

## **The complaint**

A company I will refer to as T complains that County Insurance Consultants Limited (County) mis-sold a commercial motor insurance policy resulting in a declined claim, and inadequate cover that is in place until 2024.

## **What happened**

T made a claim as a result of a lorry toppling over when it was unloading. It says the claim was declined. It says the insurer referred to a term that excludes cover when a vehicle is being used as a tool of the trade. This hadn't been highlighted to it previously.

T says it has a long-term relationship with County and expected it to have a better understanding of its business requirements. As a result, it has suffered an uninsured loss and is still tied into an inadequate policy until 2024.

In its complaint response County says the insurer relied on a policy exclusion to decline the claim. Specifically, that the activity resulting in the incident had been carried out unsafely. It refers to the lorry driver not positioning stabilisers correctly. It also highlights the clause that excludes losses where the vehicle is being used as a tool of the trade. County didn't uphold T's complaint and wasn't able to release it from its contract with the insurer.

T didn't think this outcome was fair and referred the matter to our service. Our investigator upheld the complaint. She says it's clear T's vehicles are used as tools of its trade frequently and that County was aware that cover was required for carrying out business activities. Because of this she didn't think the policy met T's requirements and County hadn't highlighted the exclusion sufficiently.

Our investigator says County should arrange for T to be released from the contract with the insurer. This means County should cover the financial costs in the event the insurer declined to allow this. But she thought the claim was declined fairly based on the safe use exclusion.

County agreed, but T didn't. It says this outcome doesn't reflect the financial damage or the stress and worry caused. T asked for an ombudsman to consider its complaint.

It has been passed to me to decide.

## **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.

Having done so I've decided to uphold this complaint in part. Let me explain.

County acts as insurance broker for T. T was placed with its current insurance provider in 2018. I've read the policy terms to understand what exclusions are in place. The terms say:

*"General Exceptions:*

*any loss damage or liability under Section 1 whilst any item of mechanical plant or machinery or tool whether attached to the “Insured Vehicle” or not, is being used as a TOOL OF TRADE including whilst loading or discharging a load except so far as it is necessary to meet the requirements of the Road Traffic Acts and under Section 2 damage to the “Insured Vehicle” itself is excluded.”*

I acknowledge T’s comments that this exclusion means it isn’t covered for activities it frequently carries out. I’ve looked at County’s notes to see what it understood T’s requirements were. A factfinder document dated in August 2018, asks the question, *“Please indicate the nature of your operation”*. T’s answer is recorded as, *“Machinery Movement & General Haulage”*. Under, *“What types of goods are carried”* T responded with, *“Machinery & Heavy Plant”*.

I think it’s clear T was reliant on County to source an insurance policy that fit with the needs of its business. It’s also clear the exclusion clause in the current insurer’s terms meant the policy didn’t meet its needs.

County has provided copies of email correspondence both internal and external. I can see from this that T’s previous insurer didn’t have the tools of the trade exclusion. However, when the new insurer was appointed, I can’t see that County highlighted this new term. Given its significance, I think it should have.

I can see that our investigator asked T whether other claims had been impacted by this exclusion. It hasn’t shown that it did. But I can understand T’s concern that it is at risk of suffering future uninsured losses because it’s currently tied into this policy until 2024. Because of this I think it’s reasonable that County makes arrangements to allow T to be released from its current insurance policy. If the insurer isn’t agreeable, it should ensure any premium T has paid for cover post cancellation is refunded, as well as covering any other financial costs in cancelling the policy.

I’ve thought about whether this exclusion impacted on T’s insurer declining its claim for losses. I don’t think it did. The insurer relied on another exclusion based on safe use. The terms say:

*“We shall not be liable in respect of: (1) any accident, injury, loss, damage or liability caused, sustained or incurred whilst the “Insured Vehicle” is: being used in an unsafe condition either before or after an accident.”*

From what I’ve seen the losses occurred as a result of T’s employee not following the correct procedure involving stabilisers. This isn’t related to the tools of the trade exclusion. So, I don’t think the insurer’s decision will have been any different had the tools of the trade exclusion not been there.

I acknowledge T’s reference to financial damage caused to the business. We asked for information to demonstrate this point. From what I’ve seen I don’t think financial damage has been demonstrated. Other than the contract issue, which I have already addressed.

I also acknowledge T’s reference to the stress and worry caused by the declined claim and the mis-advice provided. I’m sorry the individuals working for T have been upset by this matter. However, the complainant here is a business. I’m not able to consider an award for distress suffered by a business.

### **My final decision**

My final decision is that I uphold this complaint in part. County Insurance Consultants

Limited should:

- make arrangements to allow T to be released from its current insurance policy - if the insurer doesn't allow for this, County should pay the costs involved in cancelling the policy, including refunding any premiums paid for cover post the cancellation.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 20 March 2023.

Mike Waldron  
**Ombudsman**