

## **The complaint**

Z Limited complains through its director Mr F that DAS Legal Expenses Insurance Company Limited mishandled a claim on a self-drive hire motor breakdown insurance policy.

## **What happened**

Z owned a motorhome made in about 2009 with a diesel engine.

Z hired the motorhome out to customers. The bookings were often made through one of three specialist agency websites.

From late May 2023, Z had a DAS breakdown policy through a broker. That covered the motorhome, including during such hire.

Unfortunately, on 3 July 2023, a hirer was driving the motorhome when it emitted black smoke from the exhaust. The hirer called DAS's roadside assistance company.

Much of the complaint is about acts or omissions of that company and its roadside operative who was the first on the scene. Insofar as I hold DAS responsible for them, I may refer to them as acts or omissions of DAS.

DAS attended and inspected the motorhome.

After talking to DAS and Mr F, the hirer continued his journey with the motorhome. But he only got about 30 miles before the motorhome started losing power and he had to pull over and call for recovery. DAS took the motorhome to the hirer's local garage.

Later, DAS took the motorhome to Mr F's local garage.

Mr F complained to DAS that it was responsible for inappropriate advice to continue to drive the motorhome, which had caused damage to the engine.

By about 24 July 2023, Mr F's garage had repaired the motorhome at a cost of about £5,800.00 including VAT.

Z or Mr F sold the motorhome and cancelled all future bookings.

By a final response dated late August 2023, DAS turned down the complaint.

Mr F brought Z's complaint to us in mid-September 2023.

## *our investigator's opinion*

Our investigator recommended that the complaint should be upheld in part. The investigator thought that Mr F had provided sufficient evidence of the damage caused to his vehicle. The investigator recommended that DAS should:

1. reimburse Mr F for the full cost of the repairs, minus the fuel injectors/washers; and
2. add interest to this amount at the rate of 8% simple per annum from one month from the date the claim was made to the date of settlement; and
3. pay Mr F £300.00 to compensate him for his distress and inconvenience.

Mr F provided further information.

The investigator changed their opinion and recommendation. The investigator thought that three bookings were only unable to go ahead due to the damage caused to the engine, which was the result of the advice received from the recovery operative who first attended the vehicle. The investigator recommended that DAS should:

1. reimburse Mr F for the full cost of the repairs, minus the fuel injectors/washers; and
2. add interest to this amount at the rate of 8% simple per annum from one month from the date the claim was made to the date of settlement; and
3. reimburse Mr F for the holiday bookings which were unable to go ahead between 3 July 2023 and 24 July 2023 when the vehicle was confirmed as repaired; and
4. add interest to this amount at the rate of 8% simple per annum from one month from the date the claim was made to the date of settlement; and
5. pay Mr F £300.00 to compensate him for his distress and inconvenience.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Z and to DAS on 18 March 2024. I summarise my findings:

The continued use of the vehicle caused serious damage to a piston, a cylinder and the cylinder head.

DAS wasn't responsible for the initial engine problem. And I couldn't say how long that would've taken to fix if there hadn't been the further engine damage.

In any event, Mr F wrote an email to DAS dated 24 July 2023 which included the following:

*"Also, remember that I am NOT asking you to reimburse us for the c. £3,000 we have lost due to cancelled bookings."*

So – unlike the investigator- I wasn't minded to find it fair and reasonable to direct DAS to reimburse Z for cancelled bookings.

The policyholder was Z, a limited company. So – unlike the investigator- I wasn't minded to find it fair and reasonable to direct DAS to pay compensation to Z or to Mr F for "distress" but rather for "inconvenience".

Subject to any further information either from Z or from DAS, my provisional decision was that I upheld this complaint in part. I intended to direct DAS Legal Expenses Insurance Company Limited to pay Z Limited:

1. £4,845.76;
2. simple interest on that amount at a yearly rate of 8% from 22 July 2023 to the date of its payment (As Z is a limited company, I don't include our usual wording about

deduction of income tax); and

3. £300.00 for inconvenience.

Mr F disagreed with the provisional decision in part. He says, in summary, that:

- He wrote the sentence in the email of 24 July 2023 so that DAS would at the very least pay him for the garage costs.
- Later emails, dated 18 and 22 August, mention the £3,000.00 lost while the engine was being replaced.
- They also mention subsequent bookings of a further amount of about £3,000.00 that he had to cancel. He had to stop the hire business because of the stress and anxiety caused by the events.
- The replacement of fuel injectors takes one day.
- At the time, he worked with two garages. They would always try to book him in very quickly, at short notice, to sort mechanical problems. They would've done the job in a maximum of 2-3 days.
- His business should be compensated for the totality of the lost business, but at the very least for the lost business whilst the engine was being repaired.
- The silence, lies, negligence and abandonment from both DAS and the insurance brokers was utterly awful and unbelievable, making him lose concentration, entering a state of incredulous depression about the whole situation. It is absolutely incredible how they lied, diminished him and treated him throughout the whole saga.

DAS hasn't responded to the provisional 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.

