

complaint

Mr B's complaint is about the handling of his legal expenses insurance claim by DAS Legal Expenses Insurance Company Limited.

background

I issued a provisional decision on this matter in October 2015, part of which is copied below:

"Mr B owns a garage specialising in high end cars. In March 2008 one of his cars was hit by an employee whilst it was parked outside his garage. The employee was driving his own car at the time.

At the time of the accident, the car had been sold but the buyer hadn't yet taken delivery of it. After the accident the buyer decided against taking the car so Mr B sold him a different one from his garage and refunded him the difference between the car and its replacement.

Mr B couldn't claim for the full extent of the damage to the car because his motor insurance policy only covered him for third party, fire and theft. So he made a claim against his employee's insurance company but although it initially accepted liability it then refused to pay the claim.

Mr B said he made the required repairs to the car himself at a cost of roughly £27,000. This was the amount he wanted to claim.

In March 2013, Mr B made a claim to DAS under his legal expenses insurance policy to make a claim against his employee's insurers because they weren't prepared to pay the claim.

DAS contacted the employee's insurers with a view to negotiating a settlement for Mr B. The insurers were surprised to receive a claim five years later because they said they'd already investigated the matter and closed their files in 2009. They also said they weren't prepared to accept liability.

Following this, DAS asked Mr B to provide various documents to evidence his claim so that it could take legal action if the employee's insurer's still wouldn't accept the claim. DAS says the information it has asked Mr B to provide is crucial to proving his claim and without it there is no basis to pursue proceedings. Mr B has provided DAS with a number of documents but DAS says those documents are contradictory and don't evidence the extent of the damage, the position regarding ownership of the car and that there are discrepancies in the repair costs and the time it has taken Mr B to complete the repairs.

DAS says it remains happy to explore litigation once it has the evidence it needs to pursue the claim. Mr B says that he has found it difficult to provide the information he has been asked for. On the issue of proof of ownership, Mr B says that the buyer's name might not yet have been registered with the DVLA at the time of the accident so the car may well have remained in his name. The DVLA has refused to provide him with this information and says that it doesn't matter whose name the car was registered in at the time of the accident because registration of a name against a logbook doesn't amount to legal ownership. This seems to be borne out by the fact that the buyer wasn't able to make a claim against the employee's insurers. He was told he wasn't the legal owner of the car because he hadn't taken delivery of it.

DAS has also pointed out that Mr B's claim in respect of the accident would probably be time barred if he didn't bring it by March 2015.

Our adjudicator considered Mr B's complaint against DAS and said that it was better suited to a court of law. This was because she thought that a court would be better placed to deal with this complaint because it could test witness evidence on oath and compel non-parties to give evidence. She said our informal, paper-based procedures were not suited to resolving cases like this and that it wouldn't be possible for us to reach a fair outcome.

Mr B doesn't accept the adjudicator's opinion so the matter has been passed to me.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'm not currently minded to uphold this complaint.

DAS has pointed out that it is a condition of the policy that the policyholder must provide all reasonable and necessary documentation to support the claim. It says Mr B has not done this.

Having considered the policy terms, I can see that it's a condition of the policy that Mr B provides DAS with everything it asks for in writing and gives it any information it needs.

The information DAS requires that Mr B has been unable to provide is as follows:

- *proof of ownership of the car at the time of the accident*
- *clear photographs of the damaged car and the damaged parts*
- *an explanation of Mr B's connection with the buyer*
- *proof of purchase of the parts Mr B says he sourced to repair the car*

Having considered the papers before me, I can see that the issue of ownership of the car is a difficult one. Mr B says he sold the car to the buyer but that the buyer had yet to take delivery of it. I haven't seen any clear evidence to support whether the car had been registered in the buyer's name with the DVLA. Mr B says he completed a registration form for the buyer but it's not clear whether this was sent off or received by the DVLA at the time of the accident. The DVLA are not prepared to provide Mr B with a copy of its records. They say that even if the car had been registered in the buyer's name, this doesn't necessarily amount to evidence of ownership.

The employee's insurers say the car wasn't registered in the name of the buyer at the time of the accident. That having been said they are also disputing Mr B's claim on the basis that they don't believe he owned the car at the time of the accident. As a result they say he has no insurable interest. The employee has provided his insurers with a statement intimating that the buyer had actually taken delivery of the car and was already using it at the time of the accident. But it seems that the buyer himself did try to make a claim for the car but was told by the employee's insurer that he wasn't the registered owner at the time so it wouldn't consider his claim.

