

## The complaint

L has complained about Zurich Insurance Company Ltd's decision to refuse a claim for a van belonging to it under a policy taken out by Miss B in her own name.

L is a limited company represented by Miss B, who is a director.

## What happened

As both parties know the full circumstances behind this complaint I have not gone into what happened in detail. Instead I have provided a brief summary below.

L made a claim for a van (vehicle C) belonging to it that was stolen. The claim was under a policy in Miss B's name. Zurich refused the claim on the basis the policy doesn't cover L.

Miss B asked us to consider L's complaint about this.

I issued a provisional decision on 3 December 2024 in which I set out what I'd provisionally decided and why as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I should say first of all that I consider that L's complaint is within our jurisdiction, i.e. I do have the right to consider it. I am satisfied Miss B intended to take the policy covering vehicle C out with Zurich for the benefit of L. Our rules (DISP 2.7.6(5)) explicitly state that a relationship may still be eligible if the complainant is a person for whose benefit the contract of insurance was "intended" to be taken out with the respondent. I do not believe the fact Zurich didn't know that Miss B intended to take the policy out for L's benefit is relevant. I say this because DISP 2.7.6(5) does not make any reference to the need for the respondent to have been aware the contract was intended to be taken out for the complainant's benefit. Turning now to the merits of L's complaint.*

*Zurich has not actually avoided the policy Miss B took out to cover L's van, which started on 20 October 2021, which was the policy in force when vehicle C was stolen. Although, Zurich has said it reserves the right to do so. In my opinion, Zurich's approach here was less than clear and it was unusual, as it suggested when it avoided the previous policy covering vehicle C from 8 September 2021 that this meant it did not need to pay the theft claim for this vehicle. However, as the later policy was in force at the point vehicle C was stolen, Zurich was technically obliged to consider the claim (given it hadn't avoided this policy).*

*However, as Zurich has not at this stage avoided the relevant policy, I've not considered this aspect. I have instead considered whether L has the right to claim under the relevant policy for vehicle C. Unfortunately, I don't think it does. I appreciate this will be very disappointing news for Miss B at this late stage, but I'll explain why.*

*I agree with Zurich that Miss B did not have an insurable interest in vehicle C. This is*

*because it was owned by L and it held the legal title for it, and L had exclusive use of it. And it was the only party that stood to suffer a loss if it was damaged or stolen. However, I do not believe this in itself prevents L from making a successful claim under the policy Miss B took out with Zurich to cover vehicle C. I say this because I believe it would have been possible – subject to the below criteria – for Miss B to take the policy out as an agent of L for its benefit, i.e. L could be an undisclosed principal and so entitled to benefit under the policy and therefore receive payment following a claim.*

*I say this because I believe that in agency the legal cases hold that L can be treated as a contracting party to the policy as long as:*

- a) Miss B was authorised to enter into the contract on L's behalf;*
- b) Miss B intended, when entering the contract, to do so as an agent for L; and*
- c) there is nothing in the contract which precludes L from being a contracting party.*

*Miss B is a director of L, and so I think she can establish points a) and b). However, I do not consider she can establish point c). And this is why I don't think L can claim under the relevant policy covering vehicle C.*

*This is because legal commentators suggest the case law around this issue makes it clear it is almost impossible for a court to reach a finding that an undisclosed principal is a contracting party to the policy where the policy identifies the insured persons by name or description. And the policy documentation for the policy Miss B took out to cover vehicle C in October 2021, which was the policy in force when it was stolen, records the customer (the insured person) as Miss B. This is both in the Statement of Insurance and in the Certificate of Insurance.*

*In addition, the policy identifies the insured persons by description and this description does not include L. I say this because 'You, your' is defined as 'the person named as the policyholder on your certificate of motor insurance'. And that was Miss B, not L. And the policy makes multiple references to 'You, your' in a context which can only relate to a natural person, not a corporate entity. There is also a prohibition in the policy on assigning any interest, which again indicates it was only intended to cover the insured person, i.e. Miss B.*

*I appreciate the policy did extend to cover use of vehicle C for business purposes. However, I accept Zurich's argument that this cover is not intended as commercial cover to a corporate entity, but is instead intended to cover a natural person for driving from A to B for business purposes, as opposed to it being intended to cover a business to carry materials for business from location to location. So, I don't think this clause in itself suggests the policy is one that could extend to cover a corporate entity like L.*

*This all means that, despite my natural sympathy for Miss B's predicament as a director of L, I do not believe I have sufficient grounds to require Zurich to meet L's claim for vehicle C as an undisclosed principal under the policy Miss B took out to cover it in her own name. And I do not consider there is any other good reason for me to find that it would be fair and reasonable for me to make Zurich meet L's claim, irrespective of what I believe the position to be in law, as set out above.*

*It seems to me that the main problem here is the fact that Miss B took a policy out in her own name under a private client contract to cover a vehicle which didn't actually belong to her personally. And then didn't point out when she got the policy documentation that the owner and registered keeper were incorrectly shown as her and not L. It is not for me to comment on why she did this, but it does mean that she ended up with a policy which didn't actually provide any cover at all for vehicle C.*

### ***My provisional decision***

*For the reasons set out above, I've provisionally decided not to uphold L's complaint about Zurich Insurance PLC.*

I gave the parties until 17 December 2024 to provide further comments and evidence in response to my provisional decision.

