

complaint

Mr B complains that Aviva Insurance Limited declined a claim he made on his travel insurance policy when he injured a third party with a golf buggy on a golfing holiday, based on a policy exclusion that a golf buggy was a “*motorised vehicle*”. He also complains that, even if the exclusion were to apply (with which he does not agree), Aviva did not make this clear to him in the policy documents.

background

In January 2016, when he was in his late 60s, Mr B went on a European golfing holiday. During that holiday Mr B lost control of a golf buggy on the golf course where he was playing. Another player was hurt. That player later told Mr B that he intended to make a claim against Mr B for his personal injury and loss of income. Mr B notified Aviva about this.

Aviva said its policy specifically excluded personal liability cover where the policy holder owned or used motorised vehicles. It said the golf buggy was a motorised vehicle, so it said Mr B’s claim wasn’t covered under its policy.

Mr B strongly disagreed and made detailed arguments both to Aviva and to this service. Our investigator thought Aviva had been entitled to turn down Mr B’s claim for personal liability. Mr B didn’t agree so the complaint was referred to me for review.

In July 2018 the other player’s solicitor sent Mr B, via his solicitor, a letter of claim. The letter gave Mr B three months to confirm whether he admitted liability. Our investigator sent a copy of this letter to Aviva.

I made a provisional decision in which I dealt with the main arguments made by Mr B and Aviva. In the following extract from my provisional decision I set out my provisional findings:

my provisional findings

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. In doing so, I’ve taken into account the relevant law, regulator’s rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. Having done so I intend to uphold this complaint. I’ll explain why.

the policy

The policy year that applies is April 2015 to April 2016 (Mr B’s policy renewed on 4 April 2015). The following elements form the contract of insurance, where “*you/your*” is Mr B and “*we/us*” is Aviva.

- “**your** policy booklet;
- Information contained on **your** Information Provided By You and/or Demands and Needs Statement as issued by **us**;
- **your** schedule;
- any clauses endorsed on **your** policy, as set out in **your** schedule;
- any changes to **your** travel insurance policy contained in notices issued by **us** at renewal;
- the information under the heading ‘Important Information’ which we provide to **you** when **you** take out or renew **your** policy.”

I asked Aviva for copies of the above documents, which it has sent me together with evidence that it sent the documents to Mr B. I sent those documents to Mr B who has also commented.

does the personal liability section exclusion for motorised vehicles apply?

I first need to consider whether Aviva was entitled to turn down Mr B's claim under the policy terms and conditions that applied at the time of the incident (January 2016).

Aviva correctly considered Mr B's claim under the "*personal liability*" section of the policy. This provides cover up to the limit in the policy schedule (£2,000,000) for any money he legally has to pay that relates to an accident during his trip which causes death or physical injury to any person. It includes cover for reasonable and necessary legal costs and expenses he incurred in relation to the accident.

But Aviva said the claim was excluded under part iii of the personal liability exclusion. I've included part of the full list below:

"What is not covered:

2. f) You owning or using:

- i) animals (except domestic animals)*
- ii) firearms (except sporting guns used for clay-pigeon shooting);*
- iii) motorised vehicles;*
- iv) vessels (except manually-propelled watercraft); or*
- v) aircraft of any description, including unpowered flight...*

h) you taking part in any leisure activity, activity based holiday or winter sports activity where Personal Liability is specifically excluded in the Leisure Activities, Activity Based Holidays and Winter Sports Activities sections...

3. Anything mentioned in the General Exclusions section."

The term "*motorised vehicles*" isn't defined in the policy. I've carefully considered Mr B's arguments about the definition of a "*motor vehicle*" in section 185(1)(c) of the Road Traffic Act 1988 as a "*mechanically propelled vehicle intended or adapted for use on roads*". He says the golf buggy clearly doesn't meet that definition - as it doesn't require a driving licence or seat belts to be worn. He says this is also supported by the changes to Aviva's policy document, which refers to motor vehicles being ones which require a licence to drive in the UK – which golf buggies do not. He says that any ambiguity in the policy documents should be resolved in his favour.

The relevant exclusion specifies the use of "*motorised vehicles*" which is not exactly the same as "*motor vehicle*", although I accept there may be similarities between the two terms. As the policy does not define "*motorised vehicles*", I have looked at the ordinary meaning of the words comprising the term. The ordinary meaning of motorised is to equip a vehicle or device with a motor to operate or propel it - for example, a wheelchair could be motorised. A vehicle is something used to transport people or goods, especially something used on land or roads - essentially a means of conveyance. So, when considering the ordinary meaning of the words, I think it's arguable that a golf buggy is a motorised vehicle.

But I tend to agree with Mr B that the relevant policy terms were not clear. Aviva issued an important information document (dated May 2014) with its policy at renewal in April 2015. This important information document formed part of the insurance contract as set out on page 4 of the same document.

The “*changes to General Exclusions and Conditions*” section of the document explained the “*General Exclusions*” that applied. It said, on page 6, section 9, that the policy didn’t cover any claim for an incident which happened during the trip that resulted from a number of listed activities.

