

The complaint

Through his mother Ms L, Mr L complains that Admiral Insurance Company Limited mishandled a claim on his motor insurance policy.

What happened

Mr L took out a motor policy for the ten months from 17 August 2017. Ms L was a named driver.

Admiral was responsible for dealing with claims. Where I refer to Admiral, I include claims-handlers, investigators and others insofar as I hold Admiral responsible for their actions.

On 17 September 2017, Mr L's vehicle and another driver's vehicle were damaged in a road traffic accident. Mr L, his passenger and the other driver were each injured.

Prosecutors charged Mr L with driving a motor vehicle with a proportion of a controlled drug above the specified limit. On 29 March 2018, Mr L pleaded guilty to that charge.

Admiral dealt with the third party claims by paying out over £21,000.00. It sought to recover its outlay from Mr L. Mr L and Ms L complained to Admiral.

By a final response dated 30 September 2019, Admiral turned down the complaint. Unhappy with that, Mr L brought his complaint to us on 23 March 2020. He said that Admiral should reinstate cover, stop its claim against him and pay for his damaged car.

our investigator's opinion

Our investigator didn't recommend that the complaint should be upheld. She thought that Admiral acted fairly when it cancelled the policy and declined Mr L's claim. She thought Admiral's decision to accept liability for the accident was fair and reasonable. She thought that it was fair for Admiral to recover its outlay from Mr L. She thought that Admiral responded promptly when it needed to, and its actions weren't unfair or unreasonable when handling the claim with Mr L and Ms L.

my (first) provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr L and to Admiral on 22 March 2021. I summarise my findings:

From what I'd been told, Admiral's policy for Mr L contained the following General Condition:

*"If an accident happens whilst you... 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...
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 ... all sums paid (including all legal costs), whether in settlement or under a Judgement, of any claim arising from the accident."

Admiral had said that the words "*or drugs*" weren't in the first bullet point when Mr L took out the policy in August 2017 but were added later. So I accepted that Mr L wasn't bound by those words in that bullet point.

Fitness to drive meant fitness lawfully to drive.

Mr L had been on 17 September 2017 driving whilst unfit through drugs.

I wasn't minded to find that Admiral treated Mr L unfairly. I wasn't minded to find it fair and reasonable to direct Admiral to change its decision about cover or to withdraw its claim against Mr L or to meet his claim for his damaged car.

Subject to any further information from Mr L or from Admiral, my (first) provisional decision was that I didn't uphold this complaint. I didn't intend to direct Admiral Insurance Company Limited to do any more in response to this complaint.

my (second) provisional decision

After considering all the evidence, I issued a second provisional decision on this complaint to Mr L and to Admiral on 10 May 2021. I summarise my findings:

When he took out the policy in August 2017, Admiral's policy for Mr L contained the following General Condition:

*"If an accident happens whilst you... is driving your vehicle and:
- is found to be over the legal limit for alcohol or drugs..."*

I had underlined the words "*or drugs*" in the first bullet point. I accepted that Mr L was bound by those words in that bullet point.

Subject to any further information from Mr L or from Admiral, my provisional decision was that I didn't uphold this complaint. I didn't intend to direct Admiral Insurance Company Limited to do any more in response to this complaint.

Mr L disagrees with the second provisional decision. Ms L says, in summary, that:

- The only policy booklet amendment of which she and her son have been notified was made on 1 February 2018. That included "*Additional wording for drug driving offences*". There seems a very strong possibility that the words "*or drugs*" were only added on 1 February 2018.
- Ombudsman's decision DRN8803675 relates to an accident in December 2017. It sets out the same wording as Admiral's letter dated 17 April 2018.
- Mr L's policy was somewhat unusual in that its duration was for 10 months rather than the usual 12 months. This shorter policy may have had different terms.
- Admiral have made repeated mistakes during this process – she cannot rely on what they say without checking it.

- The policy documents produced by Admiral do not give any indication of the dates to which the policy relates. The only indication is on the very last page where there is a minuscule code that is only useful to Admiral, not the customer.
- She expects to see an amendment from 1 October 2017.
- She has looked at the policy that she received from Admiral on 4 November 2019. The General Conditions drink and drugs clause 11 actually appears on page 40. The 1 February 2018 amendment states page 39.
- She paid £270.00 pounds to an expert witness - to try and respond to the facts that Admiral had presented. It's particularly galling to now be told that they want to change the facts and so entirely ignore the evidence she has submitted.

Admiral agrees with the second provisional decision. It says, in summary, as follows:

- It has sent us copies of the following policy books which went live on the following dates:

01.02.17 – AD003 012
01.04.17 – AD003 013
01.10.17 – AD003 014
13.12.17 – AD003 016
01.02.18 – AD003 017
25.05.18 – AD003 018
19.09.18 – AD003 019
06.03.19 – AD003 020
- AD003 015 was created but never used as further changes were needed.

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 have to take into account the law, the policy terms, regulation and good practice. Overall I have to decide what is fair and reasonable.

All motor insurance policies offer cover to the policyholder against liability to third parties such as passengers, other road users and owners of roadside property. Most motor insurance policies also offer cover to the policyholder against damage to his own vehicle. All motor insurance policies contain policy terms about such cover, including limitations or exclusions of cover.

Under road traffic law, a motor insurer has a legal obligation to deal with a third party's claim even if the policyholder wasn't covered because of a policy term or a cancellation.

