

The complaint

Mr O complains about Admiral Insurance (Gibraltar) Limited's decision to decline a claim and cancel his policy after he was involved in a road traffic accident.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr O had been represented in making this complaint by family members.

Mr O had a car insurance policy underwritten by Admiral. He made a claim after he was involved in an accident in March 2023.

Mr O told Admiral that the Police had attended the accident, breathalysed him and arrested him. They later took blood for analysis. Mr O said the breathalyser result had been above the legal limit (by some distance). Mr O told Admiral that he had been drinking before the accident.

Admiral then declined the claim and cancelled the policy. They referred Mr O to the policy terms. These say that Admiral will not provide cover under the policy – and will cancel the policy – if the insured is found to be driving whilst over the legal limit and/or unfit to drive through drink or drugs.

Mr O wasn't happy with this and made a complaint to Admiral. He believes it's unfair for Admiral to take those steps without sufficient proof that he was driving whilst over the legal limit or unfit to drive through drink.

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

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

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.

There's no dispute here about what the policy terms say, so I won't quote them in detail. They basically say that Admiral will be entitled to decline any claim and cancel a policy if the policyholder is found to be driving over the legal limit for alcohol.

Mr O wasn't prosecuted by the Police. And the blood sample he gave at the Police station showed alcohol in the blood at below the legal limit. That's possibly because the sample wasn't taken until around six hours after the accident. The reason for that delay would have to be explained by the Police.

We've listened to a recording of the relevant phone call between Mr O and Admiral. When

asked, he says he was breathalysed – with a result of either 52 or 62mg. Mr O doesn't articulate this entirely clearly, but it is absolutely certain that he says either 52 or 62.

Mr O's representative has questioned the validity of the breathalyser test. However, it is well over the legal limit and well beyond any tolerance allowed for slightly inaccurate calibration of the equipment etc.

The representative has also questioned Mr O's own recollection. They say Mr O has ADHD and may have forgotten what he was told by the Police when he was breathalysed and/or been confused. However, it is very unlikely the Police would have arrested Mr O if the breathalyser reading had been below or close to the legal limit.

Mr O's representative has given an account of the evening in question and the amount Mr O had drunk which flatly contradicts what Mr O told Admiral.

Mr O did not appear in any way confused during the conversation with Admiral. And he was very firm in answering the questions put to him. He did not hesitate in his answers, did not say he was unsure and did not say he might not recall exactly – at any point.

Mr O's own account of his drinking that day tallies with the later breathalyser reading. He told Admiral he'd had two cans of cider before driving to his local town, a couple of drinks earlier than that and a further drink in town before he set off to drive back. And he finished drinking just before he set off.

Mr O's representative said he (Mr O) had drunk two cans that day. And so, the breathalyser reading (if it were 52 or 62mg) might not be reliable or accurate. I suspect that was the two cans the representative (a family member) was aware of, rather than the full extent of Mr O's drinking.

The family member also suggests Mr O was ill that day – and had been sent home from work – which again might affect the breathalyser reading. This doesn't correlate with Mr O's own admission to Admiral that he had been drinking before the two cans he had at home before setting off to his local town.

Admiral are entitled to believe what Mr O told them, rather than what they were later told by a family member who may not have been fully aware of the facts. Mr O was clearly alert and on the ball when he spoke to Admiral - and he gave a cogent and convincing narrative about what had happened that day.

In summary, the evidence available to Admiral strongly suggests that Mr O was very likely well over the legal limit when the accident occurred. I can't conclude that Admiral have acted in any way unfairly or unreasonably in applying the policy terms and declining the claim and cancelling the policy.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 November 2023.

Neil Marshall
Ombudsman