalysed her. He thought it was unfair for Admiral to reject the claim on the balance of probabilities.

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 can see that Admiral's decision has had significant financial consequences for Mr P. I can understand that he feels frustrated that it's rejected the claim even though Miss L was found not guilty of drink driving. It's not for me to comment on the decision made by the court. Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably.

As our investigator has explained, an insurer and a court rely on different standards of proof when making decisions. The court convicts on the basis of "beyond reasonable doubt", but an insurer considers the balance of probabilities. I can see that Mr P thinks this is unfair. But I think it's for Admiral to take into account the court's decision, and other available evidence, but it's entitled to make its decision on the balance of probabilities.

Admiral thought that, on the balance of probabilities, Miss L was over the drink driving limit at the time of the collision. The evidence it relied on was:

- The other driver at the scene had heard shouting "we're going to get done, we need to get out of here." Admiral said this showed that Miss L was aware that she was breaking the law and left the scene to avoid arrest.

- Miss L said she'd had two drinks during the evening before the collision. Then, when she got home, she continued drinking in the twenty minutes before the police arrived. Miss L first thought she may have been drinking vodka, but she couldn't remember. Four days later, she said it was half a bottle of brandy. Admiral questioned that Miss L had drunk this alcohol very quickly and that the effect was so apparent to the police in just twenty minutes.
- The police who arrived at Miss L's house twenty minutes after her described her as "acting in a very drunk manner and the smell of alcohol was very strong". But Miss L told them she'd had two brandies. She didn't then tell the police about the half a bottle of brandy she later said she'd drunk when she got home.
- After she was arrested for driving under the influence, Miss L told the police, "I've messed up". A later blood test found Miss L to be over the legal limit for driving.
- Mr P commissioned an independent forensics report that said this reading was caused by Miss L drinking after the accident. But this relies on Miss L's statement about what she drank on the day of the accident. And I think Admiral reasonably disagreed with the report's conclusions based on the number of inconsistencies in the evidence.

So I think Admiral reasonably and fairly decided that Miss L was over the legal limit for alcohol at the time of the accident. Admiral then relied on a policy exclusion to reject Mr P's claim:

"11. Drink and drugs clause

If an accident happens whilst you or any person entitled to drive under Section 3 of your current Certificate of Motor Insurance is driving your vehicle and:

- *is found to be over the legal limit for alcohol or drugs*
- *is driving whilst unfit through drink or drugs, whether prescribed or otherwise*
- *fails to provide a sample of breath, blood or urine when required to do so, without lawful reason*

No cover under the policy will be provided and instead, liability will be restricted to meeting the obligations as required by Road Traffic Law. In those circumstances, we will recover from you or the driver, all sums paid (including all legal costs), whether in settlement or under a Judgement, of any claim arising from the accident."

Admiral also said there were a number of inconsistencies in Miss L's versions of events:

- When asked about the police investigations, Miss L didn't tell Admiral that she'd been arrested for driving under the influence of alcohol. She told it that she was being investigated for dangerous driving and leaving the scene.
- Miss L changed her story about how she and her passengers had got home after the collision.
- Miss L didn't tell the attending police that she'd been drinking alcohol after the accident, but water.
- Miss L told the police that the accident was caused by faulty brakes. But she told Admiral that the last she recalled was bending down to retrieve her phone.
- Miss L said she was drinking alone in the kitchen after the accident. But her mother told the court that Miss L was drinking brandy.

I think Admiral reasonably applied the policy exclusion for fraud as a further reason to decline Mr P's claim. And so I think Admiral acted fairly and reasonably and in keeping with the policy's terms and conditions. I don't require it to settle Mr P's claim.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 June 2021.

Phillip Berechree
Ombudsman