

The complaint

Miss H says Watford Insurance Company Europe Limited wrongly declined a claim she made on her motor insurance policy after an accident.

What happened

Miss H says that on 29 June 2024 at around 2am she swerved her vehicle to avoid a cat and collided with a tree. Miss H's foot was severely injured in the accident (requiring a month in hospital and six surgeries). She said that after a few minutes, as she couldn't find her mobile phone (which had been on the passenger seat) and no-one had come to her aid, she crawled to her nearby home to alert emergency services. Meanwhile, a neighbour had called the police, who arrived at Miss H's home around 15 minutes after she got there.

Miss H says she was unable to complete a breath test as requested due to the extreme pain she was in. She says that when asked by the police she said she'd had one drink four hours earlier (although the police said she told them she'd had a couple of glasses of wine). She also told them she'd used mouthwash, due to recent dental extractions. Miss H agreed to a blood test, which was carried out in hospital later, but the police mislaid the specimen. She wasn't prosecuted, but in May 2025 (after it received the police report) Watford declined the claim due to Miss H failing to provide a breath test. She complained about the decision. In response Watford said that - on the balance of probabilities -it thought Miss H had been driving when unfit to do so due to alcohol.

Miss H didn't think it was fair for Watford to change the reason for declining her claim, so she complained to us. One of our Investigators reviewed her complaint and concluded that Watford had acted reasonably. He said it had given weight to the evidence provided by the police, and that there were inconsistencies in Miss H's account (for example, her mobile phone was found to be in the front passenger seat footwell). He noted that Watford thought she had used delaying tactics. And in the absence of a breath test or a blood specimen analysis, he said it had to make a decision based on the balance of probabilities.

Miss H then provided more evidence, including full details of her injuries / hospital stays, CCTV of her crawling home, and dashcam evidence of the accident. But the Investigator's view didn't change. He said Miss H's injuries and the fact that she crawled home weren't disputed. He didn't think the dashcam footage showed that a cat caused her to swerve. He still thought it was reasonable for Watford to rely on the police evidence, and he said we couldn't deal with the alleged negligent acts on the part of the police referred to by Miss H.

As there was no agreement, the complaint was passed to me for review.

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.

Miss H wanted to be sure that all the information she'd submitted was reviewed by the ombudsman who dealt with her complaint. I can assure her that I've seen all of the evidence

from her, alongside all the evidence provided by Watford, although I won't comment on it all.

I have great sympathy for Miss H, given the traumatic nature of the accident and the severe injuries she sustained, which must have caused her much suffering for at least 14 months after the accident. Miss H has told us about her personal circumstances prior to the accident, and it can only have added to the great emotional distress she was already facing.

My role is to examine all the evidence pertaining to the accident and its aftermath objectively, and to determine whether I think Watford acted fairly and reasonably, and in line with the policy's terms and conditions.

The policy term relied on by Watford

Watford relies on Section 15 of the policy's General Exclusions, which says there will be no cover if a driver is (a) over the legal limit for alcohol consumption, (b) unfit to drive through drink or drugs, or (c) fails to provide a breath, blood or urine specimen (other than a roadside breath test). Initially, Watford said Miss H had failed to provide a breath test. But she argued that it was a roadside breath test – and that anyway, she had provided a blood sample for analysis. Watford accepted that, and in its response to her complaint it relied on its belief that she was unfit to drive through alcohol.

I don't think it was unreasonable for Watford to rely on another part of the relevant exclusion clause. I think it could have relied on both parts of the clause in the first place. And as the Investigator has pointed out, were Watford to have to consider the complaint again, it would reach the same outcome, so I don't think Miss H has been subjected to a detriment. In my opinion, the issue is whether Watford provided a reasonable explanation for why it thinks Miss H was probably unfit to drive due to alcohol. Frequently, insurers rely heavily on the testimony provided by the police, as well as the surrounding circumstances.

