

The complaint

S complains about the way the Society of Lloyd's (Lloyds) has handled a claim it made on its commercial motor insurance policy following an impact with a third party

What happened

In December 2020 S's lorry was impacted by a third-party forklift (TP). Initially it was thought that the TP and S would settle this matter privately. But after no contact from the TP, S decided to submit a claim to Lloyds in March 2021.

After many months of negotiation and discussion, Lloyds offered S a cash-in-lieu settlement of £4,942.78. But S was unhappy with this amount saying that it wouldn't cover the cost of the repair.

So, S brought a complaint to this service. An investigator reviewed the complaint and said that the cash-in-lieu settlement was fair, but that Lloyd's should pay S £500 in compensation for the distress and inconvenience caused.

Lloyd's thought £500 was too much, so the complaint is now with me for a final decision.

I issued a provisional decision on this complaint on 13 January 2023. That provisional decision is below and forms part of my final decision.

What I've provisionally 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. Having done so, I'm planning on upholding this complaint. I'll explain why.

S is covered for accidental damage. The policy says if there is accidental damage it will either cover the repair costs or pay a cash amount. The most the policy pays will be either: "The UK mainland market value of your vehicle as determined by us, immediately before the loss; up to the value shown on your schedule or the amount it would cost us to repair your vehicle at an ERS approved repairer or as otherwise agreed by our appointed engineer whichever is less". The policy also says "We will not pay the VAT element of any claim if you are registered for VAT"

Under the heading of repairs the policy says, "We can, if you wish, organise for our approved repairers to repair your vehicle." It also says that if you choose to use your own repairer certain things won't be covered such as delays and a hire car. The policy states "We may arrange for your vehicle to go to a repairer of our choice if we cannot reach an agreement with your chosen repairer over costs.

And that is exactly what's happened here. Lloyd's don't agree with the repair estimate provided by S's repairer. But S says it's not possible to repair the vehicle for the amount Lloyd's is offering.

So, let's look at what each party has provided. S initially went to a repairer who provided an initial Audatex estimate. This estimate cost the repair at £5,715. In August 2021 when the repairer got to give the lorry a thorough examination it provided a more comprehensive Audatex estimate and it cost the repairs at £9,064.

The same week the vehicle manufacturers did an initial costing for Lloyd's. The first estimate was £1,864+VAT. But then a further costing of £5,937 (incl VAT) was provided.

After S raised question marks over the costing from Lloyd's, Lloyd's asked an independent engineer to review the estimate from the vehicle manufacturers. His estimate came in at £5,442+VAT. So, S then obtained the opinion of an independent engineer of its own. He said that Lloyd's costs were unrealistic, and he raised questions over the manufacturers ability to complete the repair at the cost proposed.

Lloyd's said that the garage chosen by S wasn't an approved repairer and as per its policy terms and conditions, because it couldn't come to an agreement with this specific garage on repair costs, it was only obliged to either ask S to get the lorry repaired at its approved garage, or pay cash-in-lieu up to what its own approved repairer/engineer had agreed.

And I think that would be fine, if there was a legitimate reason why costs couldn't be agreed, or if there were no question marks over the costs presented by the approved repairer.

But two things jump out at me from this file. The first is that there was a clearly a falling out between Lloyd's and S's preferred repairer. So much so that Lloyd's independent engineer urged Lloyd's to settle this claim via a cash settlement. And secondly, S obtained the advice of a fully qualified member of the Institute of Automotive Engineer Assessors, and this advice seems to have been completely ignored. I appreciate what the policy says, and I agree that it says that Lloyds will only pay up the amount approved by its own "appointed engineer" or costs approved by its own repairer. However, if what appears to be a more qualified engineer, who is a member of a recognised expert body raises questions about the standard of estimates provided and also asks questions about contradictory comments contained in the repair reports being used, I think it would only be fair and reasonable for Lloyd's to at least take into consideration what this fully qualified engineer has said. And that hasn't happened here.

