

The complaint

Mr W complains that Haven Insurance Company Limited (Haven) declined his claim following the theft of his vehicle and cancelled his motor insurance policy.

What happened

Mr W had a commercial insurance policy with Haven. His van was stolen so he made a claim. He says Haven declined to cover his loss because it thought his occupation differed from the information he provided when taking out the policy.

Mr W says he told the insurance broker he worked as a furniture dealer. This is what was stated in his policy documents. He says his occupation involves obtaining furniture from house clearances. Mr W says he acted in good faith and his occupation was described accurately when taking out his policy. He says he wasn't given 14 days to review his policy documents and to make any changes.

In its final complaint response Haven says Mr W was insured to drive his van for 'Carriage of Own Goods'. It explains that he declared his occupation as 'Self Employed Furniture Dealer'. Haven says it interviewed Mr W after he made his claim. During the interview he said his occupation was "furniture removals" and this involved using his van for, "picking up furniture and removals".

Haven says its policy terms don't provide cover where the vehicle is used for a purpose other than those specified on the certificate of motor insurance. It says Mr W was using his vehicle for hire and reward purposes, which is a class of use he isn't insured for. Because of this it declined the claim and cancelled the policy in line with its terms and conditions.

Haven says it set up the policy correctly based on the information Mr W's broker provided. It told him to contact his broker directly if he believed that a miscommunication had occurred. But it didn't change its decision to decline the claim and cancel Mr W's policy.

Mr W thought this was unfair and referred the matter to our service. Our investigator upheld his complaint. She says Mr W's van was stolen from outside his house. At the time this happened she says it wasn't being used in a way that it wasn't insured for. She didn't think Mr W had provided inaccurate information about his occupation. She says he confirmed what he did and wasn't asked to elaborate on this by his broker.

Our investigator didn't think it was fair that Haven had continued to chase Mr W for his outstanding premium payments whilst his complaint had been referred to our service. Because of this she says Haven should pay the claim, reinstate the policy, and pay £100 compensation for the stress and anxiety it caused Mr W.

Haven didn't accept this outcome. It says Mr W didn't make a fair presentation of his occupation when taking out his policy. It says it acted according to its policy terms and conditions when declining the claim and cancelling the policy.

As an agreement couldn't be reached the matter has been passed to me to decide.

I issued my first provisional decision in October 2023 explaining that I was intending to not uphold Mr W's complaint. Here's what I said:

provisional findings

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

Having done so I'm not upholding Mr W's complaint. I understand this will be upsetting and I'm sorry to disappoint him. But I'll explain why I think my decision is fair.

Mr W has a commercial insurance policy with Haven. The relevant law here for me to consider is the Insurance Act 2015 (the Act). Haven says Mr W didn't provide accurate information when he took out his policy. Had it been provided with accurate information it says it wouldn't have offered cover.

Under the Act before a contract of insurance is entered into, the insured must give a fair presentation of the risk to the insurer. This is known as "the duty of fair presentation". This means:

*(a) disclosure of every material circumstance which the insured knows or ought to know, or
(b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.*

The information Mr W provided to Haven, during his application through his broker, confirmed he was a "Furniture Dealer". From the statement of fact document, I can see that under the heading, "Nature of employer's business", Mr W had confirmed "Furniture Manufacture". However, Haven says the insured van was being used for "hire and reward" purposes. It has provided screen shots from a social media page for Mr W's business. This states his business is a "removal and clearance company".

Haven says that during a post claim interview with Mr W its agent asked, "what's your occupation?". It says he responded with, "we just do furniture removals and stuff like that". When asked, "what is the vehicle used for?" it says Mr W responded to say, "just for picking up furniture and removals".

Looking at Mr W's certificate of insurance, it says:

"Limitations as to use:

Use for social, domestic, and pleasure purposes and for the policyholder's business for the carriage of own goods but excluding use for racing competitions, pacemaking, rallies, or any contest, reliability or speed trials or conveyance of passengers or goods for hire and reward".

I've thought about whether Mr W's stated vehicle use, for, "removals and picking up furniture", reasonably falls within the "carriage of own goods" use covered under his policy. I don't think it does. Carriage of own goods, is, I think, more reasonably used to describe the tools a trades person might carry. Whereas Mr W says he used his vehicle to collect and transport items of furniture from house clearances.

I'm more persuaded by Haven's view that furniture removals falls more reasonably within the class of usage described above, that is, "conveyance of... goods for hire and reward".