Watford's evidence / the surrounding circumstances

Watford hasn't challenged the severity of the accident, or of Miss H's injuries, or the fact that she crawled home. And it accepts that she provided a blood sample for analysis, albeit long after failing several times to provide a breath test. I think it's unfortunate that the police's bodycam footage wasn't provided by them, to Watford or to Miss H. It isn't only the disputed breath test situation that would have been clarified by it. Several of the issues below could also have been proven beyond doubt one way or another had it been made available.

In the absence of a breath test, a blood specimen analysis, or bodycam evidence, Watford had to make a decision about the claim based on the limited available information. The collision was in the early hours of the morning. Miss H said she was on her way home from meeting with friends. And she left the scene of the accident quickly. Those factors aren't conclusive, but they are often present in drink driving situations. I think it was fair for Watford to take all these factors into account. In addition, Miss H's mobile phone was photographed in the middle of the front passenger footwell. She said she couldn't find it, despite searching, due to the airbags. But normally they deflate quickly.

Watford also took into account the police report and the statement from one of several police officers who were present when Miss H was spoken to at home. These show that she admitted to having had more than one alcoholic drink. It isn't clear why she was asked about using mouthwash, but she accepted that she had done so. According to the police report, that was two minutes before they arrived. I can see why Watford found the evidence from the police persuasive and later relied on it.

In my opinion, it was reasonable for Watford to conclude, on the balance of probabilities, that

Miss H tried to use known delaying tactics to provide a specimen for analysis (whether in fact she did or not). In its experience, drivers often do so if they have concerns about being close to the legal alcohol limit.

Miss H's defence

Miss H has set out all the reasons why she wouldn't have driven when unfit to do so through alcohol. She has explained in detail that she has far too much to lose through a conviction - personally and professionally - for her to have done anything wrong. I think all the reasons she gave were sound. They show that there would be severe potential consequences should Miss H have a conviction on her record. But unfortunately her circumstances and her previous clear driving record aren't proof that she was fit to drive on the night in question.

Miss H also says she co-operated with the police when they arrived (which is disputed in relation to the breath test). She says they made mistakes in recording that she'd had more than one drink and that she had used mouthwash just before they got to her home. And she has explained that she left the car to get home and call for help as soon as possible. Watford noted that she had left the car quickly, especially whilst injured. I think it's arguable that she had a valid reason to do so, but it remains unclear why she didn't call the emergency services immediately on her landline. The police say *they* had to call for an ambulance, and Miss H hasn't said otherwise.

Miss H thinks the dashcam footage from her vehicle shows that an animal or two animals dashed in front of it and led her to swerve several times, so in her view there's evidence to show that her efforts to avoid hitting the animal(s) caused the crash, rather than any other factor. She thinks Watford should have asked for the dashcam footage before making its decision, and I agree that it's good practice to check whether any is available.

I've now looked at the footage very carefully, several times, frame by frame. I think a cat or a similar small animal is visible on the right-hand side of the road, and there's another small object (which could also be an animal) on the left-hand side of the road. But I don't think the footage shows that an animal ran in front of the vehicle, or that Miss H swerved several times before crashing into the tree. So in my opinion, had Watford viewed the footage it would have made no difference to the outcome.

In summary

I don't think it was unreasonable for Watford to attach great weight to the evidence provided by the police, and to consider all the surrounding circumstances, before making its decision. In the absence of specimen analysis or bodycam evidence, Watford had to rely on the balance of probabilities. It thought the available evidence pointed to Miss H probably being unfit to drive due to alcohol. Unfortunately, I don't think Miss H's additional evidence resolves any of the disputed issues.

Miss H says she has complained to the police and that the complaint is being taken seriously, so some of the issues may well be resolved through that route. In the meantime, despite my sympathy for Miss H, I don't think Watford acted unreasonably in rejecting her claim, based on the evidence available to it. So I can't uphold her complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 24 December 2025.

**Susan Ewins
Ombudsman**