

The complaint

BGC (formerly BEL) complains that Zurich Assurance Ltd (formerly Allied Dunbar) referred to as “Zurich” failed to amend the life cover policy as requested in 2004. As a consequence, the policy is still in the name of BEL which was dissolved in 1999.

BGC can’t surrender the policy because it doesn’t own it and is concerned that the proceeds will belong to the Crown at the point of claim. This wouldn’t have happened if Zurich had done what it was instructed to do.

BGC was being assisted by a firm of solicitors.

What happened

In 1992, BEL took out Lifeline Plan, also known as a “Keyman Policy”, referred to as “the policy”. At the time Mr W1 was the life assured.

In or around 1994 a partnership was set up called BGC, to which the business was transferred and Zurich notified, but parties concede they can no longer trace any material paperwork.

In any case, the business and individual owners remained identical. In 1999, BEL was dissolved and removed from the register of companies. The solicitors say the time limit to reinstate a company is six years and this expired in 2005.

The solicitors say that if Zurich had informed BGC of what was needed to change the policy ownership when it was notified of the transfer of business in 1994 matters could’ve been resolved at the time. Because it didn’t, BGC now has no choice but to liaise with the Treasury Solicitor and Office of the Attorney General, who have indicated that it would require an application made for a Vesting Order.

Zurich remains of the view that it would still require a Court Order before it can take any action regarding this issue.

One of our investigators considered the complaint but didn’t think it should be upheld. In response to a series of questions (referenced below), she made the following observations:

- In July 1994, was Zurich at fault by not noting the change in company status and/or not notifying BGC of the requirement of a Deed of Transfer, at a time when any issues could’ve been resolved?
 - In 1994 BEL sent a ‘generic’ letter to its customers and suppliers about a name change. There’s nothing to suggest that Zurich was directly notified about this or about the change of the policy ownership.
 - In 1994, Zurich wrote to Mrs T (one of the company’s owner and shareholders) at the correspondence address for BGC (referenced as “G Ltd” (name anonymised). The correspondence referred to the Keyman policy, but not to a change in ownership. Shortly after this, letters were sent to a different address but it’s not clear if this was on the instruction of BGC.

- In October 2004, was Zurich at fault for not heeding to a change in company status, and/or not notifying BGC that it would require reinstatement of BEL to the company record when it was still possible to do so?
 - In 2004, Zurich was asked by BGC to amend the business name which Zurich concedes it didn't fully act upon. Although BGC was added to the address alongside BEL, the policy still belonged to BEL as evidenced by 2005 statements. This shows that BGC knew, or ought reasonably to have known, that the policy still belonged to BEL.
 - The onus was on the customer to ensure that the policy documents reflected the correct information and to provide the business with the correct information.
 - If the policy had been successfully updated BGC would've been provided with an updated policy schedule with the policy being issued to BGC.
- Is Zurich responsible for meeting any legal costs incurred by BGC in resolving this matter, given that Zurich insists upon the provision of an Order of the Court, because it failed to deal with change of status of BEL?
 - BEL was required to transfer its assets (including the policy) when the company was dissolved, but it didn't in respect of the policy.
 - In 2004, if Zurich had advised BGC of the requirements to change the policy owner, BGC still would've incurred costs to reinstate BEL, so Zurich shouldn't have to pay now.
- Was Zurich at fault for continuing to accept premiums from BGC, despite the policy belonging to BEL?
 - The person or entity paying premiums doesn't have to be an owner. The premiums applied have kept the policy alive. So, Zurich hasn't done anything wrong in this instance by receiving premiums.
- Has Zurich treated BGC fairly and reasonably throughout this process?
 - Zurich accepts administrative shortcomings in 2004, and more recently with an address change in 2020. But even if these hadn't happened, BGC would still have needed to change the policy ownership. It had information to hand that could've helped it act sooner.
- If there are shortcomings on the part of Zurich, what other remedies are there?
 - The policy ownership caused BGC frustration, but Zurich has been writing to it at the (original) address since 2004 all addressed to BEL, at BGC – suggesting the policy is still in BEL's name. In the circumstances Zurich should've been informed sooner that there was an issue with the policy details and ownership.
 - Since 2007, Zurich hasn't been able to send policy information because the annual statements were returned undelivered, and no updated address was provided. In the circumstances Zurich was right to wait for the customer (BGC/BEL) to contact it, rather than it continue to send correspondence to the same address or chase the customers which it isn't required to do.
 - Where a business has made a mistake, we'd offer compensation for distress and inconvenience. But BGC, although an eligible complainant, is an entity, and therefore isn't eligible for payment for distress and inconvenience.
- Zurich continued to communicate with Mrs T– in relation to the policy – until 2021. It accepts that it shouldn't have done so because she didn't own the policy (she was a beneficiary), so it was right to stop when the error came to light. Because Mrs T is involved with BGC, there wasn't a risk of disclosing (sensitive) information to the wrong person.
- Mrs T believes the policy was mis-sold. It was taken out with BEL for Mr W1, because a similar policy was also taken out for Mr W1, which was in his own name not BEL. But the investigator hasn't considered this part of the complaint because it's a separate issue that hasn't previously been raised.

