

The complaint

The estate of Mr F complains about Covea Insurance Plc's decision to reject a claim under an Accidental Death Benefit Insurance Policy.

What happened

Mr F was driving a car when he was involved in a fatal road traffic collision. His estate made a claim but Covea rejected it citing a policy exclusion where accidental death is caused by or results from "*wilful exposure to exceptional risk unless saving someone's life.*" Covea explained its decision was based on the facts of the accident:

- Mr F was overtaking several vehicles including a lorry.
- Witness statements say that he was initially ducking in and out of traffic to perform the overtaking manoeuvre.
- He was exceeding the speed limit of 60 mph, and his actions were not legal.
- He misjudged the situation as the witness statements say that he had ample opportunity to pull in behind any one of the vehicles that were behind the HGV lorry, but he chose not to.

For the main part the factual circumstances are not in dispute:

- The collision occurred on a long straight 'A road'.
- There were no adverse road or weather conditions.
- A lorry was at the front of a queue of traffic moving at between 40 – 50 mph (coroner's report).
- Other vehicles had successfully overtaken the lorry prior to Mr F.
- Mr F at the time of collision was travelling between 66 – 69 mph (police forensic report).
- Mr F had overtaken the lorry and transitioning back into his correct lane.
- An immediate oncoming vehicle (vehicle A) had slowed down to around 30mph because of Mr F.
- Driver of vehicle B, through lack of attention, reacted late and to avoid vehicle A in front, swerved into the lane Mr F was now moving into and the collision occurred.

Our investigator explained why he thought Covea had acted unfairly in declining the claim and recommended Covea settle the claim:

- Mr F had swerved back into his own lane after overtaking the lorry.

- The oncoming vehicle (vehicle B) Mr F collided with had reacted late due to lack of attention and swerved into Mr F's lane.
- Overtaking wasn't prohibited on the stretch of road.
- Other vehicles had overtaken the lorry.
- The police forensic report didn't describe Mr F's actions in a way that suggests he wilfully exposed himself to exceptional risk.

Covea disagreed with the investigator, although it didn't provide further reasons.

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.

The starting place for my consideration is the insurance policy. This states it will pay the benefit in the policy schedule where Mr F as the insured person *suffers accidental injury, which is the sole cause of, and results in the **Insured Person's** death within 12 months of the injury from which a claim arises*. But it will not pay such a claim caused by or resulting from *wilful exposure to exceptional risk unless saving someone's life*.

The exclusion doesn't have further definition on the policy and Covea hasn't sought to apply any special meaning or definition to the words.

I don't think it's controversial to construe 'wilful' as meaning deliberate or intentional and on the facts of collision I think it's clear that Mr F intended to overtake cars and the lorry. There's no evidence to suggest it was a manoeuvre under duress or other factor that Mr F wasn't in control of. But that wilfulness has, in my view, to be directed to the exposure to exceptional risk. I'm mindful of the Court of Appeal's judgment in *Morley v United Friendly Insurance plc* 1993 WL 963502 which involved a similar exclusion¹.

The insurance policy covers death within 12 months, because of accidental injury which is the sole cause. So, the wilfulness has to be directed to the exposure to exceptional risk, which in my view here is accidental injury. I think the level of injury is important because the policy only covers the most tragic of circumstances where death occurs and within a specific timeframe. I think it reasonable to say the 'risk' must be more than *de minimis* and the word 'exceptional' connotes something more unusual and not typical. I'm satisfied that the exposure needs to be exposure to serious injury as that's what's more likely to result in the peril (death) that the policy covers.

I'm persuaded that the fair way to interpret the exception Covea has relied on is that it must show on balance that Mr F intentionally exposed himself to exceptional risk. As Lord Justice Beldam put it in *Morley* it's not enough for an insurer to show "*...that intentional acts done by the insured resulted in his being exposed to needless peril*." I think it's fair for me to extend that logic to exceptional risk for the purposes of this complaint.

Having thought about this very carefully I'm aware of the general day to day risks when driving a car. I bear in mind that Mr F's speed was more than the speed limit but not such that the police described it as dangerous or similar. Overtaking wasn't precluded by road signs or markings. There was no suggestion that Mr F was intoxicated or unfit through alcohol, medication, or other reason. And I bear in mind that the first oncoming car (vehicle A) to Mr F slowed to around 30 mph to avoid a collision but didn't feel it necessary to stop to avoid a collision, and indeed there was no impact.

¹ Wilful exposure to needless peril.

The police report suggests the driver of vehicle B reacted late due to lack of attention and to avoid a collision with vehicle A swerved into the oncoming lane. It transpired that Mr F was also transitioning to this same lane and the correct one for him, after overtaking the lorry, when the collision occurred. I've considered Covea's point that Mr F's speed was in contravention of the speed limit for the stretch of road. But I don't think that alone meets what is a high threshold for the policy exclusion. The exclusion can't fairly exclude a risk of all injuries or circumstances that give rise to injuries, there has to be something in the policyholder's acts that demonstrate their exposure to exceptional risk was wilful. Mere negligence wouldn't in my view meet that threshold as that would effectively restrict the policy to so few circumstances as to be meaningless. In saying this I'm thinking about the plethora of activities that involve inherent risk such as found in sports, hill walking and water-based activities.

In Covea's submissions it has said that Mr F "misjudged" the situation and I agree, but I'm not satisfied Covea has shown the exclusion for wilful exposure to exceptional risk fairly applies.

Putting things right

The policy schedule we've been provided with by Covea states the Accidental Death Benefit is £103,568 and so that's what Covea must pay.

As is usual for our awards, where money has been deprived when it shouldn't, Covea must also pay simple interest at 8% per year from the date it should reasonably have paid the claim. I note that due to the pandemic there were delays in receiving information from the police and the coroner.

The coroner's report wasn't sent to Covea until 31st July 2020 and it informed the estate that the claim was rejected on 2 September 2020. I think it's fair that interest applies from 2 September 2020 to the date payment is sent to the estate of Mr F.

My final decision

I uphold this complaint and require Covea Insurance plc to pay Mr F's Accidental Death Benefit claim to his estate together with interest as set out above.

Covea must pay the compensation within 28 days of the date on which we tell it Mr F's estate accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr F to accept or reject my decision before 22 July 2022.

Sean Hamilton
Ombudsman