

The complaint

Mr S complains that Covea Insurance plc avoided his commercial motor insurance policy (treated it as if it didn't exist) and declined his claim following the theft of his van. Mr S wants it to pay the claim and refund his premiums.

What happened

Mr S's van was stolen, and he made a claim on his policy. Covea declined the claim and avoided the policy because it said that Mr S had misrepresented his type of van. It said that if he had answered the question he was asked about the van type correctly, it wouldn't have offered cover. It said this misrepresentation had been deliberate or reckless. So it said this entitled it to decline the claim, avoid the policy and retain the premiums.

Mr S said he had answered the question as best he could. He said he'd called his broker for advice, and he was told that it would be OK so long as the correct registration was put in. But Covea said there was no record of this call.

Our investigator recommended that the complaint should be upheld in part. Covea had relied on the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) when considering the matter. But he pointed out that, as this was a commercial policy, the correct law was The Insurance Act 2015.

This required the policyholder to provide a fair presentation of risk to the insurer. He thought Covea had asked Mr S about the type of van to be covered. And he thought Mr S had answered this question incorrectly. So he thought there had been a qualifying breach under The Act. But he thought Covea hadn't shown that this was deliberate or reckless and so he thought it should refund Mr S's premiums.

Covea replied that Mr S was aware that he'd entered the incorrect information about the van, and it thought this was reckless. It said he had two opportunities to provide the correct information: when he was asked to enter the van's make and model and when he was asked to select the van's body type.

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.

As our investigator has explained, because Mr S had a commercial policy, the applicable law is The Insurance Act 2015. The Act says that Mr S has a duty to make a fair presentation of the risk. This means, unlike consumer policies, commercial policyholders have to volunteer information when taking out the policy. This is so the insurer has enough information to assess the level of risk it's willing to provide and on what terms.

The Insurance Act says if Mr S doesn't do this, Covea as the insurer can take certain actions as long as the misrepresentation is a qualifying one. This means, the insurer would have done something differently had they had the correct information.

If the qualifying breach was reckless or deliberate, and the insurer can either show it would have offered the policy on different terms, or not offered cover at all, it's entitled to avoid the policy, refuse all claims and doesn't have to return the premiums.

If the breach wasn't deliberate or reckless, then to avoid the policy, the insurer must show it wouldn't have offered the policy at all, but for the breach. If the insurer is entitled to avoid the policy, it means it won't have to deal with any claim under it. But it can only retain the premiums if the breach was deliberate or reckless.

Mr S wanted to insure his tipper van and so he took out his policy on an online comparison site. He was then asked, "*how would you describe the van's body type*" which I think is a specific and clear question. The drop-down menu for the site in the first year Mr S took out his policy showed a "tipper" option. So I'm satisfied that the correct information was available, but Mr S didn't select it. Instead, he selected "van". So I'm satisfied that Mr S didn't make a fair presentation when he first took out his policy through the comparison site.

Covea has provided us with evidence from its underwriting guide that shows that if Mr S had selected the correct option, "tipper", it wouldn't have provided cover. Therefore I'm satisfied that Mr S made a qualifying breach under The Insurance Act. And so I think it was fair and reasonable for Covea to avoid the policy and decline the claim.

But Covea also retained the premiums as it said the misrepresentation was deliberate or reckless. Our approach is that it's for Covea to show that Mr S knew the information he provided was untrue or misleading. And Covea also has to show Mr S knew the matter to which the misrepresentation related was relevant to the insurer or did not care whether it was relevant to the insurer.

Mr S said he called his broker to say that the tipper option wasn't available. But unfortunately there's no record of this call. However, I think this shows that Mr S was aware that this information was relevant to Covea, otherwise he wouldn't have raised it with his broker.

I've seen that the tipper option was at the bottom of the drop down list on the comparison website. So I think Mr S may have missed seeing it. I haven't seen any evidence that Mr S tried to manipulate the quote to obtain a better price. And I think if Mr S knew he wasn't fully covered by Covea, then he would have acted to correct this during the several years he held the policy.

Covea also said Mr S didn't disclose the correct model of his van to his broker. It said the model on his V5 registration document was different to that on his policy. But I can see that Mr S entered his van's registration correctly and this generated a model number which he thought was correct. Covea hasn't shown that the correct option was available when Mr S took out his policy. Its own underwriter confirmed that the registration prompted an incorrect model. So I don't think Covea has shown that Mr S made a deliberate or reckless misrepresentation in providing the incorrect model to his broker.

So I think Mr S made a mistake. And I think Mr S knew the van's model was relevant to Covea. But I'm not satisfied that Covea has shown that Mr S tried to mislead it and so made a deliberate or reckless misrepresentation. Under The Act, the remedy is that Covea can avoid the policy and decline the claim because of the qualifying breach, but it can't retain the premiums. And so I think it was unfair for Covea to retain Mr S's premiums after it avoided his policy.

Putting things right

I require Covea Insurance plc to reimburse Mr S the policy premiums it kept when avoiding this policy, and any earlier policies. As Mr S has been without his money for some time, Covea should add interest to this refund at the rate of 8% simple per annum from the date they were retained to the date of settlement.

HM Revenue & Customs requires Covea to take off tax from this interest. Covea must give Mr S a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require Covea Insurance plc to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 January 2022.

Phillip Berechree
Ombudsman