

complaint

Mr W complains that Zurich Insurance Plc ("Zurich") rejected a claim against his motor insurance policy for the theft of his vehicle, and took over two years to make this decision.

Mr W has a representative assisting him in this complaint.

background

In early 2010, Mr W reported the theft of a vehicle to Zurich and to the police. Zurich commenced investigations into the claim, but Mr W was unhappy at the length of time that passed without the claim being settled, and raised this complaint with the Financial Ombudsman Service at the beginning of 2012.

In mid 2012, Zurich rejected Mr W's claim on the basis that he did not have an insurable interest in the vehicle. This was because a limited liability partnership ('LLP') – not Mr W - had paid for and was the registered keeper of the vehicle. Mr W was not a shareholder in either the LLP or the designated LLP members. Zurich concluded therefore that Mr W had no financial interest in the vehicle, and so no insurable interest.

The adjudicator issued an opinion that Zurich was entitled to reject Mr W's claim on that basis. Mr W did not agree. Mr W's representative also suggested that Zurich was in breach of its duty of utmost good faith by setting up the policy in Mr W's name when it was aware that the LLP was the registered keeper of the vehicle.

I disagreed with the adjudicator and issued a provisional decision to partially uphold the complaint. I considered that under the circumstances of the complaint, it was fair that Zurich should reconsider the claim subject to the remaining terms and conditions of the policy and on the basis that Mr W did have an insurable interest in the vehicle. I also considered Zurich was not in breach of its duty of good faith, nor was it unreasonable for Zurich to have taken the time it did to investigate and reach a decision about the claim.

In my provisional decision, I invited Mr W and Zurich to respond with any new evidence or arguments within one calendar month.

Mr W accepted the provisional decision, acknowledging his understanding that the decision was not to require Zurich to pay the claim, but rather to reconsider it on the basis that he did have an insurable interest.

Zurich has also provided responses to the provisional decision, some of which go to the issue of 'insurable interest'.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

Zurich's rejection of claim – 'insurable interest'

The registered keeper of the vehicle was identified on the Vehicle Registration Certificate as '[the] LLP t/a [business name] Mr W', and the purchase invoice was also made out to '[the] LLP t/a [business name] (for the attention of Mr W)'. Zurich's enquiries showed that Mr W resigned as a director of the named business at the beginning of 2009 and sold that

company. In addition, while Mr W had been a 'designated member' of the LLP, a limited liability partnership, from the beginning of 2008, he had resigned towards the middle of 2009 – before the car was purchased by the LLP later that year.

Zurich identified two designated members of the LLP at the date of the vehicle purchase. For the purposes of this decision, I identify them as Company X and Company Y. Mr W was found to be a director of Company X, but not a shareholder; Company Y was the only shareholder of Company X. Zurich's searches did not show Mr W was either a director or shareholder of Company Y.

However, Mr W's representative describes him as *"the controller of a partner in [the LLP]. That was purely for accounting purposes. The practicality of the matter remained that Mr W was, indirectly – and transparently – the controller of [the LLP]"*.

Mr W has explained that the substitution of Company X for himself (in his personal capacity) as a partner in the LLP was simply the introduction of a *"different accountancy vehicle"*. Despite that change he says he maintains the *"same control and same position"* within the LLP and is *"the controller"* and sole authorised signatory for both the LLP (including its bank account) and Company X. He describes Company Y as an advisory/service company which has effectively *"zero"* control or participation in the LLP.

Mr W says that the purchase of the vehicle was *"my decision, my choice"*, and that it was bought for his use and pleasure, and for marketing.

