

## **The complaint**

A company that I'll refer to as J has complained that Great Lakes Insurance SE unfairly declined their motor fleet insurance claim.

Mr P, a director of J, has brought the complaint on J's behalf.

Great Lakes is the insurer of this policy. Part of this complaint concerns the actions of its agent. As Great Lakes is accountable for the actions of its agent, any reference to Great Lakes includes the actions of its agent.

## **What happened**

J held a Motor Fleet insurance policy with Great Lakes. J claimed on its policy after one of its drivers had an accident driving a tipper lorry. J said its driver forgot to fully lower the tipper when it was driving off a site. J said the driver was driving at around 20mph for around 20 seconds. J said the raised tipper hit an overhead gantry causing damage to the tipper and the gantry.

Great Lakes declined J's claim. It said the 'Health and Safety Executive Tipping guidelines' state that the tipper should be level at all times while the lorry is being driven. And as the tipper was not level it was being driven in an unsafe condition and that meant it was not covered by the policy as there was a general exception (exception 1 (c)) which excluded cover where a vehicle was being used in an unsafe condition.

Unhappy with Great Lakes' response, J brought its complaint to our service. It said the driver was fully conversant with the health and safety requirements but had forgotten to fully lower the tipper. It said it was an accident, and that is what the policy should cover. J said it had a similar claim for almost identical circumstances covered a few years earlier.

One of our Investigators looked into J's complaint and thought it was reasonable for Great Lakes to decline the claim, as she thought the tipper was being driven in an unsafe condition.

J did not agree. It said the policy wording was ambiguous and open to interpretation. It thought the intention of this wording was to exclude claims where a vehicle was being driven in a poor condition, such as with bald tyres or faulty brakes. Whereas its driver had just made an error. It thought it was unfair to decline the claim as this was an accident.

J said the driver did not have the tipper fully raised as it had been lowered to 80% flat. J explained that once a load has been tipped the driver has to lower the tipper part of the way down in order to close and secure the tipping door. It said the tipper is not fully lowered at this point, as otherwise the driver cannot reach the rear door. J said once the door was secure the driver got back into the cab and forgot to lower the tipper to level. J provided photos showing the position of the tipper lorry.

Great Lakes said that the purpose of the exception was not to exclude claims where the vehicle was faulty or poorly maintained, as those requirements were set out under a

separate condition of the policy (general condition 4). Great Lakes said this showed that the exception was intended to apply when a vehicle was being used in an unsafe way.

Great Lakes reiterated that tipping guidelines said that the tipper should be lowered and that J's driver was driving around the compound with the tipper raised.

Another of our Investigators reviewed the information and recommended J's complaint be upheld. He said the words "unsafe condition" were not defined in the policy and were used in both exception 1 (c) and general condition 4. He thought the exception related to vehicles being driven in a poor physical condition. As there was nothing to indicate that the tipper was being driven in a poor physical condition, and as he thought not lowering the tipper was a genuine accident, he therefore did not think it was fair and reasonable for Great Lakes to decline J's claim. To put things right, he recommended that Great Lakes reconsider J's claim in line with the remaining terms and conditions of the policy.

J accepted our Investigator's recommendation but Great Lakes didn't and asked for an Ombudsman's decision. It said that the exception was a standalone exception and it was not reasonable to change the meaning of "unsafe condition". It said all vehicles are fitted with a warning alarm which indicates that the tipper has not been lowered and this meant the driver would have been aware of carrying out an unsafe manoeuvre.

J also said the claim had originally been declined due to the tipper being driven in an unsafe way, but now Great Lakes was referring to an unsafe manoeuvre. It said this was completely different as a manoeuvre was completely different to an unsafe condition. J said it was not true that all tippers have a warning alarm and this vehicle did not have one. It said there was a small warning light but this would not have been visible to the driver as it was not in the cab.

Before I reached a decision on this complaint I let both parties know that I intended to require Great Lakes to do something different to that which our Investigator had recommended. I said that, to put things right, Great Lakes should pay J's claim, which would include dealing with any third party claim. J confirmed that it had not yet paid for repairs.

Great Lakes still did not agree to paying J's claim as it did not believe that it was covered by the policy.

### **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.

J's policy covers, amongst other things, accidental damage and liability to third parties. It also has an endorsement which says that cover is provided for damage to the insured vehicle caused by, or arising out of, the use of tipping gear. However, exception 1 (c) of J's policy says that Great Lakes will not be liable for loss, damage or liability caused where the insured vehicle is being "used in an unsafe condition either before or after an accident".

"Unsafe condition" is not defined in the policy and I have considered Great Lakes' point that it intended the exception to apply to circumstances where a vehicle is being driven in an unsafe manner, and not only where a vehicle has been poorly maintained. I don't intend to make a finding on that because, even if I agreed with Great Lakes' that this exception also applied to vehicles being used in an unsafe way, I do not think it would produce a fair and reasonable outcome to this particular complaint for me to allow Great Lakes to rely on this exception. I will explain why.

I am persuaded by what J has said, that the driver had lowered the tipping body some way but forgot to lower it all the way down before driving off. This is because J has explained the process that the driver should have gone through and explained why the driver might not have noticed that the tipping body was not fully lowered. I also have not seen anything to persuade me that the driver would have had any reason to drive around with the tipper still raised. I think that the CCTV provided also supports that the driver was leaving the compound which, in my view, suggests that the driver did not intend to drive with the tipping body raised, as I don't think the driver would have wanted to drive on public roads with the tipper raised.

It is not disputed that the driver was not tipping a load and it is also not disputed that the driver should have lowered the tipping body as set out in the Health and Safety guidelines. Therefore, I acknowledge that the lorry was being driven in a way that was not safe and therefore in some circumstances it could be considered to have been driven in an unsafe condition. However, I think that a reasonable interpretation of being driven in an unsafe condition would be where the driver knew, or should reasonably have known, they were driving in an unsafe condition or where they acted recklessly. I do not think it is fair and reasonable for Great Lakes to rely on this in this case where there was a genuine, and understandable, error.

Great Lakes said that tipper lorries all have alarms in their cabs. But I haven't seen anything other than its comments to support this. I'm more persuaded by J's comments that there is not an alarm in the cab, as it has provided a photo which shows the warning light which is outside of the vehicle, and which the driver would not have seen when driving.

I do not believe that J's driver knowingly or recklessly drove the lorry with the tipper body raised, instead, I think it was an accident. Therefore, while exception 1 (c) might technically apply, for the reasons set out above, I do not think it produces a fair and reasonable outcome in this particular case for Great Lakes to rely on it. As such, I have considered how Great Lakes should put things right.

### **Putting things right**

J has confirmed that it has not yet paid the repair invoice for repairs to its vehicle. Therefore, as I don't think Great Lakes should have declined J's claim by relying on the aforementioned condition, I think that the fair and reasonable outcome is for Great Lakes to pay J's claim and deal with any third party claim in line with the remaining terms and conditions of the policy.

### **My final decision**

My final decision is that I uphold this complaint and require Great Lakes Insurance SE to do what I have set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 20 June 2023.

Sarann Taylor  
**Ombudsman**