

## The complaint

Miss S complains about a declined claim on her motor insurance policy with Admiral Insurance (Gibraltar) Limited.

## What happened

The details of the claim are well known to both parties, so I won't repeat them again here. Instead, I'll summarise the background and focus on the reasons for my decision.

On 17 September 2021, Miss S had a collision with a traffic light and railings at a pedestrian crossing when driving home after being out with friends. It was in the early hours of the morning and the police attended the scene. Miss S failed to provide a specimen of breath and was arrested as a result. Later she was charged with drink driving but Miss S says she was acquitted when the matter went to Court.

Miss S claimed on her motor insurance policy. Admiral declined her claim, relying on the following exclusion.

*'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.'*

Miss S complained to Admiral who didn't change its position although it did offer £150 for the delays and shortfalls in its communications with her. As she remained unhappy, Miss S brought her complaint to our service. She says Admiral unreasonably delayed and declined her claim and the compensation offered isn't enough for the poor service she's received.

An Investigator considered the complaint and didn't recommend it be upheld as they couldn't say Admiral acted outside the terms of the policy. This is for the following reasons.

- No evidence had been provided of the Court acquitting Miss S.
- Miss S failed to provide a successful sample of breath at the scene after three attempts. And, when she called Admiral to make the claim, admitted to being over the drink drive limit.
- The police report stated Miss S had '*slurred speech, glazed eyes and smell of intoxicants on her breath*'.

Finally, the Investigator agreed with the compensation Admiral offered for its poor service. Miss S didn't accept the Investigator's recommendation and the matter has been referred to

me for a decision.

### **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.

I recognise I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this and it reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to comment on every individual argument to be able to reach what I consider to be a fair outcome.

Having done so, I must tell Miss S I'm satisfied the investigator has reached a fair outcome here. So, I don't uphold her complaint in this matter. I'll explain why.

I understand Admiral's decision has had significant consequences for Miss S, financially and from a wellbeing perspective. And I appreciate she's frustrated it rejected her claim even though she wasn't found guilty of drink driving when the matter went to Court. But it's not for me to comment on any decision made by the Court in this matter nor determine whether Miss S was unfit through drink or failed to provide a sample of breath. Instead, I need to decide whether Admiral - based on the information it had at the time - declined Miss S's claim in line with the terms and conditions of the policy, acting fairly and reasonably.

Firstly, I think it's useful to explain, an insurer and criminal Court rely on different standards of proof when making decisions. The criminal Court convicts based on the standard of proof being '*beyond reasonable doubt*'. An insurer makes its decision based on the civil standard of proof which is a lower standard of proof than the criminal one - on the '*balance of probabilities*'. It can be referred to as the Insurer being satisfied the occurrence of the event was more likely than not.

I can see Miss S feels it's unfair the claim has been declined when she says she wasn't found guilty of drink driving by the Court. But the terms and conditions of her motor insurance policy don't require Miss S to have been convicted of drink driving or failing to provide a specimen of breath for the exclusion to be relied on by Admiral. And, whilst Admiral should take into account the Court's decision, it's also entitled to consider all other available evidence. Having done this, Admiral was satisfied, on the balance of probabilities, Miss L was driving while unfit through drink at the time of the collision and failed to provide a sample of breath. The evidence it relies on includes the following.

- Two witness statements from police officers which confirm Miss S was arrested for failing to provide a breath sample at the roadside after three failed attempts.
- One of police officers statements which said, when speaking to Miss S at the scene, the officer could see '*her eyes were glazed, her speech was slurred, and I could smell intoxicants on her breath which made me suspect she was under the influence of alcohol*'.
- Phone calls between Miss S and Admiral where the notes record:
  - o Miss S as saying '*her sol has told her to plead not guilty but she was over the limit*' - 21 September 2021.
  - o The above call was listened to and the notes made as a result state '*Agent asks the [policyholder] is [sic] she was DUI and when she was breathalysed she was definitely over the limit. [Policyholder] confirms that she was. Agent*

*confirms that as she was over the limit we would not deal & even if not prosecuted, we still wouldn't deal'.*

- Miss S as saying '*on legal advice she has pleaded not guilty to the charge whilst over the limit as there were serious irregularities in the procedures adopted by the police*' – 1 November 2021.

In light of this, I'm satisfied Admiral fairly and reasonably considered the evidence here before reaching their position that – on the balance of probabilities – Miss L:

- was driving while unfit through drink at the time of the accident; and
- failed to provide a specimen of breath.

It follows Admiral fairly and reasonably applied the policy exclusion under the '*drink and drugs clause*' to decline Miss S's claim and cancel her policy. So, I don't intend to interfere with this by asking it to do anything differently.

I note Miss S says the calls referred to above were at a time of deep distress, close to the accident, when she was in a state of shock and had been wrongly informed of the actions she needed to take by the police. Further, as the court didn't find her guilty, she doesn't think this can be used as evidence to decline her claim. I don't see things the same. Both calls were after the incident and I don't think it likely the police would've told Miss S to say these things. Even if this is what happened, I don't think it likely Miss S would've made these statements to Admiral if they weren't correct.

I'm not ignoring the fact Miss S says she was 'acquitted' at Court. But I haven't seen any evidence of this. I have seen a message from her solicitor which says Miss S was '*effectively*' found not guilty, but the message says this is because the prosecution asked for an adjournment, and this was refused with no evidence offered. This isn't the same as being found not guilty (or being acquitted) of the offence of drink driving. And it doesn't mean Admiral wasn't able to use the evidence from the police when it decided whether it was entitled to rely on the '*drink and drugs clause*' in Miss S's claim. Even so, for the reasons set out above, the decision Admiral made is based on a different burden of proof and doesn't require Miss S to have been convicted of drink driving or failing to provide a specimen for it to be able to rely on the '*drink and drugs*' exclusion to decline her claim.

Finally, Miss S told Admiral she failed to provide a sample of breath at the roadside due to asthma. I find it unlikely Miss S would've been charged with failing to provide the breath test if her version of events was accurate and she was medically prevented from providing a sample. I say this particularly noting there was no mention of this in the police report. I've also not seen any medical evidence to support this.

In summary, in the specific circumstances of this complaint, I find Admiral have fairly and reasonably considered the evidence here before reaching their position and I don't seek to interfere with it. At the core of this dispute, I find Miss S's failure to provide a sample at the roadside and the evidence from the police officers in attendance and the things she told Admiral mean the position taken by Admiral is both fair and reasonable.

In relation to the delays and service issues experienced, Admiral admits it got things wrong. The issue I must decide is whether the things it did to put matters right are a fair and reasonable way to resolve this complaint. I'm satisfied it is.

I can see from what has been said by Miss S she has found this claim understandably difficult and has been both mentally and financially impacted. But I also think it's important to say Admiral took this matter seriously and recognised the impact of its actions when the

complaint was raised by offering compensation for its failings, apologising for the impact and providing feedback to individuals involved.

Taking everything into account, I think the amount offered by Admiral adequately recognises the failures Admiral and their agents have made which have elongated the claim process and added further distress and inconvenience in addition to what Miss S would've experienced due to the collision and resulting Court proceedings – which Admiral isn't responsible for.

I recognise Miss S will be disappointed with the outcome, but this decision ends what we – in seeking to resolve this complaint against Admiral – can do for her.

### **My final decision**

For the reasons given above, my final decision is I don't uphold this complaint. So, Admiral Insurance (Gibraltar) Limited doesn't need to do anything more than it's agreed to do to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 23 August 2023.

Rebecca Ellis  
**Ombudsman**