

## **The complaint**

Mr R complains about Admiral Insurance (Gibraltar) Limited's ("Admiral") decision to decline his claim under his car insurance policy.

Mr R's complaint has been brought by a representative – who I'll refer to as Mrs R.

## **What happened**

Mr R was involved in a car accident for which he accepted responsibility. He made a claim to Admiral, but this was declined on the grounds that he was above the legal limit of alcohol. Mrs R complained about Admiral's decision as she says no charge of drink driving was brought against Mr R. She also complained about the delay in progressing the claim and also about other issues relating to Admiral's handling of the claim. Admiral responded and upheld Mrs R's complaint about delays in the claim and the length of time to deal with the complaint. Admiral paid £125 as compensation for the trouble and upset caused. Admiral accepted there had been delay in updating Mr R about the third party's claim costs, but they said they're unable to provide a total figure until the claim is concluded.

In relation to the decision to decline the claim, they said, although Mr R wasn't convicted of a drink driving offence, they've based their decision on the evidence provided by Mr R and the third party which confirms Mr R provided a breath reading at the scene which was above the legal limit and was subsequently arrested. Admiral say, for an insurer, the standard of proof required is lower than that of a court. They said a court will convict when the evidence is beyond reasonable doubt, whereas they consider evidence on the balance of probabilities. They said they believe on the balance of probabilities Mr R was over the prescribed limit of alcohol at the time of the accident. They said this means they won't deal with any damage to the car as a result of the accident. They also said their claims department may contact Mr R regarding any reimbursement of any costs they incur as a result of the third party's claim.

Our investigator looked into things for Mr R. He thought Admiral hadn't acted unreasonably in declining the claim, and their compensation of £125 was fair. Mr R disagreed so the matter has come to me for a 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.

Having done so, I've decided not to uphold the complaint. I understand Mr R will be disappointed by this but I'll explain why I have made this decision.

### ***Claim decision***

My starting point is Mr R's car insurance policy booklet. This sets out the terms and conditions. Under a heading 'General conditions' and sub-heading 'Drink and drugs clause' it says, if an accident happens while any insured person is driving and is found to be over the legal limit for alcohol then *"No cover under the policy will be given and instead, liability will be*

*restricted to meeting the obligations as required by Road Traffic Law and we will cancel your policy."*

Information provided by Admiral shows, when Mr R notified Admiral of the claim, he accepted fault for the accident and also confirmed the police were called to the scene and he was being charged with the offence of driving without due care and attention. Claim notes provided by Admiral show the third party claimed Mr R was arrested at the scene for drink driving. The claim notes show Admiral then spoke with Mr R and Mrs R and queried this. The notes say Mr R explained the only charge being brought is careless driving. Admiral asked about the roadside and station readings and Mr R explained he believes the roadside test produced a reading of 36 micrograms ("mg") but the two station readings were 30mg. Admiral then requested a copy of the police report. I've looked at the police report and this confirms the details of the parties involved in the accident and notes that Mr R was convicted of driving without due care and attention – but it doesn't refer to any breath test readings.

The legal limit for alcohol is 35mg of alcohol per 100 millilitres of breath. The police report doesn't specify what Mr R's roadside breath reading was – and whether this was over the legal limit. So, I've carefully considered the information I do have. Firstly, Mr R informed Admiral he believed he provided a reading of 36mg. Mrs R has provided a timeline of events in which she notes the reading as 37mg. Both of these readings are over the legal limit.

There's no dispute that Mr R was arrested for a drink driving offence and driving without due care and attention - and this is also consistent with the third party's testimony. There's also no dispute that the police then carried out further breath tests at the police station. Mr R and Mrs R say these produced a reading of 30mg – which is below the legal limit. I'm persuaded the police station readings were below the legal limit as Mr R wasn't then subsequently charged with any drink driving offences. That said, I do believe the roadside reading was above the legal limit on the basis of the testimony provided by Mr R, Mrs R, and the third party. I'm further persuaded this was the case as I believe it's fair and safe to conclude that, had the roadside breath reading been below the legal limit, then it's unlikely the police would've asked Mr R to provide further breath specimens at the police station.

While I accept no charges were brought against Mr R for any drink driving related offence, Mr R did still provide a reading at the roadside which was above the legal limit. I agree with Admiral's point about the standard of proof being higher in criminal proceedings compared to civil proceedings – the latter being the standard of proof they use. And just because no charges were brought against Mr R for any drink driving offences this doesn't mean Admiral should disregard other information which shows evidence of a reading which is above the legal limit.

I think Admiral have acted fairly in taking into account information from a range of sources and then applied an appropriate standard of proof to reach the view that, on the balance of probabilities, it's more likely than not Mr R did provide a roadside breath reading above the legal limit. That being the case, I don't think their decision to decline the claim is unreasonable. And given that the terms and conditions allow them to cancel the policy in such circumstances, it follows that I don't think them cancelling the policy is unreasonable.

