

The complaint

Mr C complains that Admiral Insurance (Gibraltar) Limited ('Admiral') declined a claim made on his car insurance policy because it considered he was driving over the legal alcohol limit.

What happened

Mr C was involved in an accident on 18 July 2023 when while driving his vehicle came off the road and collided with a tree. The police attended the scene and arrested Mr C on suspicion of driving whilst over the specified limit of alcohol. On the same night as the incident, Mr C was taken to a local hospital where a sample of blood was taken and seized by the police for testing.

Mr C reported the accident to Admiral and it carried out investigations. But during the course of the claim, Mr C's representative (who I'll call 'Mrs C') complained to Admiral on behalf of Mr C about poor service he had received and distress caused including by Admiral laughing during a phone call and accusing him of being a drunk driver, prematurely reaching a decision on the claim, and saying if he wasn't convicted of driving over the limit his claim would proceed.

Admiral provided a final response to this complaint on 19 August 2024. It upheld Mr C's complaint in part and agreed there were some service issues including that Mr C was shown a lack of empathy and laughed over during a call, that he was misinformed his claim would go ahead if there was no conviction, and that there was poor communication during the claim. In recognition of these issues, Admiral agreed to pay Mr C £250 compensation.

However, Admiral also said in this final response it was reviewing the claim further and would make a decision once it had reviewed information supplied by the police and had calculated Mr C's blood alcohol levels.

Admiral subsequently wrote to Mr C to confirm it had decided to decline the claim because it considered the evidence showed on balance of probabilities Mr C was over the legal limit for alcohol and as such was in breach of a clause in the policy terms which said no cover would be provided in the event an accident happens while the insured person is driving and found to be over the legal limit for alcohol, or driving while unfit through drink.

Dissatisfied with this response, Mr C referred his complaint to us. Our investigator didn't find Admiral had unfairly declined the claim. He acknowledged that Mr C ultimately wasn't convicted of driving over the limit but said the threshold for a conviction was higher than the threshold for Admiral to have reasonably declined the claim, and he thought Admiral had provided sufficient evidence to show on balance of probabilities Mr C was over the limit.

The investigator considered the service Mr C had received from Admiral and agreed there were aspects where it had treated Mr C unfairly. But he found the £250 compensation it had agreed to pay was fair and reasonable for the distress and inconvenience caused.

Mrs C, on behalf of Mr C, didn't agree. So, the complaint was referred 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, while I understand Mr C will be disappointed, I've decided not to uphold this complaint. I'll explain why.

I should start by saying while I've read and considered everything Mr C and Admiral have provided, I won't be commenting on every point made. I'll instead concentrate on what I consider are the key points I need to think about for me to reach a fair and reasonable decision. This isn't meant as a discourtesy to either party, but instead reflects the informal nature of this Service.

I've begun by looking at the policy terms and conditions. These say:

"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."

Therefore, if one of the above conditions is met, this would entitle Admiral under the policy terms to have declined the claim for the damage to Mr C's car. However, if Admiral believes the drink and drugs clause applies to the claim, the onus is on it to demonstrate this. And the threshold required for it to show this is on balance of probabilities – which to put in context means that Admiral needs to show out of the two possibilities that Mr C was either below the alcohol limit or above the alcohol limit when the accident happened, it was more likely he was above the limit.

I have considered if Admiral has shown it was reasonable for it to apply the drink and drugs clause to decline Mr C's claim.

I don't dispute Mr C wasn't convicted for driving over the limit. But the burden of proof for a conviction is for it to be shown beyond reasonable doubt that Mr C was driving over the alcohol limit. And given that the burden of proof for a conviction is higher than the requirement for Admiral to show on balance of probabilities the drink and drugs clause applied to Mr C's circumstances, the lack of a conviction by itself does not mean Admiral unfairly declined the claim.

Having considered the evidence, I find that Admiral has shown on balance that Mr C was found over the legal limit for alcohol. And as such, I don't find it unfairly applied the policy clause to decline his claim. I'll summarise below the points which have led me to find this:

- According to the police statement, prior to the accident Mr C had spent the evening at a pub and left shortly before 11.00pm.

