

The complaint

Mr D complains that Advantage Insurance Company Ltd (“Advantage”) rejected a claim under his motor insurance policy.

What happened

Mr D had a motor insurance policy with Advantage. The incident in question involved a named driver on his policy who is a family member of Mr D.

As it’s Mr D who’s made the complaint to Advantage and approached this service, for ease I’ll refer to him throughout.

Mr D was involved in an incident in his car when he crashed in heavy rain into a roadside barrier while distracted and trying to operate his wipers.

The police attended and breathalysed him. The level of alcohol in his breath was above the legal limit and he was arrested.

Blood samples were then taken and analysed, but the police reported the results were “inconclusive” and no further action was taken by the police against Mr D.

Mr D reported the incident to Advantage. It refused to pay his claim and cancelled his policy with seven days’ notice.

He complained to Advantage about a range of issues with the claim. Advantage upheld part of his complaint about storage fees. But it wouldn’t settle his claim.

Mr D remained unhappy and brought his complaint to this service. He asks that the policy is reinstated and his claim paid. He asks for travel costs to be paid and for an apology.

Our investigator looked into it and thought it wouldn’t be upheld. She said the evidence showed that Mr D was over the prescribed alcohol limit at the time of the incident. So she thought Advantage acted in line with its terms and conditions when it refused to pay his claim and cancelled his policy.

Mr D didn’t agree with the view. Because he 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.

Having done so, I’m not upholding Mr D’s complaint. I’ll explain why.

Our approach in cases like this is to consider whether the insurer has acted in line with the terms and conditions of the policy, and fairly and reasonably.

Advantage said it had declined Mr D's claim because he'd provided a specimen of breath that was over the legal limit allowed.

The appropriate part of the policy wording dealing with this is:

"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...*

That's not an unusual condition in my view and I'm satisfied that it is clear.

I can see from the file of evidence that Mr D's reading was 65 at the roadside. The legal limit is 35, so clearly the roadside reading shows the level of alcohol in his breath was almost double the maximum allowed amount.

Mr D says that the police don't prosecute on this basis alone and use a blood sample to prove or disprove the actual level of alcohol present. I can see from a police report that the blood sample was returned as "inconclusive".

He's also talked about the alcohol he'd consumed on the day of the crash, and I can see that 4-5 pints of beer shandy are mentioned. It's Mr D's position that shandy has a lower alcohol strength and could not have raised the blood alcohol level above the legal limit. He talks about the alcohol being consumed between 12-8pm that day, and none more from that point. He also mentions a prescription inhaler that had been used shortly before the breath sample was taken.

But the facts in this case seem to speak for themselves. Mr D drank several pints of alcohol that day, then drove late at night in heavy rain and crashed his car. When he was breathalysed, the reading was well above the allowable limit.

Advantage's policy wording allows it to decline his claim is he's "found to be over the prescribed limit for alcohol". I know Mr D says he wasn't prosecuted for the offence, but that's not what Advantage's wording says. Its wording is governed by civil law and matters are assessed on the basis of the 'balance of probabilities' rather than the higher bar of criminal law.

Mr D blew a reading of 65 while at the scene of the incident and this amount shows him in breach of his policy terms.

So, I think Advantage has acted in line with its policy terms and conditions in rejecting his claim and I'm not going to ask it to do more.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 May 2024.

Richard Sowden
Ombudsman