

The complaint

Mr B complains that Admiral Insurance (Gibraltar) Limited unfairly turned down a claim on his motor insurance policy.

In bringing this complaint Mr B's mum has represented him. But, for ease of reading, I'll refer to his mum's comments as being his.

What happened

Mr B was returning from a function when he was involved in an accident. Mr B told Admiral that he swerved to avoid an animal, probably a dog or a small deer. Mr B's car ended up in a ditch. No other vehicles were involved.

At the scene Mr B tested as being over the legal limit for alcohol when police breathalysed him. He was then arrested and charged with drink driving.

Admiral said that as Mr B had been found over the legal limit it would not cover his claim for the damage to his car.

The Crown Prosecution Service (CPS) later discontinued the prosecution as it said there was *"not enough evidence to provide a realistic prospect of conviction."*

Mr B asked Admiral to review its decision to refuse his claim. Having done so Admiral said that its position remained unchanged. Mr B didn't think that was fair and complained. Admiral didn't uphold the complaint.

Mr B brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. He initially didn't think Admiral had dealt with them matter fairly. But, after reconsidering Admiral's further submission reviewed his findings and didn't think the complaint should be upheld.

Mr B didn't agree with our Investigator's complaint assessment so the matter's 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, for the reasons set out below, I don't uphold it.

Mr B's policy says –

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

- *is found to be over the legal limit for alcohol or drugs*
- ...
- ...

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. “

It's not my role to decide whether or not Mr B was over the legal limit and unfit to drive. Instead I need to decide whether Admiral – based on the information before it – declined Mr B's claim in line with the terms and conditions of the policy, acting fairly and reasonably.

First, I think it's useful to explain, an insurer and criminal Court or the CPS rely on different standards of proof when making decisions. The criminal Court convicts based on the standard of proof being 'beyond reasonable doubt' and generally the CPS won't recommend a prosecution where they don't believe they have sufficient evidence. An insurer makes its decision based on the civil standard of proof which is a lower standard than the criminal one – on the 'balance of probabilities'. It can be referred to as the Insurer being satisfied the occurrence of the event was more likely than not.

Mr B thinks it's unfair that Admiral has declined the claim when the CPS discontinued the case and he wasn't prosecuted. But the terms and conditions of his policy don't require him to have been convicted of drink driving for Admiral to rely on the exclusion. And, whilst Admiral needed to take account of the CPS's decision, it's also entitled to consider all other available evidence. Having done this, Admiral was satisfied, on the balance of probabilities, Mr B was driving while over the legal limit for alcohol.

Mr B's roadside breathalyser test showed that he was over the legal limit to drive. He did two further tests while at the police station. Both of those tests also showed him to be above the legal limit. However, my understanding is that because the difference between the two tests carried out at the station was more than 15%, as per the relevant guidance, the CPS adjudged the breathalyser evidence to be unreliable and so it discontinued the court action.

Mr B believes the policy term above shouldn't apply as a court did not find him to be above the legal limit. But as I've said above, the policy terms do not require a court to find that Mr B was over the legal limit. Instead the evidence needs to indicate that it was more likely than not that he was over the legal limit.

Mr B told Admiral that he'd had two or three glasses of champagne over a five hour period. So he does acknowledge he'd been drinking even if the amounts he disclosed as being consumed would seem on the low side to make him over the limit. And Mr B has suggested other factors, for example vomiting with the shock of the accident or acid reflux could have, essentially, caused a false positive. So I've thought very carefully about whether or not it was fair for Admiral to apply its policy terms and refuse Mr B's claim as it has.

The evidence Admiral is relying on includes:

- Mr B acknowledges drinking champagne before driving, although he doesn't know the exact amount.
- Mr B blew over the legal limit for alcohol at the roadside and was then arrested.
- He blew over the legal limit for alcohol on two more occasions at the police station.
- The roadside test and the first station test were consistent.
- He was in an accident where he lost control of his car.

As I've described above Mr B has offered some explanations for why the breathalyser may have produced a false positive. But I don't find those compelling. Such an explanation could perhaps explain the 'spike' in the test that caused the second reading at the police station to be higher than the first but I think that's unlikely to be the reason that all three tests produced

positive results. So I think it was fair for Admiral to say that Mr B was driving while over the legal limit for alcohol. In those circumstances it was fair to decline his claim.

I'm not ignoring the fact that the CPS found the police station breathalyser results unreliable. But it would appear to me that was a technical point of procedure. And while the results of roadside tests are not admissible evidence in court, the fact remains that Mr B blew above the legal limit on three separate occasions. So the fact that the CPS decided not to proceed was a technicality and not evidence that Mr B was not above the legal limit. And it doesn't mean that Admiral cannot consider the evidence from the police when it applied the terms set out above.

It follows that I think Admiral's decision to decline Mr B's claim was fair and reasonable in the circumstances.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 July 2025.

Joe Scott
Ombudsman