Miss B responded on behalf of L and provided some further comments herself, along with comments and evidence from her insurance broker, who I'll refer to as P.

I asked Zurich to provide its comments on what Miss B and her broker had said, as it concerned the transfer of Miss B's policy from a scheme with another insurer to a scheme with Zurich. It has now provided its comments.

### **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 not to uphold L's complaint. I'll explain why.

Zurich has said in its response to my provisional decision that it still does not agree L is an eligible complainant, but it does not wish to challenge this provided I reach the same conclusion in my final decision. However, I should say for completeness, that my view that L is an eligible complainant remains the same and I am issuing this final decision on the basis I believe L's complaint is one that I can consider.

I've now established that vehicle C was originally added to a policy in the name of L with Zurich in September 2018. But it was only insured under this policy until October 2018. It was then insured under a policy with another insurer in L's name until October 2019. And in October 2019 P arranged a policy in Miss B's name to cover it and other vehicles with an underwriter who I'll refer to as O. This policy also covered another van belonging to L and its interest in this van was noted on the policy. But L's interest in vehicle C was not noted. I've also established that the policy did not include use of the vehicles insured under it for the carriage of goods in connection with a trade or business. So, it seems the cover was more limited than was needed, bearing in mind what L used vehicle C for. In addition, it seems that when this policy was taken out O were told that vehicle C belonged to Miss B and that she was the registered keeper of it. This was also incorrect, as it belonged to L and – as I understand it – L was the registered keeper. However, I have not seen the vehicle registration document, so I can't be sure L was the registered keeper.

It was the policy with O that was transferred to Zurich. And the details for the policy with Zurich were picked up from the information that had been provided to O.

When the policy was provided by Zurich it sent a letter to P which stated that the policy with Zurich was specially designed to protect 'the owners of high value cars and family fleets'. And the letter also said that it was important that P checked the policy documents to ensure the cover still met Miss B's needs. So, I'm satisfied that Zurich did make it clear that the documentation needed to be checked and that P needed to make sure the policy was suitable for Miss B. And either P or Miss B could have picked up on the fact L's interest in vehicle C had not been noted on this policy. They could also have noticed that Miss B was incorrectly noted as the owner and registered keeper of the vehicle.

I've noted that P has suggested that Zurich's definition of business use under the policy it

provided in 2020 was narrower than the cover provided under the policy with O. But, looking at the certificate provided by Zurich in October 2021, the cover for business use under its policy actually appears to be wider than the cover that was provided by O, as it provides cover for business use, but only excluding use for the carriage of passengers for hire or reward.

I have also noted P's point that the Consumer Insurance Act 2012 required Zurich to ensure it asked appropriate questions. But this is not the relevant legislation. Because L's van was used in connection with its business, the correct legislation is the Insurance Act 2015. And this required L and/or P on its behalf to make a fair presentation of the risk it wanted Zurich to insure. This would have included making it clear who owned any vehicles to be insured under the policy and the extent of the use of these vehicles.

I've also noted P's comment that in its experience Zurich is happy to note the interest of a company in relation to vehicles insured when the policy is in the name of an individual. But, as Zurich has pointed out, noting a company as an owner does not actually mean it is insured under the policy. But, the reality is, L's interest in vehicle C was not noted and – as I see it - Zurich had no reason to think it was insured under its policy. This means the only way L could have a valid claim under Miss B's policy with Zurich would be to claim as an undisclosed principal. And I've explained in my provisional decision why I don't consider it can do this.

P has also suggested that the intention for the interest of L to be noted for vehicle C and for L to be able to claim for the loss of or damage to it should have been clear to Zurich. But I do not agree. It was for Miss B or P on her behalf to make sure Zurich was aware that L owned vehicle C and wanted to be able to claim for it. And then Zurich could have decided whether it wanted to cover it under a policy in Miss B's name. This didn't happen and Zurich assumed it was owned by Miss B and correctly insured on her name based on the information that it had available when it took over the policy from O. And, despite it sending clear documentation stating this was the case, it was never told otherwise. And I would not have expected Zurich to pick this up from the fact it provided cover for vehicle C in 2018 on a separate policy in L's name.

In summary, while I sympathise with Miss B's position, it seems that up until October 2019 L had a policy covering vehicle C that was in its name and suitable in terms of the cover for business use. But this changed in October 2019 when P arranged the policy with O and provided the information to O based on which the policy was set up. And, while it is not possible for me to know or comment on why this was, it was this that ultimately led to vehicle C being insured under a policy with Zurich, which L is not entitled to claim under for the reasons I explained in my provisional decision.

### **My final decision**

For the reasons set out above and in my provisional decision, I've decided not to uphold L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 25 February 2025.

Robert Short  
**Ombudsman**