

complaint

Mr G complains that Admiral Insurance Company Limited declined his car insurance claim, delayed their decision unnecessarily and failed to provide him with information he requested.

background

Mr G has car insurance with Admiral.

He was involved in an accident and breathalysed at the scene, the reading was 41 mg / 100 ml of breath.

He was later breathalysed again at the police station. The reading was 39 mg / 100 ml of breath.

Mr G wasn't prosecuted for drink-driving. He says the reading of 39 mg / 100 ml of breath is below the threshold at which the police prosecute.

Admiral didn't make a decision on the accident claim because they were waiting for information from the police regarding the breathalyser readings. They then declined the claim on the basis Mr G was over the legal limit for alcohol when the accident occurred.

Mr G made a complaint to Admiral. He said they'd delayed the claim unnecessarily because he'd told them about the breathalyser readings.

He said they shouldn't decline the claim because he was below the "prosecution limit" for alcohol at the time of the accident.

And he said they hadn't provided him with a recording of the call he'd made when he reported the accident despite him making a subject access request under the Data Protection Act.

Admiral didn't uphold Mr G's complaint so he brought it to us. Our investigator looked into it and didn't think Admiral had done anything wrong.

Mr G disagreed and asked for a final decision from an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've looked at Mr G's policy. This says:

"If an accident happens whilst you... (are) found to be over the legal limit for alcohol or drugs...no cover under the policy will be provided..."

The legal limit for alcohol whilst driving is 35 mg / 100 ml of breath. So, Mr G – with readings of 41 and 39 mg – was over the legal limit.

Mr G has pointed out that home office guidance suggests breathalyser equipment has an accuracy tolerance of plus or minus 3 mgs. It also says two tests should be taken and the lowest reading used.

Mr G's lowest reading is 39 mg. Taking off the 3 mg accuracy tolerance leaves 36 mg. That's still above the legal limit.

Mr G has also said his reading was below the "prosecution limit" (40 mg). The policy doesn't say no cover will be provided if you're over the prosecution limit or if you get prosecuted. It says there's no cover if you're over the legal limit (35 mg).

Mr G also says the policy term is unusual, unfair and ambiguous. And that therefore Admiral shouldn't be allowed to rely on it to decline his claim. And it ought to have been pointed out to him when he bought the policy.

It isn't unusual. It's included in many car insurance policies. And I think most people would expect to see it in car insurance policies.

It's not hidden in the small print of Mr G's policy. I don't see why he would expect that it should be brought specifically to his attention before he bought the policy.

It's not onerous or unfair either. I can't imagine that anyone would believe they could or should be entitled to buy a policy which allowed claims to be met if the policyholder was driving whilst over the legal limit for alcohol.

And the policy term isn't ambiguous, in my view. I can't see any reasonable reading of it which would suggest Mr G's claim might be met given the breathalyser readings at the time of the accident.

It wasn't unreasonable or unfair for Admiral to delay making a decision on this claim until they had the police report which detailed the breathalyser readings.

It's entirely understandable that they wanted to see independent verification of the facts before they made a decision. And Admiral aren't responsible for any delays in the police providing their report.

In any case, as I understand it, once Mr G confirmed he had a copy of the breathalyser readings and provided it, Admiral made a decision reasonably speedily.

Admiral say they initially responded to Mr G's subject access request in a timely manner. He later said he hadn't received the information. Admiral sent it again – one day after Mr G had told them he hadn't received it - and asked Mr G to get back to them if he didn't receive it again.

If Mr G had received the original response, he would have had the requested information within days. He didn't report that he hadn't received it until over a month later and the response was sent again almost immediately. The total elapsed time from the first request to the second response was just over a month. In all of the circumstances, I can't say that's unfair or unreasonable.

In summary: the decision to decline the claim is reasonable; the delays in the decision weren't Admiral's fault and in any case weren't unreasonable; and the responses to Mr G's requests for information were reasonably prompt.

I can't find any reason at all to suggest Admiral have acted in any way unfairly or unreasonably towards Mr G in the way they handled this claim.

my final decision

For the reasons set out above, I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 July 2019.

Neil Marshall
ombudsman