

The complaint

Mr B1 and Mr B2 have complained that their motor insurer, Admiral Insurance (Gibraltar) Limited ('Admiral'), refused to indemnify them after Mr B1 was involved in an accident.

Mr B1 is the main driver on the policy and Mr B2 is a named driver. For ease I will refer to all comments we have received from Mr B1 and Mr B2 as being from Mr B1.

What happened

I issued a provisional decision on this complaint earlier this month where I did not uphold this complaint. An extract from that decision follows:

"Mr B1 had a motor insurance policy with Admiral. In October 2021 as he was driving in a car park he says he lost control of his car and collided with six other cars. He made a claim to Admiral who rejected it and said that at the time he was driving while unfit through drink. It refused to provide indemnity (cover) for the accident. Admiral cancelled the policy 20 days later.

Mr B1 wasn't happy about Admiral's decision and complained. Admiral maintained its decision and repeated that Mr B1 had been convicted of driving while unfit through drink. It also said that Mr B1 had failed to protect his vehicle from loss or damage and that the incident came about because Mr B1's conduct had been inappropriate. It also questioned Mr B1's conduct whilst driving and why he didn't stop after colliding with one car and carried on to collide with five others. It added that under the policy it is allowed to make a recovery of any payments it pays out in relation to the claim.

Mr B1 responded to Admiral and said that he had not pleaded guilty to driving while "unfit through drink". He said he wasn't breathalysed at any point and held an honest belief that he was fit to drive.

In its final response Admiral said it didn't think it was unusual that the police didn't breathalyse Mr B1 as the accident happened on military property and not on a public road. It added that it didn't need a conviction to turn the claim down. It said it believed, based on reasonable doubt, that alcohol was a factor as Mr B1 had accepted he had consumed alcohol prior to driving his vehicle.

Mr B1 then complained to the Financial Ombudsman Service. He said he wanted Admiral to settle his claim.

Three Investigators looked at this complaint. The first one didn't think the complaint should be upheld. Mr B1 didn't agree. He said it wasn't the case that he hit one car and proceeded to hit the rest. There was one collision and it happened in a split second when he lost control around a sudden bend. He said the offence he was convicted of would not apply to a civilian and that he wasn't charged with driving under the influence. He said he pleaded guilty to a charge of misconduct upon advice from his barrister.

The second Investigator reviewed the complaint and thought it should be upheld. She didn't think Admiral had done enough to show Mr B1 was unfit to drive or that he displayed inappropriate behaviour. She also thought it should pay Mr B1 £200 compensation for the distress and inconvenience it caused him.

Admiral didn't agree. It said the charge Mr B1 pleaded guilty to did relate to intoxication and that Mr B1 had admitted to consuming alcohol before driving. It added that speed could have also been a factor. And, though speed wasn't measured at the time, five of the cars that were damaged were beyond repair which suggests the incident happened at speed.

A third Investigator reviewed the complaint and maintained the view that it should be upheld. The Investigator didn't think Admiral had shown that Mr B1 was over the limit. He accepted what Mr B1 had said about the police attending the incident but not feeling it was necessary for Mr B1 to be breathalysed.

Admiral didn't agree and asked for an Ombudsman's decision.

What I've provisionally 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.

The policy- General conditions

The policy includes a drink and drugs clause under "General conditions". This clause says that if an accident happens while any insured person is driving while unfit through drink or drugs no cover will be provided and instead liability will be restricted to meeting the obligations required under Road Traffic Law. It also says that Admiral will cancel the policy.

Admiral also relied on a clause which says that the insured person must protect their vehicle from loss or damage and that if they fail to do so this could affect the amount they are able to claim, result in their claims being refused and/or their policy being cancelled.

Admiral also said that it relied on a further clause which says that if an incident happens which is directly or indirectly caused or contributed to by the inappropriate conduct of the driver no cover will be given and instead Admiral's responsibility will be restricted to meeting the obligations as required by Road Traffic Law.

The policy also states that if an incident occurs which isn't covered by the policy and Admiral is required by law to make a payment, it can recover that amount from its insured.