- The police officer was then called to the scene after the accident at approximately 11.00pm and reported being able to smell intoxicants on Mr C's breath.
- A breathalyser test was taken at the scene which returned a result of a fail.
- It was not until around four hours later until a blood sample was taken, with the police statement saying this was obtained at 3.09am. The results of the blood test showed Mr C had 38 milligrams of alcohol per 100 millilitres of blood, which was below the legal limit of 80 milligrams. However, the time between the accident and the blood test being taken would have caused some elimination in the alcohol level.
- The police officer said that a back calculation was considered using average calculation rates would showed Mr C was *"likely to have been at or just over the limit."*
- Admiral carried out its own back calculation which using average levels of alcohol elimination produced a result of 48 milligrams of alcohol per 100 millilitres of blood. Admiral said that only the lowest and most uncommon alcohol elimination rate would have produced a result below the legal limit, and even then it would only be just below the limit.

I've next considered the level of service Mr C received from Admiral. Admiral has provided several call recordings, and I have listened to these.

Mr C reported the claim on 21 July 2023. During this call Mr C disclosed that he had failed the breathalyser test and towards the end of the call Admiral informed him it would need to refer the claim to its underwriters for review and in the event it couldn't deal with the claim Mr C would be liable for the cost of recovery and storage. Mr C asked if it was worth scrapping the car and was told not to make any decisions until he'd heard from the underwriting team.

Mrs C said Admiral advised Mr C his claim would be accepted if he wasn't convicted of being over limit. Admiral didn't dispute this saying in its final response that Mr C was informed on 17 July 2024 if he wasn't charged it would likely deal with the claim. And it upheld this complaint point and apologised for the inconvenience.

Although Admiral mistakenly gave this advice to Mr C, I do not find it reasonable for it to be bound to this mistake. So, I do not find it would be fair to require Admiral to settle the claim because it mistakenly informed Mr C his claim would likely be dealt with if he wasn't charged. I think the misadvice caused Mr C some distress from a loss of expectation. But I think Admiral reasonably responded to that by correctly informing Mr C in a later call on 17 July 2024 and in its final response the lack of a conviction would not ensure his claim would succeed, and by apologising for this and considering the complaint point within the £250 compensation it agreed to.

Admiral also said the later phone call on 17 July 2024 was handled poorly, and having listened to this call I wouldn't dispute that. I also acknowledge that on this call the handler did decline the claim based on Mr C's disclosure of failing a breathalyser test at the scene. While Admiral said in its final response it thought the call handler acted in accordance with the policy terms by doing this, Admiral subsequently did consider the claim further before making a final decision on it including by considering the results of the blood test. And, because it did consider the claim and additional evidence after this call, I don't think Mr C was disadvantaged by the call handler's more abrupt decision on the 17 July 2024 call.

In addition to these issues, Admiral also acknowledged that there was poor communication throughout the claim. It's good practice for insurers to pro-actively keep a customer updated on their progress of their claim. Not doing so can cause distress and inconvenience. So, I think it was fair for Admiral to uphold this point and consider it within the £250 compensation it agreed to pay.

While I don't find that Admiral unfairly declined the claim, I find there were issues with the level of service it provided to Mr C which would have caused him distress and inconvenience. So, I think compensation was warranted for that. But I find the £250 Admiral agreed to pay to be in line with the level of compensation that this Service would award for these issues and the impact they caused. So, I find Admiral has already provided a fair and reasonable response to service aspects of the claim.

Lastly, I understand that Mr C incurred some storage charges for his vehicle after the incident. As I set out earlier, when he reported the claim he asked if he should scrap the car and was told to await advice from Admiral's underwriting department. But Admiral wrote to Mr C on 1 August 2023 to confirm that it would agree to reimburse him the charges he incurred from 21 July 2023 to 1 August 2023 which I find a fair and reasonable response to put right any detriment caused to Mr C by having stored the vehicle for longer than was necessary.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 August 2025.

Daniel Tinkler
Ombudsman