

The complaint

Mr M complains that Admiral Insurance (Gibraltar) Limited (Admiral) declined his claim following a road traffic accident he was involved in, under his motor insurance policy.

Mr M is represented by his mother (Mrs M) in his complaint. I will refer to Mr M in my decision for ease.

What happened

Mr M was involved in a serious collision whilst driving his car in December 2020. The car was badly damaged having struck a tree. Both Mr M and his passenger suffered significant injuries. Both were taken to hospital. Mr M's condition was considered to be very serious. He's since recovered but his everyday life has been impacted by the injuries he suffered.

Mr M says Admiral declined his claim following the accident as it says he'd been drinking alcohol and was likely to have been over the drink drive limit. But Mr M says his blood alcohol was tested after the collision and was below the drink drive limit.

In its complaint response Admiral says that approximately six hours after Mr M's accident, a blood test showed 55mg of alcohol per 100ml of his blood. It says the legal limit to drive is 80mg per 100ml of blood. This shows Mr M's reading was around 68% of the legal limit approximately six hours after the accident occurred. Admiral says it's probable the level of alcohol in Mr M's blood was over the legal limit at the time of the accident. So, it declined to indemnify him for his loss.

Mr M didn't think this was fair. He says the blood test showed he was under the legal alcohol limit to drive. He says Admiral shouldn't base its decision on probabilities. He says he'd been injected with a number of different medications at the time of his hospitalisation, which could also have impacted on his blood sample results. Because he disagreed with Admiral's decision he referred the matter to our service.

Our investigator upheld Mr M's complaint. He says it wasn't clear when the blood sample was taken that was used to identify his blood alcohol level. Because of this he didn't think Admiral could reasonably show Mr M was driving whilst over the legal alcohol limit. Our investigator didn't think Admiral could fairly rely on the policy exclusions it had to decline his claim. He says Admiral should settle the claim based on the remaining policy terms.

Admiral disagreed. It says on the balance of probabilities, Mr M's blood alcohol level exceeded the legally allowed level at the time of his accident. Our investigator didn't change his mind. So, Admiral asked for the matter to be considered by an ombudsman.

The complaint has now been passed to me to decide.

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 to uphold Mr M's complaint. Let me explain.

The policy terms Admiral relied on to decline Mr M's claim are copied below from the section entitled, 'General Conditions':

"11. Drink and drugs clause

If an accident happens while any insured person is driving and:

- is found to be over the legal limit for alcohol or drugs*
- is driving while 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 given and instead, liability will be restricted to meeting the obligations as required by Road Traffic Law and we will cancel your policy."

I've read the police statement relating to Mr M's accident. This says:

"A blood sample was taken from [Mr M] and tested at approximately 03:01hrs on 14/12/2020. This test was negative, 55mg of alcohol per 100ml of blood, with the legal limit being 80.

A 'count back' was requested, but there were too many unknown factors to calculate"

Mr M wasn't prosecuted for drink driving by the police. As the statement says - his blood alcohol level was found to be below the legal limit to drive.

That said it isn't necessary for the insured to be convicted of drink driving in order for an insurer to reasonably decline a claim. Criminal prosecutions must meet a higher test, which is that of beyond a reasonable doubt. The test here is that of what is most likely to be true based on the balance of probabilities. Admiral says that in Mr M's case the test result for his blood alcohol wasn't provided until around six hours after the accident. At this time, his alcohol level was approximately 68% of the drink drive limit. It has provided a response from its underwriter's that says:

"It's inconceivable to suggest that [Mr M] wouldn't have been over the limit at the time bearing in mind there is 6 hours of metabolised alcohol which would add to the 55. Roadside screening couldn't be taken due to injuries. While this isn't evidence beyond reasonable doubt, we feel it meets balance of probabilities".

In its final complaint response Admiral didn't explain how it assessed Mr M's blood alcohol level at the time of the accident. However, its claim records refer to the approach its underwriters used here. It says blood alcohol rates in adults reduce by approximately 20mg per hour. In Mr M's case this meant his blood alcohol level, at the time of the accident, was around 120mg higher than when it was tested - six hours later. This indicates Mr M's blood alcohol level would've been approximately 175mg per 100ml of blood at the time of the accident. This is in excess of the legal limit to drive.

Mr M argues that it isn't clear what time the sample was taken that was used to determine a blood alcohol level of 55mg per 100ml of blood. I note our investigator asked Admiral if it had evidence to show when the blood was taken. It responded to say the hospital's toxicology report would confirm the time the sample was taken, if this was needed. But it says the police statement recorded that the sample was taken and tested at approximately 03:01hrs. It says it was satisfied that its decline decision was correct based on this information.

Our investigator maintained his view. Following which Admiral responded to say it had sent all the evidence, but it didn't agree with this outcome.

I've thought carefully about the police statement and what this says about when Mr M's blood sample was taken. Having done so, I don't think it's clear when this happened. The statement says the sample was tested at approximately 03:01hrs on 14 December 2020. But it isn't specific about when the blood was taken. I don't think it's conclusively been shown that blood was taken at the same time as it was tested.

This is an important point in establishing whether it's probable Mr M was over the drink drive limit at the time of the accident. The closer to the time of the accident that the sample was taken, the less likely it is that Mr M was over the limit. Admiral was given the opportunity to provide evidence in support of this point, but it didn't respond.

Based on this, it can't reasonably be established that Mr M was over the drink drive limit at the time of the accident. None of the three policy exclusions highlighted by Admiral can therefore apply here.

In summary I don't think Admiral has reasonably shown, on the balance of probabilities, that Mr M was driving whilst over the drink drive limit at the time of the accident. He didn't fail to provide a specimen of breath, blood, or urine. As it can't reasonably show that Mr M was driving whilst over the legal limit, Admiral can't rely on the policy exclusion that he was unfit to drive through drink. Because of this, I agree with our investigator that Admiral should now consider Mr M's claim based on its remaining policy terms.

My final decision

My final decision is that I uphold this complaint. Admiral Insurance Company Limited should:

- consider Mr M's claim based on its remaining policy terms without relying on section 11 of its General Conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 October 2023.

Mike Waldron
Ombudsman