The roadside report included the following:

*"Fault Found: TURBOCHARGER  
Outcome: NO FAULT FOUND"*

More recently DAS's assessor has said that the smoke was consistent with turbo failure. He also said the following:

*"Whilst it would have been wise to initiate the recovery of the vehicle on this first occasion, the decision to continue the journey would have only contributed to minor further engine damage as the damage was already apparent and in the balance of probability, was in fact already to a point that a replace engine would have been necessary and as such the further thirty miles travelled would not have any significant financial bearing to the cost required in the work schedules necessary... I cannot see that the vehicles injectors have any relevance or bearing in this case and certainly it is unlikely that a new engine would have been required had there been any issue with the injectors."*

However, referring to the roadside operative, the hirer said the following:

*"He located a small oil leak and suggested it was coming from worn injector seals"*

Also, Mr F's garage reported as follows:

*"Engine damaged caused an injector failing and over fuelling into the cylinder chamber which caused the piston to melt and damage the cylinder bore and cylinder head in our opinion when the breakdown technician came out to the vehicle and saw the engine was misfiring they should have advised the vehicle not be driven and recovered to the garage for further investigation."*

Weighed up against the roadside report and the more recent assessor's report, I prefer the evidence of the hirer and Mr F's garage, who repaired the vehicle. And Mr F invited DAS to contact the hirer and the garage for direct evidence.

So I find that the roadside operative should've advised the hirer and Mr F that the motorhome should be recovered rather than driven. At that time, the engine was still running and providing power. So I find that the continued use of the vehicle caused serious damage to a piston, a cylinder and the cylinder head.

So I agree with the investigator that it's fair to direct DAS to reimburse the cost of the repairs, less the cost of the new injectors (which already needed replacement). From the invoice, I see that the cost of the injectors was £804.36 plus VAT – that is £965.23 So I find it fair to direct DAS to reimburse Z as follows:

Repair invoice	£5,810.99
Less injectors	£ 965.23
Balance	£4,845.76

As Z has been out of pocket since the date of the invoice (22 July 2023), I find it fair and reasonable to direct DAS to add interest at our usual rate from that date.

Mr F has provided evidence of bookings for the following periods:

05 July 2023 to 10 July 2023	£761.00
14 July 2023 to 17 July 2023	£405.00
19 July 2023 to 24 July 2023	£715.00

He has also provided evidence of cancellation. As all the bookings were due to start shortly after the breakdown and before the engine repair, I accept that the cancellations were due to the engine problem.

However, DAS wasn't responsible for the initial engine problem. And I can't say how long that would've taken to fix if there hadn't been the further engine damage.

In any event, Mr F wrote an email to DAS dated 24 July 2023 which included the following:

*"Also, remember that I am NOT asking you to reimburse us for the c. £3,000 we have lost due to cancelled bookings."*

So – unlike the investigator- I don't find it fair and reasonable to direct DAS to reimburse Z for cancelled bookings.

Also, the policyholder was Z, a limited company. So – unlike the investigator- I don't find it fair and reasonable to direct DAS to pay compensation to Z or to Mr F for "distress" but rather for "inconvenience".

I don't under-estimate the impact of extra inconvenience on Z at an already difficult time.

That included having to complain to DAS. Overall, I find it fair and reasonable to direct DAS to pay Z £300.00 for inconvenience.

#### Response to the provisional decision

Mr F has mentioned poor response from both DAS and the broker.

However, I'm dealing with a complaint about DAS and I don't hold it responsible for the acts or omissions of the broker.

Mr F says that the replacement of fuel injectors takes one day. He also says that one of his garages would've done the work within a few days.

However, Mr F has sent us a link to some online information about repairs to cars. That isn't good evidence about repairs to a larger vehicle such as a motorhome. Also, he hasn't provided any evidence from a garage that it would've repaired the fuel injectors within a few days. So I still can't say how long that would've taken to fix if there hadn't been the further engine damage.

Mr F says that he wrote the sentence in the email of 24 July 2023 in a particular context.

However, by that time Z had lost the first three bookings but Mr F didn't complain that DAS should compensate it.

Mr F says that later emails, dated 18 and 22 August, mention the £3,000.00 lost while the engine was being replaced.

However, I'm not persuaded that – but for the further engine damage – the initial engine problem wouldn't have caused the cancellations. Also, the first three lost bookings (set out above) totalled less than £2,000.00 not £3,000.00.

Mr F says that the later emails also mention subsequent bookings of a further amount of about £3,000.00 that he had to cancel. He says that he had to stop the hire business because of the stress and anxiety caused by the events.

However, starting from the first attendance at the roadside, I'm not persuaded that it was a reasonably foreseeable consequence of DAS's shortcomings that Mr F would decide to repair the motorhome but to sell it and cancel further bookings. So I don't find it fair and reasonable to direct DAS to compensate Z for that.

Mr F says that DAS was responsible for silence, lies, negligence and abandonment. He says this made him lose concentration, entering a state of incredulous depression about the whole situation.

However, DAS had responded urgently with roadside assistance. Also, Mr F hasn't provided enough detail to show that DAS told lies.

The Financial Conduct Authority's dispute resolution rules require that following a complaint, the firm must provide a final response within eight weeks. DAS complied with that. So I can't

hold DAS responsible for the effect on Mr F of having to wait for a response during those weeks.

In any event, Mr F brought the complaint on behalf of the policyholder Z Limited, which was not capable of suffering distress, but which suffered inconvenience for which I've found £300.00 is fair compensation.

### **Putting things right**

I find it fair and reasonable to direct DAS Legal Expenses Insurance Company Limited to pay Z Limited:

1. £4,845.76;
2. simple interest on that amount at a yearly rate of 8% from 22 July 2023 to the date of its payment; and
3. £300.00 for inconvenience.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct DAS Legal Expenses Insurance Company Limited to pay Z Limited:

1. £4,845.76;
2. simple interest on that amount at a yearly rate of 8% from 22 July 2023 to the date of its payment (As Z is a limited company, I don't include our usual wording about deduction of income tax); and
3. £300.00 for inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Z to accept or reject my decision before 30 April 2024.

Christopher Gilbert

**Ombudsman**