The evidence

When Mr B1 reported the incident he said he was driving from one car park to another and collided with six stationary cars due to fatigue. He said the accident happened in the early hours of the morning. He added that he had been out with friends and had consumed some alcohol though he couldn't say when his last drink was. He said he wasn't breathalysed but tested for drugs and was found to be negative. He initially told Admiral he had been charged with five counts of criminal damage.

Admiral advised Mr B1 it wouldn't provide cover if he'd been driving under the influence or driving dangerously. But it said it would wait for the police report. Admiral also said that the third parties had argued that Mr B1 had been driving under the influence of alcohol.

The proceedings

In April 2022 Mr B1's case went to trial. He said he was not convicted of driving under the influence of alcohol or a similar offence.

Mr B1 has provided a copy of his barrister's note of the hearing. The barrister said that the Judge could not find impairment through alcohol as there was no evidence in support due to Mr B1 not being breathalysed. The barrister also pointed out that Mr B1 was never charged with or convicted of an offence of driving with excess alcohol or any offence that would require proof of the level of any impaired driving.

The barrister confirms that Mr B1 was charged and pleaded guilty to a military offence of misconduct through alcohol. He pointed out that this is different to a drink driving offence under the Road Traffic Act 1988 (RTA) which requires the level of alcohol in the body to be ascertained (via a test) and for the individual to be legally unfit through drink in order to be found guilty of that offence.

From what I have seen the offence Mr B1 pleaded guilty to states that a person is guilty of an offence of unfitness or misconduct through alcohol or drugs if, due to the influence of alcohol, they are unfit to be entrusted with their duty or any duty they may be reasonably expected to be called upon to perform or their behaviour is disorderly or likely to bring discredit to the military.

The barrister added that as the accident did not happen on a public road Mr B1 could not be charged with an offence under the RTA. But that Mr B1 could have been charged with other military offences (for example Contravention of Standing Orders or Disobedience of Lawful Commands) if he had been suspected of driving whilst unfit through alcohol. He wasn't charged with such offences.

The decision to refuse indemnity

Mr B1 has accepted that he had consumed alcohol before the incident, but he didn't remember when he'd had his last drink. Mr B1's main argument is that it wasn't considered necessary for him to be breathalysed and that he was never found to be over the limit.

The conditions I referred to above and which Admiral has relied on don't say that Mr B1 has to be convicted of an offence of drink driving in order for him to be considered to have breached the terms of his policy. They say that it is enough for him to be driving while unfit through alcohol. And Admiral only has to show, on the balance of probabilities and not on the basis of reasonable doubt which is a higher standard, that Mr B1 was unfit through alcohol and I think it has. And I say this due to the fact that Mr B1 pleaded guilty to an offence of unfitness or misconduct through alcohol meaning he potentially couldn't be entrusted to carry out military duties or that his behaviour was disorderly or could bring the military into disrepute.

But even if I didn't think Mr B1 was unfit to drive through alcohol, Admiral has also relied on conditions which say that Mr B1 failed to protect his car from damage or loss and that the incident was directly or indirectly caused or contributed to by Mr B1's inappropriate conduct. Inappropriate conduct isn't defined within the policy but I think pleading guilty to an offence of misconduct through alcohol would lead someone to conclude, on the balance of probabilities, that there was inappropriate conduct i.e. conduct that was not suitable for that particular situation (driving). Especially as the particular offence Mr B1 pleaded guilty to refers to disorderly behaviour.

Furthermore, the accident happened in a car park where, I expect, the speed limit to be low. Mr B1 said he lost control when going around a sudden bend. I think it is reasonable to expect there to be bends around a car park but I also think Admiral makes a fair point when it says that the severity of the damage caused to the other cars is substantial enough to

suggest Mr B1 was travelling at speed. And this is further supported by the fact that Mr B1 says there was only one impact. So that impact must have been severe enough for it to cause a concertina collision between six stationary cars. Even if there is no evidence of Mr B1's speed, I think these circumstances would, on balance, indicate inappropriate conduct and failing to protect the car from loss or damage. For these reasons, I think it is fair and reasonable for Admiral to rely on the clauses it has relied on.

