

The complaint

Mr M complains Haven Insurance Company Limited unfairly avoided his commercial motor insurance policy

What happened

The details of this complaint are well known to both parties, so I won't repeat them in full again here.

In summary Haven avoided Mr M's policy as it discovered he'd been charged with a criminal offence, but not yet tried or convicted. It says that when the policy was sold Mr M was asked to disclose any pending convictions. As he did not do so, he didn't provide a fair presentation of the risk and it is therefore entitled to avoid the policy and retain the premiums paid.

Mr M argues that he didn't have a pending conviction, he'd been charged incorrectly, and these were later changed. He was waiting for a court date as he believed he was innocent of any wrongdoing. Mr M has subsequently confirmed he was acquitted of all charges.

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.

Having done so, I agree with the investigator the complaint should be upheld. I do so for the following reasons:

At this service, as well as having regard for the law we also consider cases on a fair and reasonable basis.

The relevant law here is the Insurance Act 2015. This sets out that it is for a customer to give a fair presentation of risk. i.e., for them to disclose anything they reasonably think an insurer may want to know about.

However, this service also recognises that on a fair and reasonable basis (although not strictly required by the Insurance Act 2015), that an insurer should set out clearly what information it wants to receive and not ideally leave a customer in a position where they have to effectively guess what they need to reveal. Insurers are the experts in their field and know what risks they are/are not prepared to accept, so they have some responsibility to ensure situations like this are minimised as the impact on both parties can be very high. The question asked at the start of the policy was: "*Any criminal convictions (including pending)*". There was then a free text box below where it said, "*Please give details of criminal convictions*".

I think Mr M has a point here – he didn't have a pending conviction. As, I would take it, that would imply he'd already been found guilty, and it is simply a matter of the conviction appearing on the appropriate records or a person was awaiting sentencing by a court. So I'm

not persuaded here that Haven asked a clear question of Mr M. It didn't ask about current charges or pending prosecutions, only convictions.

I understand Haven's point that Mr M could have let it know of the situation he was facing, and this would have then allowed it the opportunity to decide if it wanted to provide cover. And if he had done so, he would have met the obligation of giving fair presentation of risk.

So, I recognise that on a strict interpretation of the Insurance Act 2015, Haven would have been entitled to avoid the policy on the basis that Mr M didn't make a fair presentation of the risk. As, he was aware of information which would have had a material impact on Haven's decision whether to provide cover.

However, for the reasons set out above, here I'm more persuaded that on a fair and reasonable basis Haven should have asked a clearer question to elicit the information it was after. Had it included pending prosecutions, or similar words, I think it is more likely that this would have led Mr M to realise his situation would be relevant for the insurer to know. And I find it more likely than not, he would have let the insurer know.

As such, I uphold Mr M's complaint. I think on a fair and reasonable basis it would be unfair to apply the strict position the Insurance Act 2015 allows. Especially in light of the fact the policy only had three weeks left to run and there had been no claim made or any indication one was to be made. In the specific circumstances of this complaint, the consequences of avoiding the policy seem too severe and unfair. And as such I don't think Haven acted fairly or reasonably when it avoided Mr M's policy.

Putting things right

To put things right, Haven should do the following:

- Remove all cancellation/avoidance markers from its internal systems and ensure any markers on external databases are removed. It should write to Mr M to confirm this has been done.
- Treat the policy as if it ran to term. It should provide Mr M confirmation of the appropriate number of No Claims Discount years he would have obtained at the end of the policy term.

My final decision

My final decision is that I uphold Mr M's complaint against Haven Insurance Company Limited. I direct it to put matters right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 March 2023.

Alison Gore
Ombudsman