

The complaint

Mr K complained because an insurer at the Society of Lloyd's (I'll refer to Lloyd's for ease) declined his motor insurance claim.

What happened

Mr K bought a car for £22,991. According to the sales invoice Mr K was the buyer and payment was made up as £3,000 cash; £7,000 part exchange; and £12,991 through finance. Mr K was involved in a road traffic accident and he made a claim under his policy. Lloyd's initially offered to settle the claim but later declined it. This was because it felt Mr K had no financial interest in the car.

Mr K argued that the car was his and he paid for it. He said that in order to buy the car he paid the initial deposit and part-exchanged the other car, and although the credit was taken out by someone else he paid for it. Lloyd's remained of the view that Mr K's claim wasn't covered as he hadn't established a direct financial link to the car, so he had no *insurable interest* in it.

What I provisionally decided

I issued a provisional decision which outlined why I didn't think the complaint should be upheld. The relevant parts of my provisional decision are detailed below and form part of this final decision.

- I'd seen various documents that I considered relevant to the complaint:
 - Sales invoice – this showed what I've outlined above
 - Credit agreement – this showed that credit was taken out by a Mr A (one of Mr K's work colleagues); the credit was £12,991 over a 60 month period; the repayments were 59 monthly payments of £287.46 and one final payment of £437.46; the credit was linked to the purchase of the car that's at the centre of this complaint
 - Registration (or V5) document – this showed the registered keeper as Mr K
 - Statements from Mr A and Mr K – these said that Mr A got a bank loan to help Mr K buy the car, and that Mr K had been paying money into Mr A's bank account and Mr A was paying the finance company from there
 - Mr A's bank statements – these showed regular payments of £287.46 being made to the finance provider from March 2017 to May 2018; and various payments ranging from £30 to £2,000 being paid into the account by Mr K during the same period (although some payments just had a handwritten note which said the payments came from Mr K; and there were other payments going from the account to Mr A).
- The credit was provided to Mr A through a conditional sale agreement – which worked by the credit provider buying the car from the dealer, and then allowing Mr A to pay for it over a number of instalments; in essence, the car was owned by the credit provider and Mr A essentially 'hired' it from the credit provider until he paid all the instalments.

- Mr K's policy didn't cover loss of or damage to any car he was driving or using that didn't belong to him, that wasn't being bought by him under a hire purchase agreement or was leased to him.
- 'Insurable interest' is the interest (usually financial) a person has in property to the extent that if the property is lost or damaged the person suffers harm (usually a financial loss); it's important to insurance because a person can't generally insure something that they don't own/have a financial interest in.
- The majority of the purchase was funded by way of credit that was provided to Mr A. It was solely Mr A's responsibility to make the repayments – the credit provider wouldn't have any claim on Mr K for any missed payments. And irrespective of any funding arrangements Mr A and Mr K might have agreed to, Mr K wasn't party to the credit and he had no insurable or financial interest in the car through the credit agreement.
- The starting position for me was that the credit provider owned the car and Mr A had the main financial and insurable interest in it (due to his liability to the credit provider through the credit agreement). So I thought Mr K had to provide persuasive evidence to show that he ought to be recognised as the person with insurable interest.
- I felt one problem Mr K had in that respect was that there was no clear paper trail confirming that he paid money to Mr A, who in turn paid the credit provider. Although this is what both Mr A and Mr K said in their statements, I didn't place much weight on the statements as I didn't think they were supported by the bank statements that had been provided – because none of the transactions in the statements that showed money paid into Mr A's account by Mr K (or purported to show this) correlated with the £287.46 Mr A paid each month to the credit provider; the payments were irregular in frequency and amount.
- Mr K said that the different payments didn't mean they didn't support payments for the finance. I acknowledged that was true as it was possible the payments, in part, covered the cost of the credit. But I felt it equally possible that they were for something else altogether – particularly as the payments going into the account between March 2017 and May 2018 exceeded £20,000, whereas the repayments for the same period totalled just over £4,000; there were also some transactions going from Mr A to Mr K. Given my starting position that it was the credit provider and Mr A who had the financial/insurable interest in the car, I didn't think the *possibility* that the payments covered the credit was enough to conclude that Mr K was *probably* paying for it.
- Mr K explained that both he and Mr A used the account – hence the various transactions. However I didn't think that helped him establish a clear paper trail linking him to the finance, and therefore the car.
- Overall, I didn't think Mr K had done enough to show that he was paying for the finance.
- The sales invoice showed that Mr K was the buyer so I thought it was more likely than not that the part-exchanged car was owned by him – because I thought the dealer would likely have made some cursory checks into the ownership of the car before accepting it in part exchange.
- The deposit wasn't as clear because the cash could have come from anywhere. I thought it significant that Mr K hadn't been able to provide proof (eg a bank statement

