

The complaint

Mrs D and Miss D complain about how Advantage Insurance Company Limited (“Advantage”) declined a claim and cancelled their motor insurance policy. They are represented in this complaint, but for ease I’ll refer to them throughout.

What happened

Mrs D and Miss D had a motor insurance policy with Advantage, which was a policy covering multiple vehicles in the same household.

Miss D was involved in an incident in her car and it was significantly damaged.

The police attended and breathalysed her about 40 minutes after the incident. She provided a specimen that was higher than the specified limit and was arrested. At a police station she then gave a second specimen which was under the limit. She was then released by the police.

Miss S made a claim from Advantage. It declined her claim and referred to this exclusion in the policy wording:

“4. Alcohol and drugs

You're not covered if an accident happens while you or anyone entitled to drive under your current Certificate of Motor Insurance:

- Is found to be over the prescribed limit for alcohol or drugs in the country where the incident happens*
- Is driving while unfit through alcohol, drugs or other substances, whether prescribed or not”*

Advantage cancelled the policy. It gave them a refund of £40 against a premium paid of about £1,700.

Mrs and Miss D complained. Advantage said it had acted fairly. It said because she’d blown over the limit at the roadside, it was entitled to reject her claim.

They remained unhappy and brought their complaint to this service. They ask that Advantage pay the claim and remove the cancellation marker it’s applied to both of their details. Miss D also says the cancellation has increased her premium and that she’s been supported by her friends and family to get around. She says she has been left in a difficult financial position.

Our investigator looked into their complaint and upheld it. He said he didn’t think it was fair for Advantage to decline the claim based on the first breathalyser test, because this test isn’t used for evidential purposes in criminal court. He thought Advantage should pay the claim, remove records of its cancellation from any databases and pay £150 compensation for Mrs

and Miss D's distress and inconvenience.

Advantage didn't agree with the view. Because it didn't agree, this complaint has been passed to me to make a final decision.

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.

In later correspondence with this service, Mrs and Miss D have confirmed that Advantage has now settled their claim for the damage to their car.

I've not been provided with details of exactly what Advantage has offered and paid to Mrs and Miss D, but it leaves me with the remaining issue of their distress and inconvenience to consider. In doing so, I'm going to talk about the process Advantage has gone through with this claim, but clearly I don't now need to tell it to handle the claim in a particular way.

I've thought carefully about the situation Miss D was in when she'd crashed her car. I can see from the file that the attending police breathalysed her and that she was over the limit. We've not been given details of the reading.

When she gave the second sample, which was about an hour and thirty minutes after the accident, her reading was lower than the limit. The level used by the police would be the lower of those taken, and I can see this was 20. The legal limit is 35, so Miss D was released from custody.

Advantage's position seems to be that Miss D must have been over the limit when she had the crash. But I don't agree. The police has provided evidence clearly stating that she wasn't over the limit shortly afterwards and crucially it's this evidence that states Miss D was under the "prescribed limit" used in Advantage's policy wording.

So I don't think it was fair of Advantage to decline the claim for this reason.

In correspondence with this service post-view, Advantage has also referred to Miss D being "unfit" to drive. But it has provided no evidence of this. It has made various allegations about the conduct of Miss D following the incident and makes somewhat spurious claims about the rate of alcohol absorption into the bloodstream.

I've considered its arguments and I don't think they are useful or fair.

So, because Advantage has no evidence to show that Miss D was either unfit or over the prescribed limit, it follows that I think it declined her claim unfairly.

Consequently, I also don't think it was fair for Advantage to cancel Mrs and Miss D's policy.

It seems to me that the fair thing to do here is that Advantage pay Miss D's claim, which I understand it has already done. I think it also needs to remove details that it cancelled their policy from their records, and any external database it has updated.

I mentioned above that Mrs and Miss D continue to be affected by Advantage's decision to not pay their claim and cancel the policy. They should contact their current insurers and update them about my decision, once Advantage has confirmed it has carried out my instructions.

I've also thought carefully about the impact of this, and particularly on Miss D. Taking everything into account, I think the figure of £150 compensation is appropriate for Mrs and Miss D's distress and inconvenience.

My final decision

It's my final decision that I uphold this complaint. I direct Advantage Insurance Company Limited to:

- Remove records of it cancelling their policy from Mrs and Miss D's records and confirm this had been done, to them.
- Pay Mrs and Miss D £150 compensation for their distress and inconvenience. If Advantage has already paid this, then it can be discounted.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Miss D to accept or reject my decision before 11 July 2023.

Richard Sowden
Ombudsman