I note Mrs R questions the accuracy of roadside breath testing and says it's commonly known that there are issues with this method whereas the evidential breath testing which takes place at the police station is established as being more accurate – and this is why they're used in a court of law. Mrs R says the balance of probabilities argument being used by Admiral isn't fair in the circumstances here due to the known margins of error in roadside breath testing devices. I can see Mrs R has also provided a Home Office guide to 'Breath Alcohol Screening Devices'. I have carefully considered Mrs R's points and the information

she has provided but I'm not persuaded Admiral have acted unfairly in taking the roadside breath reading into account. While I don't have detailed knowledge about the technical specifications which might make an evidential breath test more reliable than a roadside breath test, I don't believe that changes what I believe is fair and reasonable here. Roadside breath testing is an established procedure used by the police so I can't say Admiral should disregard the reading this produced. As mentioned above, I agree two later breath test readings were under the legal limit, but that doesn't change the fact that, at the scene of the accident, a roadside reading was produced which was above the legal limit.

### *Premium refund*

I understand Mrs R says it's unfair for Admiral to not reimburse any part of the premium despite cancelling the policy. I note Mrs R feels, at the very least, the refund should apply from the date the policy was cancelled. Mrs R says that a decision on the claim should've been made sooner and, had it been made earlier, then the cancellation would also have been applied earlier. Mrs R says they haven't been able to benefit from the policy since the accident date so she feels there's an argument that Admiral should refund the premium from this date.

The terms and conditions of Mr R's policy sets out Admiral's cancellation rights. This says Admiral can cancel a policy if "*you break any of the following General conditions...*" It then lists the 'Drink and drugs clause' as one of those conditions. This section then goes further to say, "*If a claim has been made during the period of insurance, you must pay the full premium and no refund will be given.*" Given that Admiral have cancelled the policy based on a breach of one of the listed conditions, and based on there being a claim, I don't think it's unreasonable for Admiral to not provide a refund of the premium.

### *Third party claim costs*

I understand Mrs R is concerned that, despite Admiral informing Mr R they may contact him regarding any reimbursement of costs they incur as a result of the third party's claim, they haven't updated Mr R or Mrs R on the position with this claim.

The terms and conditions say, under the heading 'Right of recovery', "*If an incident occurs which is not covered by this policy and we are required by the law of any country to make a payment, we can recover that amount from you or any other insured person.*" Admiral have explained, while they've declined to provide cover for the damage to Mr R's car, they are obliged to deal with the third party's claim. And, in view of this policy term, it's not unreasonable for them to seek recovery of any payment from the policyholder. Admiral accept there has been delay in providing Mr R with information about their outlay. But, they say they're unable to provide a total figure until the cost of the total claim is completed. They say, once the claim is complete and the total cost is known, they'll be in contact to discuss this. So, taking this into account, while I acknowledge Mr R and Mrs R will want to know what the outlay is likely to be, I don't think it's unreasonable for Admiral to wait until the total costs are known before informing Mr R.

### *Claim delays and complaints handling*

The key facts about this part of the complaint aren't in dispute. Admiral have admitted they got things wrong with delays in deciding how to proceed with the claim and delay caused in dealing with the complaint. The only issue I have to decide is whether their payment of compensation is fair and reasonable. I think it's right that Admiral should compensate Mr R for the frustration and upset caused by their delays. To help decide what a fair and

reasonable level of compensation should be, I've looked at the error by Admiral and what the impact of that error has been.

The claim notes provided by Admiral show things could've been progressed sooner. For example, Admiral acknowledged the need to have sight of the police report, but this doesn't appear to have been requested until over a month later. While I don't think it was unreasonable for them to want to see this report, it's clear there was delay caused by them in requesting this – and this led to Mr R being frustrated at the length of time things were taking.

Complaint handling isn't a regulated or other covered activity. So as a general rule, and in line with the law, if the complaint is solely about complaint handling, we wouldn't be able to look into things. Where complaint handling forms a part of a customer's complaint, then we can take into account complaint handling when looking at the overall customer experience. In this case, I agree the issues which Mr R and Mrs R raise about the complaints handling – in this case the delays caused by Admiral - are an extension of the issues which relate to regulated activities. I can see this caused further frustration and upset to Mr R.

Taking this all into account, I think the £125 paid by Admiral is fair and reasonable in the circumstances.

I am sorry to disappoint Mr R and Mrs R, and I'm sorry to hear about the impact this event has had, and continues to have, on Mr R. I wish to reassure Mr R and Mrs R I've read and considered everything they've sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

### **My final decision**

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 June 2023.

Paviter Dhaddy  
**Ombudsman**