showing a debit card transaction or a recent cash withdrawal) that the £3,000 paid to the dealer was his.

- The registration document was in Mr K's name; however that didn't establish ownership of the car.

Summary/conclusion

- The ownership and financing of the car wasn't clear. But the legal position at the time of the claim due to the credit agreement was that the car was owned by the credit provider and Mr A had the main financial interest in the car. Mr K might also have had a financial interest in the car through the deposit paid and the car part-exchanged. But even if better evidence in that respect could be provided, I didn't think it overcame the fact that the main financial interest in the car was held by the credit provider and Mr A.
- I didn't therefore think Lloyd's treated Mr K unfairly when it declined the claim – because the policy didn't cover damage to a car Mr K was driving that didn't belong to him. And I didn't think Mr K had sufficiently shown that the car belonged to him.

Responses to my provisional decision

Lloyd's accepted my provisional decision.

Mr K acknowledged my decision although he said it wasn't what he was expecting. He nevertheless pointed out that I had failed to consider the witness statement he and Mr A provided; he asked me to take these into consideration before finalising your decision.

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 disagree with Mr K that I failed to consider the witness statements – I referred to them in my provisional decision and explained why I didn't place much weight on them. I will nevertheless confirm my position for clarity.

Mr K and Mr A's statements essentially mirrored one another. Mr K said:

- he bought the car and was the legal owner of it
- he paid £3,000 in cash, £7,000 part-exchange, with the remainder by way of a loan provided to Mr A
- the log book was registered in his name and he insured the car
- at the point of insuring the car he wasn't asked whether he financed the car himself or not; but in any event he had been paying money into Mr A's bank account and Mr A in turn was paying the finance company.

Mr A said:

- Mr K bought the car – paying £3,000 in cash, £7,000 part-exchange, with the remainder coming from a loan from the bank to help Mr K finance the purchase
- Mr K had always been paying him and he in return was paying the finance company
- in 2015/2016 he earned £8,236.80, in 2016/2017 he earned £9,000.00 and from April 2018 he earned £773.28 per month – so he couldn't pay the finance company without payments from Mr K.

I've already said above that I don't place much weight on the statements in respect of who ultimately paid the credit provider because they're not supported by the transactions showing on the bank statements. I have nothing further to add in this respect.

I don't consider Mr K's comment about him not being asked about the financing of the car material to the outcome of the complaint because it doesn't change the fact (a) that the policy doesn't cover damage to a car Mr K was driving that didn't belong to him, and (b) that in my opinion Mr K hasn't sufficiently shown that the car belonged to him. What Mr K was asked at the start of the policy might have been relevant if Lloyd's declined the claim based on misrepresentations Mr K made when he insured the car – but that isn't the case.

I also don't consider Mr A's comment about his earnings material to the outcome of the complaint. That's mainly because I'm not judging Mr A's financial position and whether or not he could have afforded to pay the monthly repayments – I'm judging whether Lloyd's treated Mr K fairly given the issues in respect of the ownership of the car/insurable interest. In any event, Mr A's recorded earnings are only one part of this financial position and I haven't been provided with anything else – he might, for example, have had other means to pay for the finance eg savings.

Overall, for all the reasons outlined above, my conclusion remains the same ie Lloyd's didn't treat Mr K unfairly when it declined his claim.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 July 2021.

Paul Daniel
Ombudsman