Insurers update their policy booklets from time to time. When a policyholder takes out or renews a policy, the insurer will refer the policyholder to the most recent version of its policy booklet. The terms in that booklet then apply until the policy comes to an end or is renewed – even if the booklet is amended in the meantime.

The duration of the policy is dealt with in a policy schedule. So I don't find it likely that Admiral has different policy booklets for ten-month and twelve-month policies.

In its final response letter dated 30 September 2019, Admiral said the following:

"If [Mr L] was driving the vehicle "whilst over the prescribed limit" for his prescribed medication he is classed as "driving whilst unfit" which is outlined in the second bullet point of Section 11; General Conditions of your cover. There has been an update to this condition since you accepted your policy, which is why "or drugs" has been added to bullet point 1 in the above. This does not change the second bullet point to which describes the circumstances of your reported incident"

So Admiral had said that the words "or drugs" weren't in the first bullet point when Mr L took out the policy in August 2017 but were added later.

After the first provisional decision, Admiral said that it added the words "or drugs" to the first bullet point in April 2017.

Ms L has referred to a complaint published under our decision reference number 8803675. That quotes policy wording omitting "or drugs" in the first bullet point as applying to an accident in December 2017. But the policy wording applied from the start of the policy year (or other period). And the decision doesn't say when the policy was taken out. So it could've been up to a year before the accident – that is as early as December 2016. The decision indicates that the words "or drugs" were added to the policy booklet after December 2016.

Admiral has referred to another complaint – which I believe led to a decision published under our decision reference number 4809391. That complaint included the suggestion that Admiral's policy wording hadn't kept up with the creation in 2015 of the offence of driving a motor vehicle with a proportion of a controlled drug above the specified limit. So I accept Admiral's statement that it changed its policy wording in April 2017 – shortly before the final decision on that complaint.

Ms L has recently sent us a document summarising amendments to the policy terms – she says with effect from about February 2018. The document mentions (without quoting it) additional wording to the drink and drugs clause 11 which it says is on page 40. And Ms L has shown us an extract from a policy booklet she says Admiral sent her with clause 11 on page 40. I cannot explain that.

But Admiral has recently sent us its policy booklet AD003 012 with the words "or drugs" missing from the drink and drugs clause 11 and its subsequent policy booklets from AD003 013 onwards with the words "or drugs" included in the drink or drugs clause 11. Crucially, I have found that Admiral made that change with effect from 1 April 2017.

So I find that – when he took out the policy in August 2017, Admiral's policy for Mr L was by reference to policy booklet AD003 013 issued on 1 April 2017 and contained the following General Condition:

*"If an accident happens whilst you... 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...
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 ... all sums paid (including all legal costs), whether in settlement or under a Judgement, of any claim arising from the accident."*

I have underlined the words “*or drugs*” in the first bullet point. I accept that Mr L was bound by those words in that bullet point.

In my view the drink or drugs exclusion isn't unusual and – whilst it may be ruinous for a driver who falls foul of it – I don't find the term unfair. But I will consider whether Admiral applied it fairly in Mr L's case.

Most motor insurance policies also contain a term that the insurer may decide how to deal with a claim involving a third party. Admiral's policy for Mr L contained the following term:

*“We are entitled to:
conduct the defence or settlement of any claim on your behalf”*

The effect of that term is that – on a question of liability to a third party – Admiral's view would prevail over Mr L's. Unlike a court dealing with a case between two drivers, we don't decide the extent to which either of them is responsible for causing injury or damage. But I will consider whether Admiral applied the policy term fairly in Mr L's case.

The conviction for driving on 17 September 2017 with a proportion of a controlled drug over the specified limit is enough evidence that Mr L had been on 17 September 2017 driving whilst over the legal limit for drugs.

I don't condone the making of mistakes in a final response letter. And I acknowledge that Admiral's mistake caused Ms L to spend time and money on addressing points under the second bullet point – unfitness to drive.

However, I'm satisfied that Mr L's driving over the legal limit for drugs engaged the consequences set out in the General Condition I've quoted. I'm also satisfied that such driving caused prejudice to Admiral's prospects of defending the third party claims.

So I don't find that Admiral treated Mr L unfairly by declining cover and dealing with the third party claims and telling Mr L that it would seek recovery from him of its outlay.

From its file, I'm satisfied that – in dealing with the third party claims - Admiral took into account all the relevant evidence. That included reports of the accident from Mr L, his passenger and the other driver. It also included the nature and location of the damage to each vehicle. It also included a police report and an investigator's report.

I'm satisfied that Admiral did a reasonable and proportionate investigation. It decided that – rather than incur the cost and risk of losing a court case – it would settle the third party claims. I can't say that Admiral's decision was unfair or unreasonable in the circumstances. There's no evidence that Admiral paid out more than it had to.

From its file, I'm satisfied that Admiral communicated with Mr and Ms L properly. Whilst Admiral's communications were unwelcome and caused Mr L and Ms L some distress, I can't say the communications were inappropriate or unfair.

Overall I don't find that Admiral treated Mr L unfairly. I don't find it fair and reasonable to direct Admiral to change its decision about cover or to withdraw its claim against Mr L or to meet his claim for his damaged car.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Admiral Insurance Company Limited to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 July 2021.

Christopher Gilbert

Ombudsman