Admiral said that under the policy it is entitled to seek reimbursement from Mr B1 for its outlay. After the complaint came to us Mr B1 informed us that Admiral is now seeking reimbursement of around £51,000 in damages from him. As this isn't part of the present complaint I am not able to deal with it here. What I will say is that if Mr B1 is unhappy with the fact that Admiral is seeking reimbursement and/or the amount it is seeking to recover from him, he is free to complain to it first and then to us. An Ombudsman should be able to consider whether Admiral is acting fairly and reasonably in the circumstances."

Admiral didn't respond to my provisional decision within the timescales provided. Mr B1 and Mr B2 did respond and their main comments were as follows:

- That Mr B1 hit four other cars and not six.
- Mr B1 did not plead guilty to driving while unfit through drink nor was he convicted of driving under the influence. Upon advice from his barrister he pleaded guilty to a charge of misconduct. And he was not convicted of an offence of driving with excess alcohol or any offence that would require proof of the level of any impaired driving.
- As pointed out by Mr B1's barrister he could have been charged with other offences had he been suspected of driving whilst unfit through alcohol.
- The judge decided that they could not find impairment without evidence. The judge applied a higher standard – that of reasonable doubt – to make their decision and it would be unreasonable to apply a lower standard, that of the balance of probabilities to override the judge's decision.
- Admiral hasn't done enough to show that Mr B1 displayed inappropriate behaviour. Mr B1 was never charged with displaying inappropriate behaviour and neither was this demonstrated nor ever mentioned in court.
- The accident happened very quickly and it didn't mean Mr B1 showed inappropriate behaviour or that he failed to protect the car. The car was his pride and joy and it took him years to save up to buy it and he always protected it.
- The cars Mr B1 collided with were repaired and not beyond economic repair. If speed had been a factor Mr B1 would have been charged with an offence which involved breaking the speed limit.
- Admiral said Mr B1 could not be charged with an offence of being unfit to be entrusted with his military duty (under section 20(1)(a) of the Armed Forces Act 2006 ("the Act")) as he was not on duty at the time so instead he pleaded guilty to an offence about his behaviour being disorderly (under s.20(1)(b) of the Act). And that they are both sections of the same offence and both relate to intoxication. This is not correct and if he had been deemed to be unfit to perform his duty he would have been charged with this offence even if he was off duty at the time. The bar would have been high as he is a member of the armed forces.
- The military police did not conduct an alcohol test and did not deem this to be necessary so Admiral cannot conclude that he was unfit to drive because of alcohol.
- We do not know what alcohol level Mr B1 had in his body as he was never tested so there is no evidence to support that he was over the limit. A test would have proven that he was not over the limit and the lack of evidence does not prove or support that he was. He was found innocent of any civilian law in court and only put his unit in disrepute as they are held to the highest standards.
- Mr B1 has cooperated fully with all the investigations.

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.

Before I go into my findings, I'd like to thank Mr B1 and Mr B2 for their continued engagement and for their helpful and detailed comments. I appreciate that this is a very stressful time for both of them and I thank them for their communication with us which has always been very courteous including when the outcome wasn't in their favour.

As I did in my provisional decision, I will refer to Mr B1 and Mr B2's comments as being Mr B1's for ease.

I note Mr B1 says there were four other cars and not six. As Mr B1 himself acknowledges, this does not impact my findings and I would like to explain that six cars were noted in Admiral's final response letter as well as its note of its initial conversation with Mr B1 around the time of the incident. But I note the particulars of the offence as provided by Admiral refer to and provide registrations for five other cars.

Mr B1 says he did not plead guilty to and was not convicted of an offence of being unfit through alcohol, or being over the limit. Or about his behaviour being inappropriate. He did not refuse to provide a sample and always cooperated with all investigations. I am afraid I don't fully agree with all these statements and I will explain why below. But what I will say is that I haven't seen anything that would suggest Mr B1 hasn't been cooperative with Admiral or with any other party or that he was asked and refused to provide a sample.