In my provisional decision – as in this final decision - I am considering whether it was fair and reasonable for Zurich to reject Mr W's claim for lack of 'insurable interest' as it did. In reaching my decision, it is not a matter of my endorsing or applying any particular legal test – although there may be occasions which require me to take into account but not apply legal precedent in order to reach a fair and reasonable outcome. In this case, I acknowledge that a strict application of English case law as it currently stands, would require Mr W to show he had a proprietary or legal interest in the vehicle in order to establish an 'insurable interest'. However, I remain of the view that to apply that in the circumstances of this case would be inappropriate and unfair, given the practical reality of Mr W's arrangements with the LLP.

On the available evidence, it therefore appeared fair and reasonable to me to conclude that Mr W's claim should be considered on the basis that he did have an insurable interest in the vehicle. He had the exclusive use, control and enjoyment of the vehicle. He benefited from its existence, and suffered a detriment as a result of its loss. That detriment was not just in terms of not being able to use the vehicle, but also in terms of Mr W's personal accountability to the LLP for an asset of the company. I was therefore minded to uphold Mr W's complaint on that basis, and I have seen nothing which persuades me to change that decision.

Time taken to consider the claim

Mr W made the claim to Zurich in the first quarter of 2010. He says that from June 2010 to April 2011 circumstances were such that he did not pursue his claim with Zurich.

Zurich had previously started dealing with the claim, arranging for its investigators to interview Mr W and sending him a series of questions, saying the claim could not be progressed until it received the answers to those questions. In the absence of the requested information from Mr W, Zurich closed its file, but re-opened it when Mr W made contact to

advise he wanted to proceed. Approximately six months after Mr W had provided answers to Zurich's questions (during which time Zurich's investigations were on-going), Zurich advised Mr W it was rejecting the claim.

The time from the claim being made to Zurich's completion of investigations and ultimate rejection, was just over two years. During that period, Mr W himself did not pursue the matter for 11 months. Zurich had made it clear that without the information it had requested from Mr W, it could not progress its investigations. Given the circumstances and subject matter of the claim, I was satisfied it was reasonable for Zurich to undertake 'detailed' enquiries.

I did not consider that the time Zurich took to investigate and reach its decision was unreasonable under the circumstances, nor did I consider that the distress and inconvenience experienced by Mr W during that period could fairly be attributed to Zurich. Therefore, my provisional decision was to make no award in relation to distress and inconvenience for the time taken up to the point of Zurich's decision to reject Mr W's claim. Neither party has disagreed with that aspect of my decision and I have no reason to change it.

Duty of Utmost Good Faith

In my provisional decision, I was satisfied that Zurich had acted fairly in relying on the information given by the broker in setting up the policy. I did not consider that Zurich was in breach of its duty of utmost good faith for failing to let Mr W know that the policy should not have been taken out in his name, when it was aware he did not own the vehicle.

The information Zurich had was to the effect that Mr W's company would purchase the vehicle but that he would be the registered keeper. Zurich was willing to insure the vehicle on this basis. I considered it was reasonable to infer from this that had Mr W been in the position of having a clear legal ownership or proprietary right/interest in the LLP which purchased the vehicle, Zurich is unlikely to have cited lack of insurable interest as a reason to reject the claim.

In the absence of any further information or arguments, I have no reason to change my decision in this regard. It should be noted, however, that neither my provisional decision nor this final decision makes any findings at all about the actions, responsibilities or duties of the insurance broker used by Mr W.

Under the circumstances of the complaint, I therefore consider that:

- it is fair and reasonable to treat Mr W on the basis that he had an insurable interest in the vehicle
- it was not unreasonable for Zurich to have taken the time it did to investigate and reach a decision about his claim and
- Zurich was not in breach of its duty of utmost good faith in setting up the policy on the basis of the information provided to it.

my final decision

For the reasons set out above and in my provisional decision of February 2013, it is my final decision that I partially uphold this complaint.

I require Zurich Insurance Plc to reconsider the claim subject to the remaining terms and conditions of the policy and on the basis that Mr W does have an insurable interest. To be clear, I am not making a direction that Zurich must pay the claim, but rather that it must reconsider it.

Helen Moya
ombudsman