BGC disagreed with the investigator's view and asked for an ombudsman's decision. In summary, Mrs T made the following points:

- The investigator has misunderstood the point(s) in relation to the events of 1994. She hasn't asked herself why correspondence was sent to BGC and the home address of Mrs T, if Zurich still believed the policy belonged to BEL. Its actions would suggest that it had been notified of the change of details and there's no other way it would've written to "G Ltd" unless it had been supplied with a new Certificate of Registration from BGC in April 2004 – six months before it was sent the reminder in October 2004.
- Zurich accepts it failed to take heed even though the investigator suggests that it didn't. BGC isn't an insurance specialist and therefore shouldn't have known there was a problem because it wasn't sent an updated schedule. BGC placed its trust in Zurich and complied with the relevant terms and conditions.
- BGC (and BEL) were trying to provide the correct information but dealing with a *"bunch of incompetents making it impossible"*.
- Zurich should meet the legal costs incurred by BGC, including employing a barrister to represent them at court, and instructing solicitors. Because Zurich failed to rectify its errors the legal cost is higher than it should've been.
- Zurich has admitted to making errors therefore it should take ownership of the problem and put right everything it has done wrong.
- If Zurich had done its job right in 2004, BGC would've been within the six-year time limit, and so been able to change legal ownership which would've been easier. If it hadn't made a mistake, it wouldn't be where it is now.
- The transfer of assets did happen when BEL was dissolved but Zurich didn't keep the paperwork.
- BGC is disappointed with how this complaint had been handled.

The investigator having considered all the additional points wasn't persuaded to change her mind.

As no agreement has been reached, the matter has been passed to me for review.

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 agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the available evidence, and on balance, despite what BGC says, I can't safely say that Zurich behaved in such a way that this complaint should be upheld.

BGC has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope it won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by BGC and Zurich, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I'm aware that the business has consented to us considering the merits of this complaint.

I don't uphold this complaint, in brief, for the following reasons:

