

## **The complaint**

Miss P complains about the repudiation of her motor insurance claim by Watford Insurance Company Europe Limited.

Watford are the underwriters (insurers) of this policy. Some of this complaint concerns the actions of their appointed agents, primarily the appointed interviewing agent. As Watford accept they are accountable for the actions of their agents, in my decision, any reference to Watford should be interpreted as also covering the actions of their appointed agents.

## **What happened**

The background to this complaint is well known to Miss P and Watford. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Miss P had a motor insurance policy with Watford. In October 2022, Miss P was involved in a road accident. No other cars were involved. She claimed against her insurance policy. Watford declined the claim.

Watford allege (in summary) that Miss P had been drinking alcohol prior to the accident. They also said by leaving the scene of the accident, this prevented police from breathalysing her sooner and it enabled her to use the defence that she'd only had a drink after the accident. They say that Miss P was later arrested but no criminal action taken against her is irrelevant.

Miss P, on the other hand, says she was in shock, had a panic attack and was crying after the accident. She'd initially tried to contact a friend with a recovery vehicle to recover her car from the scene, but her passenger's friend picked them up and drove to a friend's house/pub around 15 minutes away. She says she only drunk alcohol *after* the accident.

Miss P complained and as she remained unhappy, she referred her complaint to our Service for an independent review. Our Investigator considered the complaint and recommended that it be upheld. As Watford didn't accept, the complaint has been referred 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

I'm sorry to hear of the impact this claim and complaint has had on Miss P's mental wellbeing.

It's not my role in this complaint to determine exactly what occurred leading up to the accident or shortly afterwards. I'll be considering whether Watford have fairly and reasonably investigated and then considered the claim, in line with their policy terms.

Watford have relied on both terms below to decline this claim:

*"This Policy does not cover the following:*

*The below exclusions apply as well as the exclusions shown in each Section detailing the cover provided....*

*c) Involved in an incident following which You, a driver described on Your Certificate of Motor Insurance as an insured driver, or any other person are:*

- *Driving with an alcohol level in excess of the legal limit;*
- *Driving while unfit through drink or drugs;"*

Whilst I agree it was slightly unusual behaviour to leave the scene of the accident, I've also had to keep in mind what Miss P has told us about being in shock and the police report describes severe damage to the car. I've then considered the relatively short distance from the scene of the accident to the address Miss P went afterwards and the (approximately) three hours that passed before she was breathalysed.

I've kept in mind that the police took no further action against Miss P. Although it wasn't a policy requirement that Miss P be prosecuted for Watford to be able to rely on the relevant terms here, I've placed some weight on this fact (that she wasn't prosecuted). Watford have pointed to a bottle of alcohol being found in the car, but this could easily be attributed to the passenger who a witness described as smelling of alcohol.

As with any insurance claim, the starting point is the circumstances of the claim need to be as the policy holder has presented. On balance, I don't find sufficiently persuasive evidence presented by Watford that undermines Miss P's account of not having drunk alcohol prior to the accident.

The onus rested with Watford to show why (with sufficiently persuasive supporting evidence), on balance, that Miss P was over the legal limit and/or that she was unfit to drive at the time of the accident. I'm not persuaded that they can fairly rely on the drink driving exclusions in the specific circumstances of this complaint - given the available evidence.

The breathalyser reading was indeed over the legal limit – hours after the accident. But given the spirit (whiskey) that Miss P says she was drinking and the time that had passed, taken alongside the other available evidence in this complaint and Watford's investigation – they haven't shown it to be more likely than not that Miss P was drinking prior to the accident or that she was unfit to drive.

It follows that I find they've unfairly declined this claim when relying on the referenced policy terms.

#### *Other points*

Miss P accepted our Investigator's assessment, but for completeness I've also considered the below points.

In July 2023 (prior to their final response), Watford offered compensation of £100 in recognition of delays caused by them not requesting the police report sooner. As Miss P has

complained about her claim experience and time taken, I've also considered this point in my decision.

It's clear that it took much longer than either party would have liked for Watford to reach their claim decision. But when I've considered the overall, specific circumstances of the complaint, I don't find that Watford need to pay additional compensation

I've carefully noted Miss P's comments about financial difficulty and the adverse credit file impact that she says arose as a result of the ongoing claim. I'm very sorry to hear that. But I've kept in mind that her finance agreement was separate to the contract of insurance she had with Watford and her finance payments were due - regardless of whether a claim was ongoing or not.

Whilst I recognise Watford's claim decision took longer than either party anticipated, Miss P solely made the decision to take out further finance, on another car and no evidence has been presented that she tried to mitigate her financial exposure. By this, I mean looking at other options to avoid taking out a new finance agreement whilst she still had an outstanding one to pay. Therefore, in the specific circumstances of this complaint, I won't be asking Watford to compensate Miss P for the impact any claim delays had on her decision to take further finance, her financial ability to maintain her repayments on the insured car or any impact that has arisen as a result of missed repayments.

### **Putting things right**

I direct Watford Insurance Company Europe Limited to:

- reconsider this claim in line with remaining policy terms and;
- update any relevant internal records and external databases with the status of this claim.

### **My final decision**

My final decision is that I uphold this complaint. I direct Watford Insurance Company Europe Limited to follow my direction, as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 8 May 2024.

Daniel O'Shea  
**Ombudsman**