

The complaint

Mr R complains Advantage Insurance Company Limited (Advantage) unfairly declined to settle his claim on his motor insurance policy.

Advantage are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the intermediary. As Advantage have accepted it is accountable for the actions of the intermediary, in my decision, any reference to Advantage includes the actions of the intermediary.

What happened

On 25 June 2024 Mr R was involved in an accident whilst driving his car.

When the accident happened, the police attended and Mr R was breathalysed at the roadside and was found to be almost double the legal limit. He was taken to hospital and blood tests were completed.

The following day Mr R made a claim on his motor insurance policy. His car was deemed a total loss. After obtaining evidence from the police regarding the incident Advantage said it wouldn't be able to provide cover for the accident, and it would be cancelling his insurance policy. It said he had broken the terms of his policy at the time of the accident and therefore cover was excluded under the terms of his policy.

Mr R asked Advantage to keep his claim open whilst he obtained further evidence. In January 2025 he provided evidence that blood tests taken at the hospital after the incident, had come back *negative* which proved he wasn't driving under the influence of alcohol. Advantage said while it wouldn't cancel his policy, it would still not be able to provide cover for the incident due to the terms and conditions of his policy.

Because Mr R was not happy with Advantage, he brought the complaint to our service.

Our investigator didn't uphold the complaint. They looked into the case and said the blood tests were returned under the limit although they were very close to it, and time had passed between the breathalyser results and the blood tests being completed. They didn't think Advantage had been unreasonable when saying he was unfit to drive at the time of the accident and it had acted fairly, and in line with the terms and conditions which were in place at the time of the incident.

As Mr R is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

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.

In any insurance policy there are situations where the policy does not provide certain cover for injury, loss, damage or liability. In the terms and conditions of Mr R's policy it says;

“General exceptions

Your policy doesn't cover the following:

- *The use of the car/s while unfit through alcohol, drugs, medications or other substances, whether prescribed or not (and in this context the failure to provide a sample of breath, blood or urine when required to do so, without lawful reason shall be deemed to amount to such use)”*,

Advantage said it declined to settle Mr R's claim because this term had been broken at the time of the accident. It said the roadside breath test results showed 63 micrograms of alcohol per 100 millilitres (63mg/100ml) which was over the legal limit of 35.

When Mr R provided the toxicology report from the blood taken at the hospital, Advantage told him it wouldn't cancel his policy and would accept his claim. Shortly after, it apologised and told him it had made a mistake. It paid him £50 redress due to the incorrect information provided to him. It confirmed although it wouldn't cancel his policy, his claim still wouldn't be settled. It explained it was using the roadside breathalyser results as these were post collision. It said there was a delay in blood being taken and this could've impacted results.

I saw the results from the hospital found there to be 74 milligrams of alcohol per 100 millilitres of Mr R's blood, the legal limit being 80 milligrams of alcohol per 100 millilitres of blood. Although this is slightly below the legal limit there was still alcohol present at the time of testing his blood, so the test was not negative as Mr R claimed. I saw when making his claim Advantage asked Mr R if he had consumed any alcohol or drugs prior to the incident occurring and he responded “no”. These test results prove he had consumed alcohol.

I understand Mr R is unhappy with Advantage's decision to decline to settle his claim and said the roadside breath results cannot be used in court, and that the test was faulty. No evidence has been provided to show there were any faults with the equipment used at the roadside.

Advantage said it had considered both the roadside breath test and the blood test results, in addition to the statement from a police officer in attendance at the incident, the report of the incident from Mr R and the damage caused to his car to make its decision to decline his claim, due to him being unfit through alcohol at the time of the incident and therefore breaking the terms of his policy.

I'm satisfied that Advantage's burden of proof is the balance of probabilities, which is less than the courts. So, it can rely on the drink and drugs clause in the terms and conditions of the policy without a formal finding from the court if it can show that on balance Mr R was over the legal limit at the time of the incident.

Based on the evidence I have seen, it feels like on balance, Mr R was over the legal limit at the time of the incident. And I am satisfied that's a fair and reasonable conclusion based on the evidence provided to me.

Therefore, I don't uphold Mr R's complaint and don't require Advantage to do anything further in this case.

My final decision

For the reasons I have given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or

reject my decision before 17 February 2026.

Sally-Ann Harding
Ombudsman