It's clear that the question of ownership of the car isn't straightforward but that's not a matter for me to decide. The question before me is whether Mr B has complied with the conditions

of his legal expenses insurance policy and if not, whether it's fair for DAS to rely on them. I can see that proof of ownership of the car is key factor in Mr B's ability to bring a claim against the employee's insurers in law. Without this, he will have no standing to bring a claim at all. The employee's insurers have asked DAS for proof of ownership of the car. As such I don't think it's unreasonable for DAS to require Mr B to provide proof of ownership before it agrees to pursue proceedings on his behalf. Court action can be expensive. I wouldn't expect a privately paying customer to bear the cost of a claim without knowing he had the ability to bring that claim in the first place. A legal expenses insurer can hardly be expected to either.

I can see from the papers before me that Mr B has also been asked to provide several other items to help prove his claim. He hasn't provided an answer to some of those questions, such as an explanation of his connection with the buyer, or proof of purchase of the parts he said he used to repair the car. I appreciate that a considerable period of time has elapsed since the accident took place and that it might now be difficult for Mr B to provide DAS with some of the evidence it has requested – such as proof of the cost of the parts he used to repair the car or photographs of the damaged car and parts. But these would be required if Mr B wants to pursue this matter in court – he would have to substantiate what he's claiming for and so DAS is entitled to this in order to decide whether the claim should be covered. Overall, it seems to me that if Mr B isn't able to provide evidence to prove his claim in the form of the information requested, DAS can't reasonably be expected to pursue that claim for him.”

developments

I asked both parties to provide any other comments or information they wanted considered in response to my provisional decision.

Mr B has responded. He has expressed his dissatisfaction about my provisional findings and says that:

- He did supply DAS with proof of his original purchase of the car and because there was VAT to be paid this will also be recorded at HMRC.
- DAS was supplied with clear photographs of the car before and after the damage and parts as well as detailed pictures of the repair. He says there were about 20-30 photographs in total.
- A statement was provided to DAS giving an explanation of his connection with the buyer.
- He also provided proof of the parts to repair the car because a copy of the break down invoice for the repair and all the parts was supplied to DAS.
- Either DAS haven't supplied all of the documents in this case to me or I haven't considered it properly.
- This is a simple claim made hard to avoid paying out £27,000. The car was parked with no one in it; someone drove into it and caused the damage.
- DAS has delayed dealing with this claim knowing that it will take Mr B years to finish the car out of his own pocket. He didn't have the money to take them to Court and now the claim is time barred.

I asked DAS to consider Mr B's comments above. It did so and has responded as follows:

- It never received proof of ownership of the car. An email sent to Mr B in August last year confirms they were still awaiting receipt of this.

- Some photographs were received but they didn't prove the damage caused to the car through the accident. DAS have never received photographs of all the damaged parts that Mr B said needed replacing. No receipts for proof of replacement of those parts were ever received. Mr B confirmed he wasn't able to get those documents, which is evidenced by a call note dated July 2014.
- The statement Mr B provided explaining his connection with the buyer wasn't enough for the purposes of a legal expenses claim. A signed statement from the buyer would've also been necessary along with further details of the business.
- It took Mr B five years to report the claim to DAS but he was unable to sufficiently evidence his claim to enable it to contest the findings made by the employee's insurers.
- If the claim is now time barred, DAS can't help Mr B as the court won't hear the case.
- The employee's insurer raised a number of concerns about the lack of evidence to support Mr B's case. These concerns will be raised if the claim is to be pursued. DAS must be satisfied that Mr B has provided enough evidence to overcome those obstacles before it is able to deal with the claim.

my findings

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

As I said before, proof of ownership of the car is a key factor in Mr B's ability to bring a claim against the employee's insurers in law. Whilst I note what Mr B says about this I don't think he has demonstrated he was the owner of the car at the time of the accident. And the papers I have seen don't suggest that this information was ever forthcoming. So I can't see that Mr B has provided DAS with enough to allow it to establish a claim on his behalf.

It's clear to me that some of the other items requested by DAS still remain incomplete, so whilst I appreciate that Mr B has provided what he could, the items he has given to DAS aren't enough to support his claim against the employee's insurer. This might be due to the fact Mr B didn't make his claim to DAS until five years after the accident so the availability of current evidence might've been limited. But that's not something DAS had any control over.

I haven't seen any reason why Mr B made his claim so late and I note this wasn't Mr B's first attempt at claiming against the employee's insurers. Those insurers had rejected his claim in 2009. And whilst I appreciate Mr B is upset that his claim may well now be time barred, for the same reasons I have set out above, I don't think this is something DAS is responsible for.

Finally, I can assure Mr B that I have considered his complaint in detail and thoroughly reviewed all of the evidence presented to me. I don't agree that this was a simple claim. There are and still remain questions about the issue of ownership of the car at the time of the accident which Mr B hasn't been able to resolve with evidence to date. For that reason and those set out within my provisional decision, I remain of the view that Mr B's complaint should not be upheld.

my final decision

For the above reasons, my final decision is that I don't uphold Mr B's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 30 November 2015.

Lâle Hussein-Doru
ombudsman