It's not my role to say which is the more qualified engineer. Both engineers are likely to be experts in their specific field with comparable experience. But the qualifications of the engineer do have a bearing on the decision I will make. In short, it's likely I will be more persuaded by an engineer with a higher qualification or who is a member of a recognised expert body such as the Institute of Automotive Engineer Assessors.

In this case the independent engineer that S acquired raised some legitimate concerns, and these concerns weren't even acknowledged. He pointed out that the Audatex estimating system, the one used by S's preferred garage is the standard one used by the majority of repairers in the UK. He quite rightly points to the detailed breakdown the Audatex report contains, which is in stark contrast to the reports provided by Lloyd's approved repairer. He also raises questions about the figures presented for paint and materials, and he has pointed out that the report obtained by Lloyds from the vehicle manufacturer didn't include a costing for the jig to test alignment or jig bracket hire. The strange thing is that the independent engineer for Lloyds actually mentions this in his remarks, but then didn't feel the need to amend the costing Lloyd's provided to factor it in.

Looking across all reports I don't think the figures presented to Lloyds by its approved repairer are a true reflection of the actual cost to repair the damage. And in this regard, I'm more persuaded by the comments made by the independent engineer appointed by S. I

think his commentary holds more weight. He raises legitimate questions about labour times, paint and material costs and in particular he points out that S's estimate is supported by a better and more thorough estimating tool. He seriously doubts if the manufacturer would be able to repair this lorry for the cash amount being recommended by Lloyd's, and from what I've seen I'm inclined to agree.

I appreciate and acknowledge that the terms indicate that Lloyd's engineer should have the last say on this. But I think that the evidence provided by S holds more weight than that provided by Lloyd's. The overriding objective of the policy is to cover S for the damage it has suffered. And I think the term in the policy should only stand if the estimate is correct. But in this case, a qualified member of a professional body has raised doubt over the estimate cost of repairs provided to Lloyd's. As such it is only fair and reasonable to go with the more comprehensive estimate, and that is the Audatex provided by S's preferred repairer.

One thing that does raise a question mark is the damage to the rear wing/fairing beside the number plate on the lorry. S's repairer has included it but Lloyd's say its inconsistent with the other damage. Looking at the photo I agree that its away from the cab damage. But this damage was caused by a forklift and given that the prongs of a forklift are often quite high and away from the body of the forklift itself, it's not unreasonable to link this damage with that caused in the impact. My understanding is that the forklift skidded on ice, so the body of the forklift is likely to have impacted the back of the lorry, whilst the prongs damaged the cab. And as the damage looks fresh, I'm going to say that it more likely than not happened during this impact, so should be included in the claim.

I've also looked at the compensation Lloyd's has already paid, and I've considered what our investigator recommended. I note what S has said about how it had to work, because this lorry was off the road for so long. I've weighed this up with the fact that there were a lot of delays. But a number of these delays were out of Lloyd's control, as it took three months before Lloyd's actually received the claim, and then another two before a complete estimate was provided.

But there were delays and S has been inconvenienced by the delays caused when negotiations were ongoing. S has told us that it was working on 75% capacity with one lorry off the road, and it says it lost time, wages and reputation as a result. So, compensation is due. I note Lloyd's has already paid £100. So, I'm going to recommend exactly what our investigator has recommended Lloyd's pay, which is £500 compensation in total (so £400 on top of the £100 already paid) for the inconvenience caused.

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.

I sent my provisional decision on 13 January 2023.

Both parties have responded. S advised that a pallet fell from the forklift and impacted the body of the lorry, contributing to the damage. S also provided the final invoice which set out how much it paid to have the lorry repaired.

Lloyd's has also responded. It states that all engineers involved in its investigation are Institute of Automotive Engineer Assessor (IAEA) qualified, and it asks whether I discount IMI qualifications or regard the IAEA as a higher qualification. Lloyd's say that aside from the IAEA qualification, the other qualifications held by S's independent engineer are purchased on subscription.

Lloyd's has also pointed out that the Audatex report provided by S's garage has a number of asterisk's in it. Lloyd's say this is called Audatex mace and means the entry was input manually and is entered as an opinion by the user. Lloyd's also say that its estimate was provided by an approved manufacturers dealership, and that there is significant pre-existing corrosion on the damaged panel. Lloyd's say S should be contributing to this repair as the corrosion is not part of the accident. Finally, Lloyd's say that as its repairer was an approved dealer it already had a jig and bracket, so no hire costs would've been incurred.

