

The complaint

Mr M complains that Admiral Insurance (Gibraltar) Limited (“Admiral”) unfairly declined a claim he made on his motor insurance policy.

What happened

Mr M has comprehensive motor insurance with Admiral.

Unfortunately in September 2022 Mr M was involved in a road traffic accident after which he was taken into hospital. At the time of the accident Mr M's alcohol limit was tested and he was found to be over the limit at the roadside. Mr M says he contacted Admiral a few days after the accident and was asked a series of questions around the accident circumstances. Mr M told Admiral that the police had attended the scene and a urine sample was taken which would be tested in the coming weeks.

During the call Admiral explained it would be unable to proceed with the claim without the results of the test. It said if the urine test showed Mr M was over the legal alcohol limit to drive then Admiral wouldn't be able to deal with the claim. However if the test came back showing Mr M was under the limit then the claim would be dealt with.

Mr M says he was told it was usual practice for the underwriter to review the claim and once they had approved it Admiral would be able to deal with the claim. Mr M says he had around 38 calls with Admiral and in each call he was told the same thing – that once the test showed Mr M was under the legal limit to drive the claim would be dealt with as normal.

On 5 October 2022 Admiral declined Mr M's claim on the basis that the policy had an exclusion that if, at the time of the accident, the driver was found to be above the prescribed legal limit of alcohol, the insurer would be unable to provide indemnity.

Mr M provided Admiral with the urine alcohol test result of 26 October 2022 which proved he was not above the legal limit and therefore the policy terms hadn't been breached. Admiral declined the claim on the basis roadside testing showed Mr M was over the limit. Mr M maintains that was incorrect and the urine test confirmed this. He wants Admiral to deal with the claim and for him not to have to declare he's had insurance cancelled. So he complained to Admiral.

Admiral said it could see Mr M was led to believe that if the urine test result came back negative then the claim would be covered under the policy. Admiral accept Mr M was provided with incorrect information. It said it would always repudiate a claim based on the roadside reading immediately following the incident. Admiral said receiving a negative urine sample after the incident wouldn't change the outcome. It upheld the complaint and awarded Mr £150 for the distress and inconvenience caused.. Admiral agreed there were delays in the underwriter reviewing the claim and a decision being made on the claim, as well as lack of responses to his emails.

Mr M wasn't satisfied with the response from Admiral so he referred his complaint to this service. One of our investigator's looked into things for him. The investigator said the claim

had been repudiated reasonably and in line with the terms and conditions of the policy. Admiral apologised for the misinformation, the delays, and lack of response to Mr C's emails and paid Mr M £150 to reflect this.

Mr M didn't agree. He said he believed the test at the roadside was inaccurate and the urine test was taken shortly afterwards. So our investigator looked into things again and upheld the complaint. She said breathalysers were known to be inaccurate and Admiral had no evidence as to what the roadside reading was, or when the urine test was taken in relation to the accident. The investigator thought Admiral's investigation into the circumstances was inadequate. So she recommended Admiral pay the claim in settlement of the complaint.

In response Admiral offered to reopen the claim and investigate the matter further. It said it was offering to do this because if it decided to overturn its decision to repudiate the claim and advise the claim department the reason it had overturned, the claims department could decide to investigate further and confirm the times the tests were taken, and this may be enough to refer back to underwriters for review and may result in further evidence to confirm the repudiation. Our investigator didn't agree. She said Admiral had enough time to investigate the complaint but didn't do so. So, the complaint has come to me to decide.

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.

Admiral has pointed to the policy wording in section 11 'Drink and drugs abuse clause' which says;

"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."*

Mr M says the police didn't prosecute him for drink driving. But the terms and conditions don't state that he'd have needed to be prosecuted or found guilty of drink-driving in court for Admiral to decline the claim. Indeed Admiral notes the standard of proof for criminal conviction is higher than the civil standard which is what an insurer requires to decline a claim under a contract of insurance.

However based on what I've seen I'm not satisfied Admiral carried out a fair investigation to determine whether Mr M was, in fact, over the limit for alcohol at the time of the accident before deciding to decline the claim.

It isn't in dispute that the reading from Mr M's roadside breathalyser test was over the limit. But roadside breathalysers aren't 100% accurate. The legal alcohol limit in the UK is 35 micrograms of alcohol per 100 millilitres of breath. I haven't been given details of how much over the limit the breathalyser reading was. Nor have I seen anything to suggest that Admiral had a record of this.

Admiral invites me to conclude that notwithstanding the lack of certainty around the roadside reading, the fact that it is agreed that it was indicatively 'over' the limit is sufficient justification for it to decline the claim. I don't agree.

We know that Mr M's subsequent urine test showed him to be under the legal limit, but Admiral didn't obtain a copy of the police report, or a copy of the breathalyser reading. So there is no way of knowing how far over the limit the breathalyser reading was. I've seen a copy of the urine test results, but it doesn't show a time. It does show Mr M to have been comfortably under the limit when the urine test was carried out. And there is no evidence to show that Mr M failed to provide a sample when asked, or delayed in doing so, or in any other way failed to co-operate.

Admiral said the result of the urine sample was 'no less than 72 milligrams' with the legal limit being 107, 68% of the limit. Admiral admits it doesn't know what time the sample was taken but says there would normally be at least an hour or more delay before the sample was taken, but the time the policyholder was taken to the hospital and given 'the OK' by a doctor, more likely two hours plus, 'but we just don't know'.

Admiral's position is that on balance the policyholder would have been over the limit at the time of the accident because the breathalyser showed this, and he was over two thirds of the limit sometime after the accident. But the only really persuasive evidence here is the result of the evidential urine test taken a while afterwards, showing Mr M to be some way below the evidential standard to prosecute; so, overall, I don't think it has done enough to show that Mr M was actually over the prescribed limit when the accident happened, I don't think it was fair of it to decline the claim.

It seems to me the fair thing to do here is for Admiral to pay the claim and remove the cancelled insurance marker from his record. It has already agreed to compensate Mr M £150. I've thought carefully about whether £150 reflects the distress and inconvenience caused to Mr M. And I don't think it does.

Conclusion

Taking everything into account it's clear to me that an award is due to Mr M for the distress and inconvenience this whole episode caused. I can see Mr M has been frustrated chasing Admiral and trying to resolve the matter. He told us he made 38 phone calls to Admiral, that he was misinformed the matter would be settled quickly, he wasn't able to get standard insurance, and has been caused distress and financial hardship. And so to reflect this, and the inconvenience caused, I think compensation in the amount of £400 is fair and reasonable. And is broadly in line with the awards which we make for trouble and upset as set out on our website. So I direct Admiral to Pay Mr M £400.

Putting things right

To put things right Admiral should:

- Settle the claim in accordance with the remaining terms and conditions of the policy
- Add interest to the money paid in settlement of the claim at a rate of 8% simple per year calculated from one month after the date on which the claim was made until the date settlement is paid; and
- Ensure that any record of, or relating to, the cancellation of Mr M's policy and/or the alleged incident is removed from their own and any other database records.
- Pay Mr M £400 to reflect the distress and inconvenience if it hasn't already

My final decision

For the reasons explained above I uphold this complaint and direct Admiral Insurance (Gibraltar) Limited to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 December 2023.

Kiran Clair
Ombudsman