I can see the policy documents sent to Mr W explained in several places, the importance of

correct information, and that the policy may be cancelled, avoided, or claims refused if information was incorrect.

Having considered the requirements of the Insurance Act 2015, I don't think Mr W made a fair presentation of the risk when the policy was taken out.

I need to consider what Haven would have done differently had it known the insured vehicle was being used for the purpose Mr W was using it for. The business has supplied excerpts from its underwriting criteria. This shows no cover would've been offered to Mr W had he provided accurate information about the intended use of his van. Haven's underwriting criteria is commercially sensitive. So, I can't share it. But I'm satisfied from what I've seen that Haven wouldn't have offered cover.

In these circumstances the Insurance Act 2015 provides certain remedies. If the qualifying breach was reckless or deliberate the insurer can avoid the policy, refuse all claims and need not return the premiums. If it was neither deliberate nor reckless the insurer can avoid the policy and refuse all claims, but it must return the premiums.

Haven declined Mr W's claim. I think it was reasonably able to do so in line with the remedies available to it under the Insurance Act 2015. But it didn't avoid the policy. It chose to cancel the policy instead. It refers to the following policy terms in support of its actions:

"Cancellation with immediate effect / avoidance

At Our option, We or Your Broker may cancel Your policy with immediate effect or void Your policy from inception at any time where; there is evidence of fraud or a valid reason for doing so, including but not limited to:

6 If You are in breach of any of the Terms, Exceptions, Exclusions, Conditions or Endorsements of Your policy."

This section of the policy terms also says, "Where fraud is identified we may retain all premiums paid".

Haven says it has retained Mr W's premiums. But it hasn't avoided his policy. If it had, it still hasn't shown why it considers the misrepresentation was reckless or deliberate. I also can't see that it's been shown Mr W acted fraudulently. Because of this I don't think it's fair that Haven should retain his premium. It should now refund the instalments he's paid. This means Haven can't pursue him for the remaining monthly instalment he would have paid had his policy not been cancelled.

I'm unsure why Haven didn't retrospectively avoid the policy in line with the remedies under the Insurance Act 2015. But nevertheless, by not avoiding it, this arguably puts Mr W in a more favourable position than he otherwise would've been in, if Haven had exercised its full rights to avoid the policy. So, I can't say it has acted unfairly.

In his complaint Mr W says that when he took out his policy he described his occupation to the broker who selected "furniture dealer". He says he didn't raise objections as this accurately reflects his work. Mr W says collecting furniture from house clearances, is incidental to his occupation as a furniture dealer. He says this is the capacity in which he was operating at the time of the theft.

I've thought about Mr W's comments. But the evidence shows Haven offered him cover based on the information provided by his broker. If Mr W has concerns with the information his broker passed on to Haven he should contact it to raise a dispute. But any complaint

about his broker's actions will need to be handled separately.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Haven didn't respond with any further comments or information for me to consider.

Mr W responded to say he intended requesting copies of phone call recordings from his insurance broker, and that he may raise a complaint against it.

I issued a second provisional decision in November 2023 to confirm I was upholding Mr W's complaint in part. This relates to a refund of premiums in line with the Act. I confirmed a refund was required in my first provisional decision. But I referred to not upholding the complaint. This was an error. Here's what I said to correct this:

Second provisional decision

I can see that our investigator explained to Mr W that if he has concerns with the information his broker provided to Haven he must make a separate complaint. My decision here relates to Haven's involvement. As discussed, it set up its policy based on the information it was provided with by Mr W's broker. If Mr W has concerns with the accuracy of this information he will need to contact his broker directly to complain. If he remains dissatisfied with its response he can ask our service to consider the matter.

I'm sorry Mr W has suffered a financial loss. But I haven't seen any information or further comments that persuade me that a change to my provisional findings is warranted, other than to correct the error I made regarding the premium refund.

My intention is to uphold this complaint in part and that Haven should refund the insurance premium payments Mr W has paid.

I said I would consider any further information or comments the parties wanted to provide.

Haven didn't respond to my second provisional decision.

Mr W responded with copies of call recordings between him and his insurance broker.

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.

I acknowledge the new information Mr W has sent. However, my decision here is about his complaint with Haven, not his insurance broker. If Mr W thinks that his broker has provided inaccurate information to Haven he can complain to his broker directly. But, as I've already explained, I'm not able to consider any concerns raised about his insurance broker in my decision about Haven.

My final decision

My final decision is that I uphold this complaint in part. Haven Insurance Company Limited should:

- refund the premium payments Mr W has paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 January 2024.

Mike Waldron
Ombudsman