

complaint

Mrs C complains that Society of Lloyd's won't accept her motor insurance claim for indemnity against a third party claim in relation to an accident when she was driving her friend's vehicle.

For ease, whenever I refer to Society of Lloyd's this also includes the actions of the underwriters.

background

Mrs C has a motor insurance policy provided by Lloyd's. Part of the cover allows her to drive other cars in certain circumstances. In August 2018 Mrs C borrowed her friend's van. She was relying on her cover with Lloyd's to provide her with third party insurance when doing so.

While driving her friend's van Mrs C was involved in an accident. As she was reversing out of a parking space there was contact between the van she was driving and a pedestrian. The pedestrian started a claim for his losses and for personal injury.

Mrs C made a claim for indemnity under her policy, which Lloyd's declined. It said her policy only covers her to drive other cars and not vans which are commercial vehicles. The van owner had his own insurance with another business; who I'll refer to as N. N accepted the pedestrian's claim. But they say they will seek to recover any costs directly from Mrs C.

Mrs C complained to Lloyd's as she doesn't think her claim for indemnity has been fairly declined. She also brought a complaint to us. One of our investigators thought the complaint should be upheld. She thought the policy conditions weren't clear enough. And thought the fair and reasonable outcome would be for Lloyd's to accept Mrs C's claim and provide her with indemnity in respect of the third party claim.

Lloyd's didn't agree. It said the policy is clear that Mrs C is only insured to drive other cars and Mrs C was driving a van, which was a commercial vehicle. So it asked for an ombudsman's 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. Having done so, I agree with our investigator that Lloyd's should provide Mrs C with indemnity for essentially the same reasons. Let me explain why.

In the "*Liability to others*" section of Mrs C's policy it has the heading "*Driving other vehicles*". Under that heading it says:

"We will also provide the cover shown above (if this is shown on your certificate of motor insurance), to drive any private car that you do not own and have not hired under a hire-purchase or leasing agreement – as long as you have the owner's permission to drive the car.

You are not insured against:

- *Any loss or damage to the vehicle you are driving*

- *Any event which happens outside of the United Kingdom*
- *Any legal responsibility if you no longer have the insured vehicle*
- *Any event which happens when this insurance is not in the name of an individual person*
- *Any legal responsibility unless the vehicle is insured against third party road risks, in its own right or*
- *Securing the release of a vehicle that has been seized by or on behalf of the police or any public or local authority”*

I accept that the vehicle Mrs C was driving was a van. I've seen pictures of it and it has two seats with a cargo area in the rear which has been converted for use as a campervan. The rear doors have no windows and having checked the manufacturer's website it's clearly marketed and described as a van. It is however a small van and is of a weight that can legally be driven on a 'normal' UK driving licence. And it wasn't being used for business purposes by either its owner or Mrs C.

Insurers are required to present information in way that's clear, fair and not misleading. I understand Lloyds' point that a private car is referred to in the wording. I also accept that a van presents a different risk profile due to the size of the vehicle and visibility from the driver's seat.

But I also have to consider what's fair and reasonable in all the circumstances of the individual complaint. The potential consequences of driving while uninsured are particularly serious. So I think an insurer needs to make it explicitly clear exactly what vehicles policyholders are entitled to drive under the terms of the policy. For that reason I've thought about whether the average consumer would know that they weren't able to rely on the policy to drive their friend's van that was used as a private vehicle.

Mrs C says she checked her policy documents before driving her friend's van and she thought she was covered. I'm persuaded by this. The word 'vehicle' is used alongside 'car' in both the heading "*Driving other vehicles*" and in the section that lists what's not covered. There's no explicit exclusion of private vans or similar. And, while I appreciate that Lloyd's isn't required to list every vehicle that isn't covered, I think the effect overall is that the policy terms weren't clear enough to enable Mrs C to understand that a privately used van isn't covered in the same way a private car would be.

Lloyd's has made the point that motorcycles and lorries aren't covered, but also aren't excluded. But each of these vehicles requires a different licence to drive. So I don't think this is enough to persuade me Mrs C should have known she couldn't drive her friend's van

So, in light of what I've said, I don't think it would produce a fair and reasonable outcome in this particular case if I allowed Lloyd's to refuse Mrs C indemnity under her policy on the basis that she wasn't covered to drive her friend's van.

My understanding of the current situation is that the pedestrian's claim isn't currently progressing. But in the event that the pedestrian restarts his claim, I think Lloyd's should deal with the claim against Mrs C on the basis that she's covered for driving the van.

my final decision

For the reasons outlined above, my final decision is that I uphold this complaint and require Society of Lloyd's to deal with Mrs C's claim for indemnity as a result of the accident she had while driving her friend's van in line with the remaining terms and conditions of her policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 21 September 2019.

Sarann Taylor
ombudsman