

## **The complaint**

Mr W has complained about Covea Insurance plc's decision to reject a claim made under his commercial motor insurance policy, avoid his policy and keep the premium paid.

Mr W is being represented in his complaint.

## **What happened**

Mr W bought a commercial van insurance policy with the insurer, Covea through a broker online. Mr W recorded himself as the main driver and his father was named as an additional driver.

Mr W's father was involved in an incident with another vehicle while travelling to work and so made a claim to Covea.

During Covea's investigation into the claim, it discovered that the vehicle was under a short term rental agreement. Mr W had ticked a box under the options of what the vehicle was when he bought the policy as 'leased'.

Covea also discovered that Mr W's father was the main driver and that he used the vehicle to travel to different locations for work. So it said Mr W hadn't correctly disclosed what he used the vehicle for, and who the correct main driver was.

Covea said if it had known the correct information (about the rental of the van), it wouldn't have offered a policy. And it said Mr W was aware the vehicle was a rental - and what it was being used for - when he applied for the policy. So it said the misrepresentation was deliberate. Covea therefore avoided the policy which meant it didn't cover the claim, and it kept the premium paid.

Our Investigator thought the complaint should be upheld. She thought that consumers may think that a rental or lease agreement is interchangeable - and she didn't find the underwriting evidence provided by Covea as satisfactory to show it wouldn't have offered a policy if Mr W had told it the vehicle was rented. She said the website where Mr W applied for the policy didn't provide a description for a leased vehicle.

The Investigator accepted that Mr W hadn't correctly declared the use of the vehicle. But she said in order for Covea to take the action it did, Covea needed to show it wouldn't have entered into a contract if it had the correct information, or wouldn't have on different terms.

As Covea didn't show this, the Investigator thought Covea had acted unreasonably. So she recommended Covea reinstate the policy and deal with the claim.

Mr W accepted the Investigator's view. Covea didn't agree. In summary it said that it would agree the misrepresentation about the rental agreement could be treated as careless. However, Covea says Mr W was asked a clear question about the usage of the vehicle which he didn't answer correctly and it deems this to have been deliberate or reckless by Mr W. Covea said when it told Mr W the usage was incorrect, he said he didn't see why it mattered. So because it deems the usage misrepresentation as deliberate or reckless, it was entitled to avoid the policy and keep the premium.

I issued a provisional decision on 7 December 2023 as I didn't intend to uphold the complaint.

My provisional findings were:

*“As Mr W bought a commercial van insurance policy, the relevant law that applies to misrepresentation when applying for a policy is the Insurance Act 2015.*

*Under the Insurance Act, the (commercial) customer must make a fair presentation of the risk.*

*I don't intend to go into detail in my provisional decision about the first part of this complaint: that Mr W didn't make a fair presentation of the risk in declaring the vehicle was under a lease agreement rather than a rental agreement. I say this because irrespective of my view, it doesn't change the outcome because I think Covea's actions for deliberate or reckless misrepresentation for usage to be fair and in line with the policy. So the steps which Covea took remain reasonable, in line with the relevant law and the policy.*

*I've looked at the question Mr W was asked when he applied for the policy about usage. The website set out the following question:*

*“What do you use your car for?”*

*It provided three options: 'Social, Domestic and Pleasure' (SDP), 'Social Domestic, Pleasure and Commuting' (SDPC) and; 'SDPC and Business Use'.*

*The website provided explanatory notes to help Mr W - or any other customer - answer this question correctly. The note said that for commuting, this is for commuting to a single permanent place of work. Under SDPC and Business Use, the note reads;*

*“This is the above but also includes business. Business use is travelling to and from more than one location for business purposes. Business use can be selected to include your spouse/additional drivers.”*

*So I think Mr W was provided with clear information about the usage in order to provide a fair presentation of the risk to Covea. Mr W chose SDPC, but should have chosen SDPC and Business Use as he told Covea that his father travelled to various locations for work and not one single permanent place of work.*