The list referred in more than one place to the list of Leisure Activities and Activity Based Holidays section. It set out exclusions for the policy holder, including where they used:

- an aircraft;
- a scooter, moped or motorcycle (as defined);
- a quad bike, all terrain vehicle or similar on or off road;
- “*you driving any motorised vehicle, unless you are fully licensed to drive such a vehicle in the UK*”;
- “*you driving or being a passenger in any motorised vehicle unless you have complied with all laws applying to the use of that vehicle in the country you are visiting, for example, you must wear a seat belt where this is required by law*”.

I think that reading this important information document in conjunction with the policy document does give rise to some ambiguity around what would be considered under the policy to be a motorised vehicle. The requirement for a full UK licence, or to comply with all laws applicable in that country - for example wear a seatbelt - while driving a motorised vehicle, suggests that the term “*motorised vehicle*” reflects the definition of motor vehicle in the Road Traffic Act 1988 as a vehicle intended or adapted for use on the roads. In my view, general use on the roads is not one of the uses that could reasonably be contemplated for a golf buggy.

Although Mr B didn’t read the May 2014 important information document before he travelled, I consider that document to provide important context for the definition of “*motorised vehicle*” in the policy. In my view, it’s arguable that a policy holder could assume that a claim arising from their use of a motorised vehicle (other than the ones specifically mentioned) would be covered if they held a licence to use the vehicle in the UK and complied with the relevant laws. As Mr B says, a golf buggy didn’t require a UK licence and there wasn’t any question of his not complying with local laws.

Mr B has raised additional points of ambiguity and misleading policy terms in the documents he did read.

was the policy exclusion made clear to Mr B?

Mr B argues that the policy information Aviva issued to him was ambiguous and misleading. He says he specifically looked at the Aviva travel insurance documents he’d electronically filed before he left for his January 2016 golf holiday.

He explains he did this because he wanted to check that he’d be comprehensively insured, especially for personal injury and personal liability. He was less concerned about potential minor losses, but was concerned to check he was covered against unlikely but potentially very damaging claims such as hitting anyone with a golf ball or an accident involving a golf

buggy. In response to our queries Mr B has clarified this. He said as a committee member of a golf club, the club had received a claim when a player was hit by a golf ball. Also, several years previously a friend had had an accident in a buggy while playing abroad; she'd been injured and had taken time to recover.

Mr B says he checked the following documents:

the important information document:

This is the *"Important information and changes to your policy you need to know about before you renew your Aviva Annual Multi-trip Travel policy"*. The document is dated March 2013, so it was the one provided by Aviva before Mr B's April 2013 policy renewal. As mentioned above Aviva has sent me the May 2014 document it said applied to the policy covering the policy year April 2015 to April 2016.

Mr B has noted the 2014 version differs from the 2013 version, principally by including a full statement of the *"Changes to General Exclusion and Conditions"* (pages 5 to 7) which is not present in the 2013 version. It also excluded the Leisure Activities and Activity Based Holidays tables, which are included in the 2013 version.

Looking at the 2013 version before his holiday Mr B thought the important information document was the most appropriate one as it gave the cover for activity based holidays such as golf in detail. He noted that page 2 of the 2013 important information document said:

"no cover exists for the use of a Segway, quad bike or other ATV as a rider or passenger, whether on or off road"

I see this was under a heading, in bold, *"Quad Bikes/All Terrain Vehicles (ATV)"* which said *"The use of a Segway either as a rider or passenger has been added under this exclusion, whether on or off road."*

He went on to read page 3 of the 2013 important information document which said:
"What is not covered:

1. *There is no cover at all for any injury or death if, during your trip, you take part in any leisure activity, activity based holiday or winter sports activity:*
 - a. *That is NOT shown below"*

He continued reading to check that golf was *"shown below"*.

On page 6 under *"Leisure Activities"* golf was listed as covered with no tick against golf in the column heading *"No cover under Personal Liability section"*. This confirmed that personal liability cover was included for golf. He then checked the *"Limitations"* column. The only limitation was *"No cover for equipment under baggage section"*. Mr B points out that there was no mention of golf buggy usage as a limitation to cover. He also points out that the *"activity based holidays"* section on page 10 repeats that there is no equipment cover, and doesn't include any restriction for personal liability.

Mr B says that the lack of limitations for golf contrasts with other leisure activities set out in the important information document. For those activities there were many detailed and specific limitations as to how the activity can be undertaken for cover to be valid, with scuba diving being a specific notable example.

We asked Aviva for its comments on Mr B's points. It responded to say that it declined the claim because when it mentioned "*motorised vehicles*" in the policy wording this includes any vehicle with a motor.

I've considered all the evidence very carefully.

Aviva sold the policy to Mr B and is also the insurer. The Financial Conduct Authority (FCA) is the regulator and the relevant rules are set out in the Insurance: Conduct of Business sourcebook or ICOBS.

