

complaint

Mr Z is unhappy with Admiral Insurance Company Limited because it refused to deal with his motor insurance claim after he was involved in a road traffic accident.

background

In October 2016 Mr Z was involved in a road traffic accident. He was breathalysed at the side of the road. Because his reading was 38mg (which is above the legal limit of 35mg) Mr Z was arrested and taken to the nearest police station.

At the station Mr Z had two breathalyser tests. The first reading, specimen 1, read as 35mg. The second test, specimen 2 read as 38mg. But alongside the official tests Mr Z also completed two 'simulator' tests and the readings were 34mg and 35mg. The police took the lowest reading out of the two specimen test. This wasn't above the prescribed limit, so Mr Z wasn't prosecuted.

Admiral said that on balance it feels Mr Z was over the prescribed limits of alcohol at the time of the accident. Because of this it has decided to refuse his claim under the terms and conditions of the policy.

An investigator at our service looked into the complaint and recommended that it was upheld. He asked Admiral to settle Mr Z's claim and to pay £150 for the trouble and upset he'd suffered. It didn't agree and asked for the case to be passed to me to look at.

I issued my provisional decision upholding the complaint on 5 June 2017. But I said I didn't think Admiral needed to make a trouble and upset award of £150. Both parties accepted my provisional 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. As both parties accepted my provisional decision, my findings remain the same. These are as follows:

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.

Admiral has said that it refused the claim based on the balance of probabilities that Mr Z was over the legal limit at the time of the accident. It says this because the police asked Mr Z to take a preliminary breath test at the side of the road. The reading showed that Mr Z was over the legal limit of 35mg. Mr Z gave a positive reading of 38mg.

However this type of test isn't used to give an accurate measure of alcohol levels. It is used to give the police an indication on whether the person being breathalysed could be over the legal limit. If the person being breathalysed gives a reading which exceeds the legal limit then they will be arrested and asked to provide two evidential samples of breath. And usually the lower reading of the two samples will be used to make a finding on whether they are over the legal limit.

So while I appreciate that Admiral has said it thinks it was likely Mr Z was over the legal limit

at the time of the accident I don't think there is enough evidence to say this. In Mr Z's case he gave two evidential specimen samples at the police station, the first reading was 35mg and the second was 38mg. So Mr Z was found to be within the legal limit.

Because the preliminary breath test isn't the official test used to determine if a person is over the limit I don't think it is reasonable that Admiral has based its decision on this. Based on the two evidential breath tests completed, Mr Z was considered to be under the legal limit. So, I've gone on to consider the preliminary roadside test, the two blank simulator tests and the two evidential breath test. Having done so, I think on balance its likely Mr Z wasn't over the legal limit.

Our investigator recommended that Admiral offer Mr Z £150 for the trouble and upset that had been caused. But I don't think Mr Z has suffered a degree of trouble and upset that warrants compensation.

my final decision

My final decision is that I uphold this complaint. Admiral Insurance Company Limited must settle Mr Z's claim. But it doesn't need to pay any compensation for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 27 July 2017.

Jade Rowe
ombudsman