So, let's start with the qualifications first. In my provisional decision I said that it wasn't my role to say which is the more qualified engineer. I did acknowledge that both engineers were likely to be experts in their specific field with comparable experience. However, in a scenario where there are conflicting representations from two experts, one of the things we would look at is whether either expert is a member of a recognised expert body. I acknowledge that motor assessors can be qualified via different qualifying bodies. But the IAEA is recognised in the UK as the leading expert body, which also recognises its members as part of the international association of automobile experts FIEA. To be a member of the IAEA, specific experience, knowledge and qualifications are required. Further to this you are required to pass specific exams and have fulfilled specific requirements assigned to each grade. You are also obliged to abide by a Code of Conduct laid down to govern the professional conduct of its members.

In this instance the IAEA website lists the engineer that S used as a full member of the IAEA. The engineer used by Lloyd's is not currently listed on this website. He may previously have been a member, or just not paid his annual subscription. But S's engineer is listed as a member and as such, I feel the opinion set out by S's engineer holds more weight.

Lloyd's have raised the fact that S's garage used what's called Audatex mace, a mechanism on the Audatex system which allows the Audatex author to enter an opinion on the system. And reading back through S's engineers report I note that the engineer says, *"I readily accept that (S's garage report) is based upon opinion times, as the asterisks alongside confirms"*. But this engineer says before this that the first estimate submitted by Lloyds preferred repairer is clearly based on the cab not being removed, so repairs would never have been at the manufacturers required standard. He then says that the second report is produced on the Kerridge invoicing software platform, which is not an estimating system and doesn't have a breakdown of repair methods or repair times.

I acknowledge that the estimate provided by Lloyd's is from an approved dealership. But in a situation where there is a dispute between two experts, its things like the engineer's qualifications and tools used that will persuade this service. In this specific complaint we have a full member of the IAEA pointing out that Lloyd's garage used an invoicing software platform to present its costs, while S's garage used a widely recognised estimating software platform to calculate its costs. I'm not here to determine which is correct. The reality is that both platforms will produce a costing for repair. However, I am more persuaded by the evidence provided by S to support its case as it has used a more widely recognisable repair estimating tool.

In relation to the corrosion present on the rear wall of the cab, I've gone back through all the reports again. It's clear there was corrosion present. But I note that on the Audatex report provided by S, a new rear bulkhead is listed as required. This is mirrored in the approved manufacturing dealerships report when it says, *"fit new back panel"*. The report from Lloyd's engineer says *"Despite the corrosion to rear wall, the rear wall would require replacement as a result of the accident damage"* and the report from S's engineer repeats this asking the why the manufacturing dealership ever thought this damage could be repaired. Because of this, even with the corrosion, the accident damage was bad enough to require a back-panel replacement, and this is agreed by all parties. So, I don't think the corrosion impacts the

panel replacement and I'm not sure why Lloyd's are looking for a contribution from S. In relation to the jig, I do note and acknowledge Lloyd's comments about the jig and jig bracket hire not being necessary at the approved dealership, as it likely has these tools on site.

Having reviewed everything, including the actual invoice paid by S and taking into consideration what it says in the policy terms and conditions, I remain of the opinion that the fair and reasonable outcome is for Lloyds to pay the claim up to the amount on the Audatex estimate provided by S's garage. I also think that Lloyd's should pay £500 in compensation to S for the inconvenience caused for the reasons I set out previously.

My final decision

My final decision is that I uphold this complaint. I require Society of Lloyd's to pay:

- the difference between what it has already paid, and the amount on the Audatex report provided by S's garage (excluding VAT). Simple interest of 8% should be added to this amount from the date the cash-in-lieu settlement was paid to the date of payment for the reasons I've set out above. As excess has already been deducted it should not be deducted again.
- £500 in total compensation (less any compensation already paid) for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 3 March 2023.

Derek Dunne
Ombudsman