

The complaint

Mr L complains that Haven Insurance Company Limited (Haven) declined his claim and cancelled his commercial motor insurance policy, following a fire.

What happened

Mr L explains he is in a partnership with a Mr M. The policy in Mr L's name is for a catering van that he drove, but was owned by Mr M. The van was subject to an arson attack. This severely damaged the engine bay and cab. Mr L says the rear was unaffected. He contacted Haven to make a claim and was offered a settlement payment based on the van being a total loss. He disagreed with the offer, and this was subsequently increased.

Haven subsequently declined Mr L's claim. It says had it known the vehicle had been modified for use as a catering van, it wouldn't have offered cover. It paid Mr L £325 in respect of the salvage value of the vehicle but refused to pay to cover Mr L's losses.

Mr L complained but Haven didn't change its position. So, Mr L referred the matter to our service. Our investigator says Mr L hadn't given Haven a fair presentation of the risk when he applied for the policy, as he is required to do under the Insurance Act 2015. He says Haven had provided its underwriting criteria that shows it wouldn't have offered cover had it known about the modifications to the van.

Our investigator says in these circumstances the Insurance Act 2015 allows Haven to avoid the policy and refuse all claims. He didn't think Mr L had acted recklessly or deliberately when failing to provide a clear presentation of the risk. This meant Haven should refund all premiums paid. However, as Haven didn't avoid the policy but chose to cancel it after the loss event, this meant cover was in place when the loss occurred. Because of this he thought Haven should settle the claim based on its previous settlement offer.

Our investigator says Haven shouldn't have disposed of the vehicle as this wasn't its property. He accepted the modifications in the rear hadn't been shown to be damaged and there was a significant value associated to these items. He says Haven should pay £9,769.62 minus the salvage value (£325) to acknowledge this loss.

Haven disagreed with this outcome. It says it followed the remedies applicable to the Insurance Act 2015 and it can cancel the policy and refuse to deal with the claim as per its policy terms and conditions. Our investigator didn't change his mind, so Haven asked for an ombudsman to consider Mr L's complaint.

It has been passed to me to decide.

I issued a provisional decision in May 2023 explaining that I was intending to uphold Mr L'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, my intention is to uphold Mr L's complaint. Let me explain.

Mr L has a commercial insurance policy with Haven. The relevant law here for me to consider is the Insurance Act 2015. Haven says it wasn't provided with accurate information by Mr L 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 L provided to Haven stated he was a housekeeper and that he worked in the health care sector. This was confirmed in the policy documentation that was provided to him. However, the insured van was being used as a catering business and had been modified as such. Referring to the requirements of the Insurance Act 2015, I don't think Mr L 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 as a catering van. The business has supplied its underwriting criteria, which shows no cover would've been offered to Mr L had he provided accurate information about the van, and its intended use. 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 confirms it has retained Mr L's premiums. But it hasn't shown why it considers the misrepresentation was reckless or deliberate. Mr L explains that he applied for insurance online using a price comparison site. The van was registered in his business partner's name. But he only had a provisional licence, which is why Mr L was going to be driving the van. From what he's said I think it's more likely that Mr L failed to make a fair presentation of the risk posed in error, rather than deliberately or recklessly.

An important point here is that Haven didn't avoid the policy in line with the remedies set out in the Act. Instead, it says it cancelled it with immediate effect from when it became aware of the misrepresentation. This was after the loss event had occurred. As discussed, this means the policy was in force at the time of the loss. In light of this I don't think Haven has treated Mr L fairly. And it should consider his claim under the terms and conditions of his policy.

For clarity my decision isn't that Haven needs to settle Mr L's claim. But it does need to consider it and explain whether it intends to settle the claim or not and provide its reasons for this. If Mr L disagrees with Haven's decision, he can of course raise a complaint. If he remains dissatisfied with Haven's response, he has the option of contacting our service.

I've thought about Mr L's comments that the vehicle contained a number of modifications in

the rear to allow it to be used as a catering van. He says the fire damage was contained to the engine bay and the cab, with the rear section remaining undamaged. Mr L says the rear of the van could've been removed from the cab section. He also says the catering equipment in the rear was worth £9,769.62.

Our investigator asked Haven to comment on Mr L's concerns about the salvage value of the vehicle. It responded to say the vehicle was badly damaged and judged to be a category B total loss. It disposed of the salvage to mitigate costs. Haven says it wasn't in a position to confirm the value of cooking equipment but indicated that fire damaged equipment wouldn't be worth much.

Mr L has supplied information to show the equipment that was installed in the van and how much this cost. In total this comes to £9,769.62.

I've looked at the photos of the damage taken at the storage facility used by Haven. The engine bay and cab of the van are severely damaged as a result of the fire. But I can't identify any damage to the rear. No photos inside the rear of the van have been provided. So, it's not possible from this to determine if damage had occurred. Based on the available information the interior of the rear section of the van wasn't inspected.

Given the extensive damage caused by the fire, I don't think Haven behaved unreasonably when relying on its engineer's assessment that the van was a category-B total loss. Where an insurer has paid a claim, it will become the owner of the vehicle and seek to recover some of its costs by selling the salvage. However, it didn't settle Mr L's claim. Haven didn't own the salvage and by disposing of it, it's deprived Mr L and his business partner of the opportunity to recover the equipment inside.

The van's salvage has been disposed of so this cannot be returned to Mr L. In these circumstances I think it's fair that Haven pays Mr L the value of this equipment based on the costing he has supplied. For clarity my intention is that Haven should pay Mr L £9,769.62.

In summary I don't think Haven treated Mr L fairly. It should consider his claim and confirm the outcome to him and pay £9,769.62 in relation to the salvageable equipment it disposed of.

I said I was intending to uphold the complaint and Haven should:

- consider Mr L's claim; and
- pay Mr L £9,769.62 for the equipment it disposed of.

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

Mr L responded to confirm he accepted my provisional decision.

Haven responded to highlight the following endorsement from its policy:

"Vehicle Modifications

Costs of any modifications from the manufacturers original model are excluded in the event of accident, total loss, vehicle theft and/or malicious damage."

Haven says this used when making the decision to reject the claim.

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've thought about Haven's reference to the vehicle modification endorsement. This doesn't impact on my decision that it should consider Mr L's claim. Haven cancelled the policy after the loss occurred. As the policy was in force at the time of the loss it must consider the claim under its policy terms and conditions.

I acknowledge the policy endorsement Haven has highlighted. This confirms the cost of any modifications are excluded in the event of a total loss. I don't disagree with what it says. But Haven disposed of equipment that wasn't its property. This resulted in a loss for Mr L and it should reimburse him for this.

Having considered all of this, I'm not persuaded by Havens further comments that a change to my provisional decision is warranted. This will now become my final decision, for the reasons set out here and in my provisional decision.

My final decision

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

- consider Mr L's claim; and
- pay Mr L £9,769.62 for the equipment it disposed of.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and to accept or reject my decision before 20 July 2023.

Mike Waldron
Ombudsman