

complaint

Mr L complains about the handling of a claim by Admiral Insurance Company Limited under his motor insurance policy

background

In April 2017 Mr L was involved in a road traffic accident. The police told Admiral that Mr L had been breathalysed at the roadside and the police station. In both tests the reading was 45 mg / 100 ml of breath. The legal limit was 35 mg / 100 ml of breath.

Despite this, the criminal prosecution against Mr L was dismissed. That's because the police officers who'd taken the readings hadn't switched their radios to 'transit inhibit mode'.

Admiral declined Mr L's claim under the terms and conditions of the policy. It said that on the balance of probabilities, it considered that Mr L was over the legal limit of alcohol at the time of the accident.

As the issuer of a certificate of insurance, Admiral was legally obliged to indemnify the third parties to the accident. So it has sought to recover its outlay from Mr L. Mr L is particularly unhappy about this. He says the breathalyser readings aren't valid because the police didn't follow the correct procedures, so the police have lost all credibility. He also points out that he wasn't convicted of drink driving. So he thinks Admiral have treated him unfairly.

Our investigator looked into what happened. He didn't think Admiral had done anything wrong. He said that in making its decision, Admiral relied (amongst other things) on what the police had told it about the results of the relevant breath tests. Admiral's terms and conditions say that if a person is found to be over the prescribed limit for alcohol or to be found driving whilst unfit through drink or drugs no cover under the policy will be provided.

Our investigator accepted that the criminal case against Mr L was dismissed. But he said that if Mr L's case against Admiral were to go to court, it would be a civil law case. Evidential requirements are different in criminal and civil cases. Civil law cases have to be proved on the balance of probabilities – not beyond reasonable doubt. So Admiral was entitled to rely on the evidence the police had provided it with and come to the conclusion that on the balance of probabilities, Mr L was over the legal limit of alcohol at the time of the accident.

Our investigator said that along with the results of the breathalyser readings he could see that under the drink drive booklet completed by the police it said that "there is no evidence or reason to suggest that EBTIs (Evidential breath Testing Instruments) are affected by radios or mobile telephones". Mr L said that was only the relevant police officer's opinion. He made other arguments when he first complained to Admiral, and he'd sent it a copy of an expert witness statement that had been prepared on his behalf, but it he didn't pursue those points with our service.

Mr L remained unhappy, so he asked for this case to be reviewed.

my findings

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, I've come to the same conclusion as our investigator. I'll explain why.

Admiral's terms and conditions are clear that if a person is found to be over the prescribed limit for alcohol or to be found driving whilst unfit through drink or drugs no cover under the policy will be provided.

The terms and conditions go on to say that:

If an accident happens whilst You or any person entitled to drive under Section 5 of Your current Certificate of Motor Insurance:

- *is found to be over the prescribed limit for alcohol*
- *is driving whilst 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 provided and instead, liability will be restricted to meeting the obligations as required by Road Traffic law. In those circumstances, We will recover from You or the driver, all sums paid (including all legal costs), whether in settlement or under a Judgment, of any claim arising from the accident.

So if Admiral considered that Mr L was over the prescribed limit for alcohol at the time of the accident, it was entitled to decline Mr L's claim. As it was legally obliged to indemnify the third parties to the accident, it would also be entitled to recover its outlay from Mr L.

The crux of Mr L's argument is that the criminal case against him for drink driving was dismissed by the criminal court, so Admiral can't say that he was over the prescribed limit for alcohol at the time of the accident. He argues that because the police officers who'd taken the readings hadn't switched their radios to 'transit inhibit mode', the readings were invalid, and shouldn't have been relied on.

I understand Mr L's argument. However, having considered all the available evidence I think Admiral was entitled to take the view that on the balance of probabilities Mr L was over the prescribed limit for alcohol at the time of the accident. I say this because there's no dispute that in both breath tests Mr L was found to be over the prescribed limit. I appreciate that Mr L thinks that the breathalyser evidence is invalidated by the fact that the police made a procedural mistake when they failed to switch their radios to 'transit inhibit mode'. But I'm afraid I disagree. The mistake meant that the breathalyser evidence wasn't admissible in a criminal trial. It didn't mean that Admiral wasn't able to use the breathalyser evidence when it considered whether Mr L was over the legal limit or not when the accident happened.

For completeness I should also say that I've asked Admiral for its thoughts on the expert witness statement that Mr L had sent it. It didn't appear that Mr L had pursued the arguments in it with Admiral or with us, and Admiral didn't comment on it in its final response. Admiral told us that it was on its file, so it had been considered. But less weight was put on this than the breathalyser readings the police took. That's because it was based on Mr L's account about what happened and how much he had had to drink. I understand why it took this view and I'm satisfied it was reasonable to do so.

Taking the matter as whole, I understand why Admiral reached the decision it did. I'm satisfied that its decision was fair and reasonable in all the circumstances. It follows that I don't uphold Mr L's 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 Mr L to accept or reject my decision before 26 August 2019.

Laura Forster
ombudsman