

The complaint

A business (L) complains about its insurer, Society of Lloyds (Lloyds) declining a claim for damage caused by fire to a tractor.

Any reference to Lloyds in this decision includes their agents.

In bringing its complaint, L was supported by a representative (its broker). References to L include the representative.

What happened

In July 2022 one of L's tractors caught fire whilst being driven down a road, the driver noticing smoke coming from the middle of the tractor. The fire was put out by the fire service but caused significant damage, with repair costs estimated at £16,468 (excluding VAT) by a repairer (T). L contacted Lloyds to tell them about the fire and lodge a claim for the damage.

Lloyds appointed an engineer (B) to inspect the tractor, assess the damage and the cause of the fire. B's report (August 2022) found the damage was underneath the frame of the tractor and cab assembly. The report concluded there had been a 'low-level thermal incident' (fire) causing damage to various electrical wiring looms and associated components. The seat of the fire was determined as the handbrake calliper and disc at the rear of the transmission, acting on the rear driveshaft. Organic material (chaff) had compressed around the calliper and disc and then ignited because of friction between the chaff and brake components (it wasn't a specific mechanical failure).

The report also said review of the tractor's service and maintenance documentation indicated routine cleaning down of the vehicle was an important preventative maintenance procedure. The tractor operating manual indicated daily cleaning, but L said the tractor had last been cleaned ten days before the incident. Specifically, clearing chaff and other combustible organic materials to prevent accidental fire damage. Without this, dry organic materials could become trapped (or settle) around parts of the tractor that became hot (including exposed brake discs). B concluded there had been a lack of preventative maintenance on the tractor.

Based on B's report, Lloyds declined L's claim in an email in September 2022, referring to the policy General Conditions. These included a requirement to protect an insured vehicle from loss or damage. Lloyds said L hadn't met this condition because of the lack of preventative maintenance (cleaning down of the vehicle from chaff and other combustible organic materials).

L challenged Lloyds' decline, saying a cleaning regime was in place where vehicles (including the tractor) were cleaned when dirty. The vehicle was under three years old and under a service contract with the manufacturer, with maintenance in accordance with the contract. The nature of tractors operating meant mud and chaff built up rapidly, and they were designed to operate (safely) in such conditions. L said additional factors contributed to the incident, including the unprecedented dry conditions at the time. And the tractor having an external brake mechanism (most tractors had internal brake mechanisms) would appear

to have ignited the chaff, due to the extreme heat. L also referred to views they obtained from two loss adjusters, who didn't think L's decline was reasonable.

Unhappy at Lloyds' decision, L complained. But Lloyds didn't uphold it. In their stage one complaint response (October 2022), they said review of the case wouldn't lead to their changing the decision not to cover the damage (for the reasons set out in the email).

Lloyds also considered the complaint under stage two of their complaint procedure. In their stage two final response (November 2022) they didn't uphold the complaint, confirming the decline of the claim. They noted the claim was for fire damage, believed to have arisen from a mechanical failure (something not covered by the policy). The final response also referred to B's conclusions about the lack of preventative maintenance and the general condition about taking steps to protect a vehicle from loss or damage. Lloyds concluded the claim had been declined correctly in accordance with the terms and conditions of the policy.

L didn't agree with Lloyds' final response. They obtained a view from T, who said the fire was caused by a handbrake calliper that had failed, causing a heat source well beyond the manufacturer's design parameters. The failure caused ignition of the wiring loom and operational debris on the tractor (combined with the heat on the day of the incident and the normal daily build-up of debris). But the failure only became clear when the tractor was stripped down and the faulty calliper removed. T also said the debris inside the chassis couldn't be removed by routine cleaning, only accessible during servicing.

Lloyds considered L's points but didn't change their decision to decline the claim. They cited B's review of the points raised, having inspected the brake components in question. B said the calliper hadn't seized (and he hadn't observed any physical damage) and both brake pads hadn't worn evenly, such that the outer brake pad had been in contact with the brake disc (metal to metal). This shouldn't have been possible and would cause friction and heat when the brakes were applied (though B couldn't state with certainty this was associated with the fire). B also thought organic material had collected between the calliper and disc due to lack of routine cleaning. Based on the findings, B didn't change its view there was a lack of application of preventative maintenance (cleaning).

Unhappy with Lloyds' response, L complained to this Service. It said it had been affected financially by the cost of repairs (£16,468) as well as the cost of hiring an alternative vehicle (£1,250 a week) that would be covered under the Increased Cost of Working section of the policy. But this would only be invoked on acceptance of the claim for damage from the fire under the motor section of the policy. L wanted Lloyds to accept liability under the terms of the policy and cover the cost of repairs to the vehicle (less the applicable policy excess).

