

complaint

Mr G, trading as a farm which I call L, complained that Ageas Insurance Limited (Rural Insurance) refused his claim for the theft of a transit tipper van and telehandler. The claim for the telehandler was eventually paid by Ageas but the claim for the theft of the van remains declined and unpaid.

background

Mr G bought his insurance for his van through his broker in July/August 2011 along with other vehicles being insured at the same time. The policy renewed annually thereafter. The policy provided by Ageas is specifically to cover farming vehicles only. Mr G's van was stolen in September 2013 and he made a claim to Ageas.

The van was registered to one of Mr G's other companies which it believed was involved in plant hire. As Ageas' specific underwriting criteria from May 2012 excludes cover for plant hire equipment, it refused to pay Mr G's claim for the theft of his van, as it was registered to his plant hire company.

Mr G brought his complaint to us. The adjudicator, who investigated Mr G's complaint, initially said it should be upheld. She was of the view that Ageas did not ask Mr G if he was involved in any other businesses and she was satisfied that the van was being used for agricultural purposes. She did not think that Ageas had provided enough evidence to show that it would have not provided cover for this van had it known the van was registered to his plant hire company. Also Ageas had accepted that Mr G was the owner of the van, as distinct from the registered keeper. She was also of the view that as Mr G was involved in three different businesses and this van was not insured elsewhere, she did not think that Mr G was attempting to gain any advantage from insuring this van under this policy.

Ageas disagreed. It said its policy provided cover for farming businesses only. It also said that Mr G did not answer a question asking if he traded under any other name. And it said he answered 'no' to the question about whether the van would be used for any purpose other than social, domestic, pleasure and farm use. He also answered 'no' to the question as to whether his van would be used for the carriage of goods for hire or reward.

Therefore Ageas said that as Mr G specifically registered this van in the name of his plant hire business, it is reasonable of it to assume that the main use of this van was for his plant hire business, even if it was lent to his farming business on occasion. Consequently Ageas initially said that as it would not insure plant hire equipment, it would not have insured this van under this policy.

The adjudicator reconsidered the matter and decided that Mr G's complaint should not be upheld. She explained that Mr G had not correctly disclosed who the registered keeper of the van was. She also explained that Ageas would not have insured this van had it known that Mr G's plant hire company was the registered keeper. Therefore Ageas had correctly refunded the premium paid for the cover of this van so she did not recommend any further award against Ageas.

Mr G did not accept the adjudicator's view and his complaint has been passed to me to decide.

my findings

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

The issue for me to decide is whether Ageas was reasonable in its decision to refuse to pay Mr G's claim for his stolen van.

Mr G is involved in three businesses and he placed all his vehicle insurance through a broker. He said he took the advice of his tax accountant in registering this van in the name of his plant hire company. He has said he has not done any plant hire business since 2005 but has retained the business for goodwill purposes.

This company was not incorporated until 2006 when Mr G became a director of it, but clearly before that time and indeed since, it has been operated as a business in which Mr G was involved. I have also not been provided with any evidence to show precisely what type of business it carried out since this van was registered to it.

The reason Ageas paid the claim relating to the telehandler was because whilst it was registered to an agricultural contracting services company, another of Mr G businesses, (which was also not disclosed by Mr G), Ageas was assured the telehandler was being used in agricultural activities. It said had it been told that the telehandler was registered to the agricultural services business; it would have anyway provided cover for it.

The insurance chosen for Mr G's van was provided by 'Rural Insurance' which is a part of Ageas. When the policy was first bought in August 2011 Mr G said 'no' to the question "*Are any vehicles not registered in your name?*" on the application form. However this van was always registered in the name of the plant hire company and never registered in either Mr G's own name or in the name of L, the farm business, or indeed his agricultural contracting services company.

Clearly it was important to Ageas to know if any of the vehicles were not registered in the name of either Mr G or L. Clearly also, Mr G knew this van was registered to the plant hire company, Therefore I find that Mr G did not answer this question correctly and therefore did not disclose what Ageas required. I also find that this question was clear and unambiguous.

Ageas' underwriting criteria clearly shows that at the renewals of Mr G's policy that from May 2012 that it would not provide any insurance for plant hire businesses. Therefore, I am satisfied that if Ageas had known the van was registered to Mr G's plant hire business, it would not have insured it under this policy. What Ageas decides to insure is a legitimate exercise of its commercial judgement. We do not normally interfere with this, provided it is exercised reasonably.

However when Mr G and/or his broker first applied to insure this van in May 2011 Ageas' underwriting criteria was not as clear as it is now as it simply said it was insurance for farming equipment. Therefore it is not clear that at the time of Mr G's completion of the application form, what exactly Ageas would have done if it had known the van was registered to the plant hire company from the start as it appears it was not clear it would have been excluded.

Irrespective, I find that at the renewal of Mr G's policy in 2012 it was the duty of Mr G's broker to check if anything had changed both from Ageas' point of view and indeed Mr G's.

As it seems clear that it no such changes were noted, I find that it is likely on the balance of probabilities that any disclosure of Mr G's van being registered to his plant hire business would not have been disclosed.

Mr G has raised a further issue and has said that the plant hire company had not undertaken any plant hire work since 2005 and that this van was used for the transport of hay, straw and manure in his farming work. Ageas has said that as Mr G did not answer the question as to whether he ever traded under any other name, this information appears to have been withheld, which in turn brings into question the reason why.

However I find that it is for Ageas to query the lack of an answer to any question asked on an application before agreeing to provide cover, rather than to rely on the fact it had not been answered in order to refuse cover. Therefore I do not find this is a reasonable argument for Ageas to rely on now.

Notwithstanding this, Ageas have then said that the van was registered to the plant hire company, (which was not disclosed), and Mr G answered 'no' to the questions as to whether the van would be used for any other purpose than farming use and that it would not be used for hire or reward. Therefore as it was registered to Mr G's plant hire business, Ageas said, it was reasonable for it to assume that even if the van had been lent to farm business on occasion, the main use of the van was for the purposes of the plant hire business, for which Ageas would have never provided cover under this policy. I find that as Mr G has said he relied on his tax accountant's advice to register this van in the name of his plant hire business that obviously that business would gain some benefit from this, whether it be from a tax point of view or otherwise.

Therefore as the plant hire business would gain some advantage from the registration of this van to it and Ageas specifically did not wish to insure plant hire equipment, I find that Mr G's non-disclosure was such that it prejudiced Ageas unreasonably. This is because it clearly does not wish to insure plant hire equipment as it has deemed it an unacceptable risk by its underwriting criteria.

Unfortunately Ageas has weakened its argument on this point as it then said that as plant hire represents an increased risk to that provided by farm vehicles, it is likely that cover would have been considerably more expensive, which then implies it could have arranged cover for the van as being registered to the plant hire company, irrespective of its underwriting criteria under 'Rural Insurance'.

However I find on balance that on the evidence of the underwriting criteria provided for 'Rural Insurance' it is clear Ageas would not have provided cover for this van as registered to the plant hire company and if it had known it was so registered to the plant hire company, other arrangements would have probably been made with a different insurance policy being provided.

Therefore whilst I understand this will disappoint Mr G, I find that Ageas' refusal to deal with his claim for the theft of this van under 'Rural Insurance' was reasonable, on the basis of his non-disclosure that it was registered to his plant hire company. It was also reasonable that it properly refunded the proportion of premium paid for the insurance of this van.

my final decision

For the reasons above it is my final decision that I do not uphold this complaint and I make no award against Ageas Insurance Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G trading as L to accept or reject my decision before 2 March 2015.

Rona Doyle
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