

complaint

Mr L complains about ACE European Group Limited's decision to turn down a claim made under his former employer's group injury and travel insurance policy.

background

Mr L was signed off work by his GP due to depression and work related stress. He made a claim under the policy for temporary total disablement ("TTD") benefit which ACE turned down. It said Mr L was suffering with work related stress and that he had sought advice for the condition in the 12 months before the start of cover. ACE said the policy didn't pay claims for pre-existing medical conditions.

Mr L complained to us, despite ACE saying we couldn't look at the complaint because his former employer was the policyholder and Mr L wasn't eligible to bring the complaint under our rules.

Our adjudicator felt we could consider Mr L's complaint as, although the policy had been taken out by his former employer, it had done so for the benefit of all relevant employees, including him. Having looked at the complaint, the adjudicator recommended it be upheld. She said the evidence showed the condition Mr L was claiming for wasn't pre-existing, so it should pay the claim to Mr L with interest. She also recommended ACE pay Mr L £200 as compensation for the distress it had caused him.

ACE didn't agree with the adjudicator's findings. ACE said Mr L's former employer told ACE it didn't wish to take forward a claim, suggesting Mr L wasn't eligible to complain, meaning no claim could be paid. The complaint was passed to me to look into afresh.

Mr L asked that I consider his complaints that ACE had breached data protection laws and the criminal law – which the adjudicator hadn't made findings on.

my findings

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

I'll deal with each of the important issues, as I see them, in turn.

our remit to consider the complaint

We don't have a free hand to investigate all of the complaints that are brought to us. Our rules (the *DISP Rules of the Financial Conduct Authority Handbook*, which is available online) set out the complaints we can consider. We can't investigate complaints that don't fall within our jurisdiction.

ACE says we can't consider Mr L's complaint since he's not eligible to complain under those rules. That's because the relevant contract is between ACE and Mr L's former employer, and for the benefit of the former employer, not Mr L.

While I accept what ACE says about Mr L not being a party to the contract, our rules allow us to look at certain complaints from individuals in that position. For example, DISP 2.7.6 (5) says we can deal with a complaint where the person bringing it is someone for whose benefit

a contract of insurance was taken out. The rules give the example of an employee bringing a complaint about a group income protection insurance policy taken out by their employer.

In the circumstances, and while I understand Mr L's former employer has more recently said it doesn't want to take the claim forward, there's nothing to suggest the policy wasn't taken out for his benefit. In fact, the policy says the policyholder "*holds its rights under [the policy] on trust for the benefit of the Insured Persons.*"

I believe Mr L's complaint about ACE is one we can consider.

Mr L's complaint that ACE has broken the law

Mr L believes ACE initially accepted his claim and paid the benefit to his former employer. He says ACE became aware his former employer refused to pay the benefit to him so, to help it, ACE changed its decision and said it was turning down the claim.

I haven't seen any evidence that ACE ever accepted the claim or paid the benefit to anyone. But I realise Mr L has his suspicions and if he believes ACE has broken the law, I can only suggest that he contact the police. It's not for this service, which was set up to deal with financial complaints informally, to make findings on such issues.

Mr L's claim and the reasons given for it being turned down

The policy says it won't pay benefit for TTD arising from, among other things, any medical condition for which medical advice or treatment has been received within 12 months of the start of cover.

On the claim form, Mr L's GP confirmed the condition he was claiming for hadn't started until after the start of cover. Although he also said Mr L had suffered with the same or a similar condition in 2011, which had been discussed and not treated.

As a result, ACE asked for Mr L's medical records and they showed two GP appointments of note within the 12-month period. The first appointment entry shows the GP felt Mr L was feeling stressed and "*was clearly at risk of depression*" because of problems he was having at work. He encouraged Mr L to agree to counselling.

The second appointment took place around six months later. Mr L's symptoms were thought to be similar to the ones he was experiencing before and he was due to see an occupational health doctor shortly. The GP diagnosed a stress reaction and signed Mr L off from work for a week.

It's clear then that Mr L had suffered with stress before the start of the policy. And that his claim related to depression and work related stress. But that, in itself, isn't enough for me to find it was fair for ACE to turn down the claim. The issue for me to look into is whether, as the policy says, the condition that led to the TTD claim arose from the previous condition.

I don't think ACE has shown there's enough of a link between the two and I'll explain why.

Mr L's claim involves not only work related stress, which he appears to have suffered with before, but also depression. As I understand it these conditions, while often linked, aren't the same. I think this is shown by Mr L's GP's comments after the first appointment that,

although Mr L was stressed, he was *at risk* of depression. Meaning he wasn't yet suffering with depression at that time.

In January 2014, the GP said it was hard to say if the conditions suffered before the start of cover and after were the same. He said the two were related, but Mr L had received much more treatment for the second condition, with lengthy time off work and antidepressant medication. The GP said there was no more advice for the condition following the second appointment for two years. With that in mind, the GP felt the conditions shouldn't be classed as the same illness.

ACE is looking to rely on an exclusion clause to turn down Mr L's claim. Our long-standing approach means that it's for ACE to show on balance it's entitled to rely on the exclusion to refuse the claim. In the circumstances, and especially in the light of the comments from Mr L's treating GP, I don't think it was fair for ACE to rely on the exclusion clause in this case.

where the benefits should be paid to

I realise that, ordinarily, ACE might pay any benefits under the policy to Mr L's former employer. The contract of insurance is held by his former employer and not Mr L. But the policy does allow for benefits to be paid directly to a person in certain circumstances. It's clear relations between Mr L and his former employer became very strained – perhaps more so after Mr L first made the claim. Although I've already found Mr L is able to bring the complaint since the policy was taken out for his benefit.

All of which leads me to believe, in the circumstances, it would be fair for ACE to pay any benefits directly to Mr L.

ACE's handling of Mr L's claim

Our adjudicator recommended ACE pay Mr L £200 as compensation for the way in which it dealt with him. The adjudicator also said she hadn't made any findings regarding Mr L's complaint that ACE had been in breach of data protection laws, as it wasn't for her to do so.

Mr L says ACE's breach has worsened his distress. He also says ACE has colluded with and/or acted on his former employer's instructions in obstructing and delaying matters.

I agree that, for example, it was unnecessary for ACE to ask his GP for his full medical records when, for the purposes of assessing the claim against the exclusion clause, it only needed to look at his records for the 12-month period immediately before the start of the policy. And that ACE could have handled things better generally. That said, I don't believe ACE was deliberately unhelpful to Mr L as he suggests, and can understand it was caught to some extent in a difficult position between Mr L and his former employer. Overall, I believe £200 is enough to compensate Mr L for ACE's actions.

my final decision

For the reasons given, I've decided to uphold Mr L's complaint. I require ACE European Group Limited to:

- pay the claim to Mr L and in line with the remaining policy terms; and
- add interest at the simple rate of 8% a year, worked out from the date each benefit payment should have been made to the date of actual payment; plus

- pay Mr L £200 as compensation for the distress and inconvenience its handling of the claim has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 25 January 2016.

Nimish Patel
ombudsman