Our investigator didn't uphold the complaint, concluding Lloyds handled the claim fairly and reasonably in line with the terms and conditions of the policy. He considered the evidence provided by Lloyds (including B's report) and L (including T's opinion) but was more persuaded by the evidence from Lloyds. The photographs in B's report showed chaff build-up and the evidence didn't indicate cleaning in line with the manufacturer's recommendations. And there wasn't evidence to support the brake calliper being faulty.

L didn't agree with the investigator's view and asked that an ombudsman review the complaint. It said they'd taken legal advice which said a 'reasonable care' condition of the kind referred to by Lloyds (the general condition on preventing loss or damage) required recklessness on the part of L to engage (to actively appreciate a risk in not taking a particular step and then disregard the risk) rather than carelessness. L said there was no evidence of recklessness in the circumstances of the case. Nor did L accept its maintenance and cleaning programme was deficient. The evidence indicated L directed their minds towards maintenance, so met the required standard under the policy.

In my findings, I noted L provided evidence of the tractor being serviced in the year leading up to the incident, indicating the tractor was serviced in the period before the incident. I also noted what L said about their cleaning programme.

I concluded L had a reasonable approach to maintenance, including servicing in accordance with the manufacturer's recommended intervals and daily checks of the tractor for obvious defects. I didn't think this constituted reckless behaviour by L.

That being the case, I concluded Lloyds hadn't acted reasonably in citing a lack of preventative maintenance (not taking reasonable care to avoid loss or damage) as grounds for declining the claim.

I also considered T's opinion the fire was caused by a faulty brake calliper which led to a heat build-up beyond the design parameters. Which caused the chaff and debris present to ignite. So, the proximate cause of the fire was the failure of the brake calliper. While a mechanical defect or breakage itself wouldn't be covered, I didn't think it reasonable to conclude a fire caused by a mechanical defect or breakage wouldn't be covered. For example, a fire arising from an electrical fault.

So, in either of the two scenarios on the cause of the fire, I didn't think Lloyds acted reasonably, in line with the policy terms and conditions, in declining L's claim.

To put things right, as I concluded Lloyds unfairly declined the claim, I thought they should reassess the claim in line with the remaining terms and conditions of the policy (including any applicable excess).

Because I reached different conclusions to our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

My role here is to decide whether Lloyds has acted fairly towards L.

The key issue in the complaint is that Lloyds didn't act fairly in declining its claim on the grounds of a lack of preventative maintenance (cleaning) causing chaff and other debris to ignite from contact with (between) the brake calliper and disc. So, this was in breach of the general condition of the policy to prevent loss or damage. L disagrees, saying the fire was due to a failure of a component (brake calliper) causing a heat build-up outside normal operating parameters, igniting the chaff and other debris.

As the decline was based on a policy general condition, I've looked at the relevant wording referred to by Lloyds. In the section headed General Conditions and a sub-heading Your responsibilities it states:

"...you must:

- Take all reasonable steps to protect your vehicle from loss or damage...*

If the above requirement(s) are not met, we may reject or reduce your claim..."

I've then considered whether (as Lloyds contend) L didn't take reasonable steps to protect the tractor from loss or damage (by not following the manufacturer's recommended cleaning procedures). Or, as L contends, they acted reasonably in their maintenance and cleaning regime.

B's report includes extracts from the manufacturer's instruction manual for the tractor. There's a reference (Table 61) to maintenance intervals, one of which is 10 hours (calendar equivalent to daily). Table 62 includes a component headed 'General machine condition/debris' against which there's a task 'check and clean'. The task is included under the '10' column, indicating it should be carried out daily. The evidence indicates L cleaned the tractor when they considered it sufficiently dirty, and it was last cleaned ten days before the incident. So, that wouldn't follow the manufacturer's recommended frequency.

I've also considered L's view (based on legal advice) they had taken reasonable care (and hadn't acted recklessly) in their maintenance and cleaning programme. And that L directed their minds towards maintenance, so met the required standard (to take reasonable care) under the policy.

In considering this point, I asked L for further evidence and information about their maintenance of the tractor and the cleaning programme. They've provided evidence of the tractor being serviced in the year leading up to the incident (a service at 2,000 hours in July 2021 and a service at 2,500 hours in February 2022). While I haven't seen evidence of services before July 2021 (the tractor was new in 2019), it does indicate the tractor was serviced in the immediate period before the incident.

On the issue of the cleaning programme, L say their operators check their machines every day, looking for breakages, mirrors, tyres, wheel nuts and any other defects. Lubrication of machines is undertaken on moving parts and fuel and oil levels are checked (and filled or topped up as necessary). Operators are also very keen to ensure machinery is kept clean and in good working order.

