

The complaint

Mr and Mrs H are unhappy with what Gresham Insurance Company Limited did following a claim they made on their legal expenses insurance policy.

All references to Gresham include its agents and claims handlers.

What happened

In July 2010 Mr and Mrs H's son was tragically killed in a road accident while on holiday in a country called T. They sought assistance from their legal expenses policy (provided as part of their travel insurance) in bringing a claim against the third party driver. The claim was accepted and Gresham instructed panel solicitors to progress it. In June 2013 Gresham agreed with the panel firm the criminal case against the third party would need to conclude before a civil claim should be progressed.

Following the conclusion of the criminal case and confirmation from Mr and Mrs H they wanted to pursue the civil claim the panel firm advised of the options open to them. Mr and Mrs H contacted Gresham in April 2016 as they were concerned the suggested route would reduce the damages they could be awarded. Gresham contacted the panel firm and provided Mr and Mrs H with an update following receipt of advice from it. It subsequently confirmed the policy would fund a claim to the motor insurance bureau in T.

In January 2018 the panel firm confirmed the claim had been submitted and discussions about a loss of earnings claim were ongoing. In January 2021 Mr and Mrs H contacted Gresham as they were unhappy with the time taken to progress the claim. Gresham emailed the panel firm which advised an offer had been made by the bureau but its agent had advised this wasn't enough. Both the panel firm and Gresham provided updates on this to Mr and Mrs H.

Mr and Mrs H contacted Gresham again in June 2022 and Gresham asked the panel firm to progress their concerns as a complaint. Following further contact from Mr and Mrs H in June 2023 Gresham obtained a detailed progress update from the panel firm which advised a court claim in T was unlikely to result in a higher settlement than the bureau had already offered. But its agent thought further negotiation with the bureau might do so. The panel firm said in October no response had been received to a letter about that which I understand remained the position when Gresham issued a final response to Mr and Mrs H's complaint in November 2023.

Our investigator said Gresham weren't responsible for the progress of the underlying claim. And he didn't think there had been delays in relation to the case for which it could be held responsible. Nor did he think there was more that Gresham could reasonably have done to move matters forward. He didn't uphold the complaint.

Mr and Mrs H didn't agree. In summary they said:

- The civil case could have been run concurrently with the criminal case and legal advice they provided about this to Gresham and the panel solicitors had been ignored. They didn't understand why Gresham hadn't agreed to progress the civil case until 2016.
- The local agent in T (appointed by the panel solicitors) had advised the bureau route was likely to achieve a higher and quicker settlement than pursuing matters through the courts. But they'd delayed in filing the claim until 2017 and a settlement hadn't been achieved. The agent had mismanaged the case and wasted the funds provided under their policy.
- Their family had suffered an indescribable loss and they'd endured 14 years of trauma in seeking to obtain justice. They didn't understand why the third party hadn't paid a penalty for his actions as he'd been found guilty and convicted.

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 relevant rules and industry guidelines say Gresham has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

Mr and Mrs H have clearly suffered a terrible loss with the death of their only son. They've made clear in correspondence the awful (and understandable impact) that's had on them. And I appreciate on top of that they've had to deal with distressing and slow moving legal proceedings in a foreign country. It was upsetting to learn about what had happened and I'm extremely sorry for their loss. However, the question I need to consider is what Gresham did when dealing with their legal expenses insurance claim.

And in this decision I'm only considering the actions it took from March 2016. That's because our rules (the Dispute Resolution Rules known as DISP) say we can't consider complaints that were made more than six years from the event complained of, or if later, three years from when the complainant knew, or ought reasonably to have been aware of cause for complaint. That's unless the business agrees to us looking at the matter or there are exceptional reasons why the complaint wasn't brought to us in time.

It's clear in this case that some of Mr and Mrs H's concerns relate to events that took place more than six years before they complained to us or Gresham. For example, they're unhappy Gresham didn't agree to fund a civil claim to run alongside the criminal proceedings which were ongoing from 2011. And they say that was contrary to legal advice they were provided with at the time. That suggests this is something they would have had cause for complaint about at that time.

Of course, Mr and Mrs H may have arguments they'd want to make in relation to that. Or there may be exceptional reasons why the complaint wasn't referred to us in time. But I think it's appropriate any points they want to make in relation to that are considered as part of a separate complaint about whether we have jurisdiction to consider these matters. It's not something I can consider in this decision. If Mr and Mrs H do think those matters are ones we can consider they should let our investigator know why that is so, in the first instance, he can take those points into account.

Turning to the concerns they've raised about what Gresham did in the six years prior to them raising concerns with it (so from 2016) I don't think there's any dispute the civil claim they're seeking to bring against the third party involved in the accident is one their policy could

cover. Nor does it seem to be in doubt it would have reasonable prospects of success (another requirement of the policy) as the panel solicitors confirmed that was the case.

And I think it was reasonable Gresham agreed funding should be provided in November 2016 for a claim to be pursued to the motor insurance bureau based in T. There was clear advice from the panel solicitors that doing so was likely to be quicker and result in a higher settlement than pursuing a civil claim through the courts. I appreciate Mr and Mrs H may feel the advice from the local agent was flawed but I don't think Gresham would have had reasonable grounds to challenge the advice it was given about that via the panel solicitors.

It does appear it then took some time for that claim to be lodged as the next significant update from the panel firm wasn't until January 2018. But where a panel firm has been appointed to progress a claim an insurer's role is normally limited to the funding of fees and disbursements and it doesn't control the day to day conduct of litigation. So even if there was delay in the claim being lodged that isn't something Gresham would be responsible for; if Mr and Mrs H believe that was because of a failing on the part of the panel firm that's something they can raise with that firm and potentially with the Legal Ombudsman if they're unhappy with its response.

However, where a policyholder raises concerns about their representative we do expect an insurer to take some action even if that's limited to ensuring the representative is aware of the concerns and responds to them. I've reviewed the contact between Mr and Mrs H and Gresham in the period I'm considering and overall I think it acted reasonably here. I can see it sought updates from the panel firm on progress and ensured appropriate information was provided to Mr and Mrs H. It also asked the panel firm to log comments they made as a complaint.

I do accept there does nevertheless appear to have been delay to the progress of their underlying claim to the motor insurance bureau. But the available information suggests that was largely due to delays in the motor insurance bureau responding to correspondence. And those delays were exacerbated both as a result of the Covid-19 pandemic and subsequently because of wider political problems in T. I don't doubt the frustration and upset Mr and Mrs H will have been caused by those delays (particularly given their ongoing anguish over the loss of their son) but I don't think there was more Gresham could reasonably have been expected to do to progress matters.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 5 February 2025.

James Park
Ombudsman