

complaint

Miss W complains about the handling of a claim by Admiral Insurance Company Limited under her motor insurance policy.

background

In December 2017 Miss W was involved in a road traffic accident. The police told Admiral that Miss W failed a breathalyser test at the roadside. The reading was 81 mg/100ml of breath whereas the legal limit is 35 mg/100 ml.

Miss W was then taken to a hospital in order to provide a urine sample for analysis. The police told Admiral that Miss W failed this test as well. The reading for this was 155 mg/100 ml of urine whereas the legal limit is 107 mg/100 ml.

Despite this, the criminal prosecution against Miss W was dismissed, due to errors with the urine sampling procedure.

Admiral declined Miss W's claim under the terms and conditions of the policy and is seeking to recover from her any costs it's incurred as a result of the accident. It said that on the balance of probabilities, it considered that Miss L was found to be over the legal limit of alcohol at the time of the accident.

Miss W complained to Admiral as she said it was unfair to decline her claim when the criminal case against her had been dismissed. She also said she was made to feel uncomfortable when Admiral asked her personal questions and that she felt discriminated against. She also raised issues with the length of the claims process and that she hadn't been regularly updated.

Admiral accepted that it could have done more to keep Miss W updated and offered £100 in recognition for the trouble and upset caused. However, it stuck by its decision to decline the claim and said it dealt with hers in the same way it would any other claim.

Miss W didn't agree and so brought the complaint to our service. Our investigator looked into what happened and didn't think Admiral had done anything wrong. He said that under the terms and conditions of her policy, Admiral was able to decline the claim if she was found to be over the prescribed limit for alcohol or to be found driving whilst unfit through drink.

Our investigator accepted that the criminal case against Miss W was dismissed. But he said that if Miss W'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, Miss W was over the legal limit.

Our investigator felt that the questions Admiral asked Miss W were fair as was the £100 offer for poor communication.

Miss W remains unhappy, so the complaint has been passed to me to issue a decision.

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 explain 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 this means that if Admiral thinks that Miss W was found to be over the prescribed limit for alcohol at the time of the accident, it's entitled to decline her claim. It also means that Admiral is able to recover its outlay from Miss W where it's obliged to pay for third party costs associated with the accident.

Miss W argues that Admiral can't fairly say she was over the prescribed limit as the criminal case against her for drink driving was dismissed by a criminal court. Although I understand Miss W's argument, the terms and conditions don't state she needs to be found by a criminal court or convicted to be 'found to be over the prescribed limit for alcohol.

I think Admiral was entitled to take the view that on the balance of probabilities she was found to be over the prescribed limit by the police when the accident occurred. I say this because there's no dispute that Miss W was found to be over the prescribed limit on the roadside breathalyser test. When asked during a phone call with Admiral the day after the accident happened, Miss W said that the breathalyser test was around 80 mg and Admiral later had this confirmed as 81 mg with the police.

I understand from the letter from Miss W's solicitor that she disputed the procedures whereby the police took a sample of urine from her and this ultimately led to the charge against her being dismissed. However, even if the urine sample was disregarded, I still think it would be fair for Admiral to rely on the breathalyser reading. This reading showed that Miss W was significantly over the legal limit, and as such, I understand why Admiral reached the decision it did. I'm satisfied that its decision was fair and reasonable in all the circumstances.

I've also considered the length of time taken to deal with the claim and the level of communication given to Miss W throughout. I've listened to a number of calls between Miss W and Admiral and from these it's clear that Miss W was very frustrated with the claim process. And I understand why. The claim took around nine months to be decided and during that time she was left paying for a vehicle she was unable to drive. However, I don't

think Admiral were responsible for the delay as it was unable to decide the claim until the court proceedings had been dealt with.

I also think Admiral was fair to ask the questions it did regarding Miss W's alcohol intake prior to the accident. She had provided conflicting information about how much she had consumed before she drove. And so Admiral wanted to determine its indemnity position - due to the driving while unfit through drink and/or drugs exclusion in her policy. So I can't agree that Admiral treated Miss W differently to how it would any of its customer's under these circumstances.

Admiral has acknowledged that it didn't respond to all of Miss W's emails and that it could've done more to keep her updated. But as I've explained, this didn't affect the progress of her claim and so I feel the £100 offered is fair and reasonable in the circumstances.

So taking into account all of the above, I think Admiral fairly declined the claim and I won't be asking it not to recover its outlay from Miss W. I also don't think Admiral caused any undue delays and so I won't be asking it to increase its offer of £100

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 W to accept or reject my decision before 21 November 2019.

John Norton
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