Under ICOBS an insurer must take reasonable steps to ensure a consumer has appropriate information about a policy. The consumer should be able to make an informed decision about the proposed arrangements. ICOBS says the policy wording should be clear, fair and not misleading. Any key information should be set out in a policy summary, including any significant and unusual exclusions.

ICOBS says that a significant exclusion or limitation is one that would tend to affect the decision of consumers generally to buy. An unusual exclusion or limitation is one that is not normally found in comparable contracts. In determining what exclusions or limitations are significant, a firm should, in particular, consider the exclusion or limitations that relate to the significant features and benefits of a policy and factors which may have an adverse effect on the benefit payable under it.

Aviva is also subject to the FCA's Principles for Businesses, which includes to pay "*due regard to the interests of its customers and treat them fairly*" (Principle 6) and to "*pay due regard to the information needs of its clients, communicating information to them in a way which is clear, fair and not misleading*" (Principle 7).

I think Mr B has raised valid concerns. He checked he was covered for playing golf. If Aviva wanted to limit the personal liability cover for golf (as it had for other leisure activities) then I think it should have set out how the cover was restricted. So the additional information box for golf should have said there was no personal liability cover when using a golf buggy.

As Aviva says, the policy documents did include general exclusions for each head of claim, including for personal liability. But I consider the way the information was presented was confusing.

The other activities were presented with specific exclusions for personal liability or additional information in the limitations section, such as speed restrictions. The only exclusion mentioned for golf specifically in the activity list was the additional optional cover for golf equipment, so it was quite conspicuous that golf buggies weren't mentioned.

I think Mr B's explanation for why he specifically required this type of cover and checked he had it is a plausible one. He was in his late 60s at the time and on a continental golf holiday. It was therefore very likely (and in the contemplation of a reasonable person) that he would be using a golf buggy on a golf activity holiday. If Aviva wanted to exclude personal liability arising from the use of a golf buggy, then it could have expressly done so (as it did for some of the other activities in the table).

Mr B says, and I accept, that if he'd been aware of the restriction on cover he'd have taken a policy elsewhere. He says he's since done so. I agree that he would have done so, so I find his position was prejudiced by the lack of clarity in Aviva's policy.

I consider that the fair and reasonable outcome, taking into account all of the above evidence and Aviva's obligations under ICOBS and the Principles, is to find that Aviva should not exclude Mr B's personal liability claim based on the "*motorised vehicle*" exclusion. I therefore consider it just and appropriate in the circumstances to direct Aviva to proceed to consider Mr B's claim in line with the remaining terms and conditions of the policy.

I don't currently know the extent of the claim against Mr B. I invite him and Aviva to let me have their comments on this in response to this decision."

I said that I can't make a direction that would result in Aviva paying more than £150,000. So if the final claim exceeds this amount (and if my final decision was the same as set out in my provisional decision) my final decision would include the following wording:

"My provisional decision is that I'm minded to uphold Mr B's complaint. I intend to direct that Aviva Insurance Limited should not exclude Mr B's personal liability claim based on the "*motorised vehicle*" exclusion. I intend to direct Aviva to proceed to consider Mr B's claim in line with the remaining terms and conditions of the policy.

Where I uphold a complaint, as I'm minded to do here, my decision can require a business to pay up to £150,000 as appropriate, plus any interest and / or costs / interest on costs. If a claim is for over £150,000, I can only recommend that a business pays the balance.

The recommendation wouldn't be part of my determination. Aviva wouldn't have to go along with it. It's unlikely Mr B could accept my decision and then go back to court to ask for the balance. So he may want to get independent legal advice before deciding what to do now."

responses to my provisional decision

Mr B responded to say he was grateful for my decision, which he accepted.

Aviva responded to say that it accepted my provisional decision. It has passed Mr B's case to the relevant liability team. We've let Mr B know about this.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both parties have accepted by provisional decision. Because of this I don't need to add anything to the findings that I reached in my provisional decision, which forms part of this final decision. I confirm the findings I reached in my provisional decision here, for the reasons set out in full above.

As I explained in my provisional decision I can award compensation to be paid by a financial business of up to £150,000, plus any interest and/or costs/interest on costs that I think are appropriate. This includes where a direction leads to a payment of more than £150,000. If I think fair compensation is more than £150,000 I may recommend that the business pays the balance.

I've not been given any further evidence about the size of the potential claim because, as I understand it, the other party's solicitor has not yet informed Mr B of the full amount of the

claim against him. Because of that there's a possibility the claim against his policy may lead to Aviva making a payment which exceeds the maximum I can award.

my final decision

My decision is that I uphold Mr B's complaint. I direct that Aviva Insurance Limited should not exclude Mr B's personal liability claim based on the "*motorised vehicle*" exclusion. I direct Aviva to proceed to consider Mr B's claim in line with the remaining terms and conditions of the policy, and to pay the claim up to the £150,000 limit.

recommendation

If the total claim payment is more than £150,000, I recommend that Aviva Insurance Limited pays the balance of the claim. Aviva doesn't have to go along with this recommendation. It's unlikely Mr B could accept my decision and then go to court to ask for the balance. So he may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 September 2018.

Amanda Maycock
ombudsman