- The responsibility to notify an insurer of the change of name and policy ownership lies with the policy owner. In this instance I don't think that issuing a generic letter notifying customers and suppliers of a change of name as BEL (as the owner of the policy) did in 1994 meant that Zurich should've automatically changed the ownership from BEL to BGC.
- Like the investigator, I've seen no evidence that Zurich was specially written to and given such instructions, and/or notice of intended change of ownership of the policy. I note in correspondence with the solicitors Zurich says that there's no formal evidence that effected the transfer of the legal title to the plan from its original ownership prior to the BEL being dissolved. Arguably this would've been a reasonable time to sort out this issue, but this wasn't done, and may explain why BGC tried to do it in 2004, 10 years after the name change.
- In earlier correspondence with the solicitors Zurich made clear that ownership of a life plan is typically transferred by way of assignment, normally using an appropriately drafted deed. I've seen no evidence that this was done.
- It's my understanding that unless the policy ownership is specifically dealt with – and not just the company name issue – the policy will likely remain in the name of the owner (company) in whose name it was first taken out. This is unless active steps are taken to put the policy – legally – in a new name, which didn't happen here.
- In due course, the instructions ought to have come from BEL, who owned the policy, and not BGC as the company subsequently it became known as. So, its arguable that in 2004, when contact was made by BGC regarding the change of name, Zurich wouldn't have been able to do much because the instructions weren't from the policy owner. The fact that BEL had been dissolved is a separate issue and may explain why in the circumstances it belonged to the Crown. So, on the face of the evidence, and on balance, despite what the solicitors and/or BGC say, I can't safely say that in October 2004 Zurich failed to 'heed' the change in company status.
- It's also arguable that there was nothing that the business could do itself, without third-party assistance, even if it tried to amend the policy ownership itself it couldn't without official court documentation.
- I note Zurich accepts it was asked by BGC to make the necessary arrangement to change the plan ownership in 2004, but for the reasons set out above, it would've been unable to simply transfer the ownership at this stage.
- I note Zurich, in line with its processes, required a court order. Despite what the solicitors say, I can't blame Zurich for this, or for not simply accepting a statutory declaration instead. In other words, unless BGC could provide documents that evidence the transfer of legal title, prior to BEL being dissolved, there's nothing more it can do.
- On balance, I'm satisfied that Zurich certainly couldn't make any changes without the necessary legal documentation – which BGC arguably would've been responsible for obtaining and paying for in order to facilitate the transfer of ownership. Therefore, on balance, I can't say that Zurich is now responsible for picking up the cost, even if it's greater now than it would've been had matters been dealt with at the outset.
- Despite what the solicitors and BGC say, I don't think Zurich was wrong to continue to accept premiums, because it had no reason not to. In other words, its accepting payment wasn't contingent on anything, and there were no restrictions on it doing so.

- Anyone can pay for a policy belonging to a third party even though they might not benefit from a payout and/or have no legal ownership and/or rights over the policy – none of these are a prerequisite for paying/receiving payment for a policy to keep it going.
- Notwithstanding the above points, I note that since 2007 Zurich – through no fault of its own – has been unable to send any policy documentation because of address issues. In the circumstances I can't say that Zurich has done anything wrong by not chasing the owner or for not continuing to send the statements/documents to a place that isn't correct.
- But prior to this, I note documentation would've been sent in the name of BEL. So, BGC knew, or ought reasonably to have known, what the situation was with regards to ownership of the policy.
- On the face of the evidence, and on balance, I'm not satisfied that Zurich is now responsible for any (remedial) action that needs to be taken, because matters weren't dealt with appropriately at or around the time that the business name was or was about to be change but no specific application was made to change legal ownership of the policy from BEL to BGC.
- I note BGC has now been told what it needs to do in order to resolve matters, so on balance I agree with the investigator that Zurich doesn't need to do anything further.
- Despite what BGC says, I understand that the correspondence was sent to Mrs T (because she linked to the company) and BEL (because it was an address linked to it and BGC). I understand that this situation is far from ideal, but the position simply isn't clear. Despite what BGC/Mrs T says, in the absence of any documentary evidence, on balance I can't safely say that this was done as a result of Zurich being successfully notified of the intended change of legal ownership, and that it still deliberately chose to ignore this.
- I also agree with the investigator that the onus was on the customer to ensure that the policy documents reflected the correct information or to provide the business with the correct information if it didn't. On the face of the evidence, this doesn't appear to be the case.
- If the policy had been successfully updated BGC would've been provided with an updated policy schedule with the policy being issued to BGC. This didn't happen therefore BGC ought reasonably to have known that the policy still belonged to BEL. I don't accept that it needed to be an expert in insurance for it to be aware. But on balance I'm unable to say that it took meaningful action to address the issue.
- I agree with the investigator's comments regarding the complaint about suitability. I note this issue wasn't referred to our service so isn't something I can consider and certainly not before the issue has been considered by the business.

I appreciate that BGC will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what it wants to hear. Whilst I appreciate the frustration, I can't safely say that Zurich behaved unreasonably such that this complaint should be upheld.

In other words, on the face of the available evidence, and on balance, I can't uphold this complaint and give BGC what it wants.

My final decision

For the reasons set out above, I don't uphold this complaint, and I make no award.

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

Dara Islam
Ombudsman