

The complaint

Mr D has complained about Admiral Insurance (Gibraltar) Limited's decision to reject a claim he made for damage to his car under his car insurance policy. Admiral said Mr D breached its 'drink driving' clause under the policy.

What happened

Mr D crashed his car into a lamp post. He left his car and walked home. Shortly after arriving home the police attended due to the abandoned car being reported. An officer asked Mr D to take a breathalyser test. The officer said the test result recorded Mr D to be above the drink driving limit. A further breath test was obtained later and showed Mr D to be below the drink driving limit. Mr D was later convicted of failing to stop after an accident. No other action was taken.

Admiral relied on the first breathalyser test results and inconsistent information Mr D gave in comparison to information provided by the police. It decided to reject Mr D's claim by applying its exclusion clause for drink driving.

Mr D complained about Admiral's decision. But it didn't uphold his complaint. So he brought his complaint to us.

One of our Investigators thought Admiral had acted reasonably and in line with the policy. Mr D disagrees. In summary he says the evidence relied on isn't enough for Admiral to apply the exclusion it did.

So Mr D wants an ombudsman 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.

Admiral says that on the balance of probabilities Mr D was over the drink driving limit at the time of the collision. The evidence it relied on was:

- At the time of the collision Mr D was found to be over the drink drive limit after undertaking a breath test.
- Mr D provided inconsistent accounts of what and when he had drunk before the collision, and after the collision but before he undertook the breath test.
- A statement given by the police officer who attended Mr D's home shortly after the collision.

I've also considered Mr D's points which in summary are:

- although the first breath test reading was over the limit this is not a definitive

result on its own. A later breath test did not show he was above the drink drive limit. He wasn't convicted of drink driving.

- Admiral's agent was biased towards him and he denies the content of a discussion that took place between him and the agent.
- The information provided by the police isn't correct.
- Mr D has been consistent.

Mr D said that after the collision he left his car and walked home. He said he couldn't find his mobile phone and knew his car would alert the police and his wife of the collision and as he had no way of contacting his wife, he wanted to get home to let her know he was ok. Mr D said the police arrived within minutes of his arrival home.

Admiral's call notes recorded that on 17 September 2024 Mr D answered the following questions:

"Were you breathalysed? Yes, the reading was negative."

"Any alcohol or drugs consumed prior? No"

On 20 September 2024 Admiral called the police and spoke to the officer who attended. This officer went on to provide Admiral with an email confirming that they asked Mr D to provide a breath test as Mr D had admitted to drinking alcohol and it could be smelt on his breath. The officer said the breath test confirmed a reading of 45 micrograms against a limit of 35 micrograms.

The officer said a second breath test was taken later at the hospital as Mr D was receiving treatment for an injury he sustained in the collision. This test showed a result of 34 micrograms, so just under the limit of 35 micrograms. As there was no realistic prospect of obtaining a sample over the limit, no further action was taken.

The officer said he asked Mr D when attending the house if he had drunk any alcohol in the last 20 minutes, which Mr D replied 'no'. The officer said Mr D told him he had last had a drink an hour and a half ago.

Mr D disputed the timeline between the two breath tests and said they were taken within a short period of time from each other. And he disputed the police officer's account. Mr D said he had two alcohol drinks several hours earlier. He said when he got home, he had a large drink of a spirit. Mr D says the reason why he didn't tell the officer about the spirit drink was because he had forgotten due to being in shock from the collision and in pain from his injury.

Mr D says Admiral's notes which he obtained through a Subject Access Request show the agent he spoke to on 20 September 2024 was biased and unprofessional. Mr D says Admiral apologised and paid compensation for the unprofessional comments by its agent. It isn't part of the complaint Mr D brought to us so I haven't made any finding on this, but have included it in the context of Mr D's view that it showed Admiral acted in a biased way.

Mr D says the police occurrence log shows the timeline between the breath tests was much shorter than the 'several hours' the officer quoted in his email to Admiral. He believes it is unfair for Admiral to ignore this log as the only contemporaneous evidence.

Mr D says Admiral's internal notes show it recognised the evidence may be insufficient.

I've carefully considered Mr D's comments. However, I don't find the timeline between the two breath tests in this case to carry weight or make a difference in relation to the overall evidence Admiral relied on when reaching its decision. Both the occurrence log and the police officer's email confirm the first breath test reading was 45 micrograms, taken shortly after the collision.

I agree that comments made by the agent in Admiral's notes were unprofessional. This doesn't mean they show the agent inaccurately recorded what Mr D said and behaved in a biased way towards him. The agent was disappointed that the call hadn't been recorded to support the discussion. And the fact that Admiral considered the possibility of validating the claim arguably shows it acted impartially and fairly before reaching its decision.

From the information recorded in call notes on 17 September 2024, 20 September 2024, the police officer's email dated 2 October 2024, Mr D provided different information as to how much he had drank, and when. So I don't find on balance that Mr D provided a consistent account.

Admiral relied on a policy exclusion to reject Mr D's claim. I've looked at the policy terms and conditions and within the general terms it says;

"11. 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."

It's important to note that the insurers' burden of proof is the balance of probabilities – which is less than the burden of beyond reasonable doubt required by the courts. Admiral says if *'found to be'* rather than *'convicted of'* and so it doesn't need to evidence a prosecution. I think the policy wording is clear.

Putting all of its concerns together from the available information, I'm satisfied Admiral have provided enough evidence to prove the policy terms weren't followed.

I think Admiral reasonably and fairly decided that Mr D was found to be over the legal limit for alcohol at the time of the accident. This means I'm not asking it to consider Mr D's claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 March 2026.

Geraldine Newbold
Ombudsman