According to his barrister's note, Mr B1 was charged under s.20 of the Act (Unfitness or misconduct through alcohol or drugs). According to Admiral and to Mr B1 the specific sections says: "(1) A person subject to service law commits an offence if, due to the influence of alcohol or any drug – (a) he is unfit to be entrusted with his duty or any duty which he might reasonably expect to be called upon to perform; or (b) his behaviour is disorderly or likely to bring discredit to Her [His] Majesty's forces".

Mr B1 says he was only charged with and pleaded guilty to s.20(1)(b) and not s.20(1)(a). This is also confirmed in the extract from the court pleadings that Admiral provided. Mr B1 also says that Admiral didn't think he was charged under s.20(1)(a) as he wasn't on duty at the time but he says could have been charged regardless of whether he was on duty or not. And that he wasn't, as he wasn't deemed to be unfit to be entrusted with his duty. I note what Mr B1 has said but it doesn't change my provisional findings. Mr B1 pleading guilty to s.20(1)(b) still means he pleaded guilty to an offence under s.20 of the Act. And s.20 as a whole relates to unfitness or misconduct through alcohol (as stated in its title) while s.20(1)(b) specifically refers to behaviour that was disorderly or likely to bring discredit to Her (His) Majesty's forces. But that behaviour stems from unfitness or misconduct through alcohol (or drugs).

I note Mr B1 says he was not breathalysed and so there is no evidence of him being over the limit. And he also said he wasn't found guilty of any civilian offences. According to his barrister Mr B1 could not be charged with an offence under the RTA (specifically section 5 which relates to alcohol which I assume is what he is referring to) because he wasn't on a public road. So he may have been not guilty of a civilian court offence but only because he wasn't charged with one which was only because that wasn't possible due to the location of the accident.

But I do note that Mr B1 wasn't tested for alcohol, so we don't know what his alcohol level was at the time. And I also acknowledge that, according to his barrister, he could have been

charged with additional offences under the Act if he had been believed to have been unfit through alcohol – but he wasn't. And Mr B1 says that the judge applied a higher standard when deciding he wasn't unfit through alcohol (beyond reasonable doubt) rather than the balance of probabilities.

As I said in my provisional decision Admiral doesn't need Mr B1 to be convicted in order to show that it can rely on its alcohol exclusion term. And the standard it can apply is that of the balance of probabilities and not one of reasonable doubt. Reasonable doubt is indeed a higher bar and if this is the standard applied by the judge that may be why the judge didn't find any impairment through alcohol because Mr B1 was never tested for alcohol and so there wasn't sufficient evidence to reach a 'without doubt' conclusion. But Admiral only has to show that, on balance, Mr B1 was unfit to drive through alcohol, a lower bar which means less proof is required. As I said in my provisional decision I think it has. And I say this because, as I said above, the offence Mr B1 pleaded guilty to was an offence that relates to unfitness or misconduct through alcohol (or drugs).

Mr B1 said he wasn't charged or convicted of anything to do with inappropriate behaviour. I appreciate what Mr B1 says but as I said in my provisional decision and also above Mr B1 pleaded guilty to an offence of misconduct through alcohol and specifically to his behaviour being disorderly or likely to discredit the military. I think that would, on balance, suggest there being inappropriate behaviour.

Mr B1 also says he was not breaking the speed limit and that the cars he collided in to were repairable. In my provisional decision I said that the other cars sustained a lot of damage. From what I have seen the other cars sustained damage costing from around £7,000 or more each to fix. I think this indicates that the impact would have been substantial.

Having reviewed everything, Mr B1's comments in reply have not changed my views on the complaint as set out provisionally. My provisional findings, along with my comments here, are now the findings of this my final decision. And as I said in my provisional decision, if Mr B1 is unhappy about the fact that Admiral is now seeking reimbursement of its outlay from him and/or the amount it is seeking he is free to complain to it first and then to us. I have not made any findings in relation to those two issues in this decision.

My final decision

For the reasons 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 B1 and Mr B2 to accept or reject my decision before 26 July 2023.

Anastasia Serdari
Ombudsman