I've considered this further information and evidence alongside the other evidence and information on the preventative maintenance point. In disputing Lloyds' decline of the claim, L said machines are cleaned when dirty. They also said the nature of the conditions the tractor works in means mud and chaff build up extremely rapidly (though the tractor is designed to operate in such conditions). The photographs show a significant amount of chaff (debris) in the tractor, which would be consistent with L's comments about rapid build up. also pointed to the unprecedented dry conditions at the time of the incident.

I've then considered whether this then led to, or contributed to, the fire that occurred. Here the evidence differs between B and T. B concludes the presence of chaff and debris came between the brake calliper and disc (which B says involved metal on metal contact) causing ignition of the debris. B's report states:

"Organic materials (chaff) have become compressed around the calliper and disc.

This material has ignited because of friction between the chaff and brake components.

As can be seen in the following images, there is a significant amount of chaff build-up underneath the vehicle.

The correspondence received would indicate in my opinion that there was a lack of application of preventative maintenance."

T disagrees with B, stating in their opinion:

"In our opinion the fire was caused by a faulty handbrake calliper that failed and bound and caused a heat source well beyond designed parameters of the manufacturer.

The component failure only became obvious when the machine was stripped, and the faulty calliper removed.

The operational debris on the machine inside the chassis would not be possible to clean during the routine cleaning and would only be possible to clean during the routine cleaning and would only be possible to gain access to this area when servicing in accordance with the manufacturer's stipulations."

Looking at these comments and the other evidence and information, it seems clear there would have been (and was) a build up of chaff and debris around the brake. And while the tractor would have been cleaned, the last point above made by T would indicate the daily cleaning routine wouldn't have involved clearing the chaff from around the brake (as it wouldn't have been accessible other than in a service). Which means it would have built up and provided the material ignited in the incident.

Thinking about all these points, I've concluded L did have a reasonable approach to maintenance, including servicing in accordance with the manufacturer's recommended intervals, and daily checks of the tractor for obvious defects. I don't think this constitutes reckless behaviour on the part of L.

That being the case, then I've concluded Lloyds haven't acted reasonably in citing a lack of preventative maintenance (not taking reasonable care to avoid loss or damage) as grounds for declining the claim.

While B concluded there wasn't a mechanical failure, I've also considered T's opinion the fire was caused by a faulty brake calliper which led to a heat build-up beyond the design parameters. Which caused the chaff and debris present to ignite. So, the proximate cause of the fire was the failure of the brake calliper.

Lloyds state in their stage two final response that the policy doesn't cover mechanical failure. The relevant section of the policy is a sub-heading Exceptions to Section 2 (Loss of or damage to your vehicle) which includes the following statement:

"This section of your insurance does not cover the following:

...4. Failures, breakdowns or breakages of mechanical, electrical, electronic or computer equipment..."

However, while a mechanical defect or breakage itself wouldn't be covered, I don't think it's reasonable to conclude that a fire caused by a mechanical defect or breakage wouldn't be covered. For example, a fire arising from an electrical fault.

So, in either of the two scenarios on the cause of the fire presented, respectively, by Lloyds (based on B's report and opinions) and by L (including T's opinion) I don't think Lloyds have acted reasonably, in line with the policy terms and conditions, in declining L's claim.

Having reached this conclusion, I've considered what I think Lloyds should do to put things right. As I think they've unfairly declined the claim on the grounds of a lack of preventative maintenance (not taking reasonable care to avoid loss or damage) then they should

reassess the claim in line with the remaining terms and conditions of the policy (including any applicable excess).

My provisional decision

For the reasons set out above, my provisional decision is that I uphold L's complaint. I intend to require Society of Lloyds to:

- *reassess the claim in line with the remaining terms and conditions of the policy (including any applicable excess).*

L responded to say they had nothing further to add.

Lloyds responded to say they'd passed the provisional decision to their underwriter, and it was being considered by their engineer and would be in touch by the deadline for responses. However, the deadline passed without a response.

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.

My role here is to decide whether Lloyds have acted fairly towards L.

L responded to say they had nothing further to add. While Lloyds said they would consider the provisional decision and be in touch by the deadline requested, the deadline passed without a response. Having had four weeks to respond, or requested an extension, I think Lloyds have had a reasonable opportunity to respond.

As neither L or Lloyds have provided any further evidence, information and representations, then my final decision remains the same as my provisional decision, for the reasons set out in my provisional decision.

My final decision

For the reasons set out above, my final decision is that I uphold L's complaint. I require Society of Lloyds to:

- reassess the claim in line with the remaining terms and conditions of the policy (including any applicable excess).

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 7 December 2023.

Paul King
Ombudsman