*Mr W added his father as an additional driver. The Statement of Fact shows both work on a self-employed basis in the construction industry.*

*I've listened to the call between Covea and Mr W on 12 July 2023. Covea asked Mr W if the van was used for one place of work or various places. Mr W replied to say, 'various places'. The agent explained that Mr W's policy was set up with the wrong usage. Mr W said he didn't understand what difference it made.*

*In Mr W's statement of complaint to this service, he wrote that he had hired the vehicle for his father to drive to and from works. He said he (Mr W) checked the policy and was happy it suited his needs.*

*Mr W said he arranged the policy, so he inserted his father as a named driver. Mr W doesn't believe the discrepancies are of major importance.*

*However, I've looked at the relevant parts of the Insurance Act 2015 (The Act) to see if Covea's decision to classify Mr W's breach as a qualifying breach is reasonable. The Act says;*

*“A breach for which the insurer has a remedy against the insured is referred to in this Act as a “qualifying breach”.*

*(4)A qualifying breach is either—*

*(a)deliberate or reckless, or*

*(b)neither deliberate nor reckless.*

*(5)A qualifying breach is deliberate or reckless if the insured —*

*(a)knew that it was in breach of the duty of fair presentation, or*

*(b)did not care whether or not it was in breach of that duty.”*

*I think Covea acted reasonably in deciding that Mr W made a qualifying breach which was deliberate or reckless as he knew it was a breach of the duty of fair presentation and did not care whether or not it was in breach of that duty. Covea only has to show one of either 5a or 5b, not both.*

*The Act goes on to set out the remedies available to an insurer where a qualifying breach is deemed to be deliberate or reckless. It says under; ‘Contracts’;*

*“1This Part of this Schedule applies to qualifying breaches of the duty of fair presentation in relation to non-consumer insurance contracts (for variations to them, see Part 2).*

*Deliberate or reckless breaches*

*2If a qualifying breach was deliberate or reckless, the insurer—*

*(a)may avoid the contract and refuse all claims, and*

*(b)need not return any of the premiums paid.”*

*Covea has made the decision to avoid the policy, decline the claim and keep the premium paid. As these steps are in line with the remedies available to Covea under the Act, I cannot say that Covea has treated Mr W unfairly - or as it would any other customer in the same circumstances. Even if Covea might have offered a contract under different terms, if it finds the qualifying breach to have been deliberate or reckless, it can avoid the contract and keep the premium paid.”*

Mr W's representative didn't agree with my provisional decision and I've addressed his response in my findings below. Covea didn't reply. So the case has been passed back to me to decide.

### **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.

Mr W's representative has reiterated that he finds the misrepresentation about the rental of the vehicle not to have been deliberate. But as I explained in my provisional decision, this doesn't make a difference to the outcome.

Mr W's representative says Mr W's father used the vehicle to travel to one place of work for the duration of each contract. He says therefore that Mr W was unaware of the difference between one or several places of work.

However, when asked in a phone call, Mr W was able to say that the vehicle was used for different locations for work. So I remain of the view that point 5 (a) and (b) of the Act applies here.

Mr W's representative says when Mr W bought the policy he believed he would use the vehicle more than his father, but when Covea asked after he made a claim, Mr W answered truthfully that his father was the main driver. As both are experienced drivers with a good driving history, Mr W's representative doesn't agree this should be a valid reason to reject the claim.

Mr W's representative says he is able to show that Covea would offer a policy had it been aware of the correct usage for a different premium.

Where a misrepresentation is deemed as deliberate or reckless, an insurer can decide to avoid the policy and keep the premium even, as explained in my provisional decision, if it would have offered cover on different terms or for a different price.

Having considered Mr W's representatives' response, it doesn't change my decision. I think Covea properly investigated the claim and reached its decision fairly, in line with the policy and the Insurance Act 2015.

So this means I'm not asking Covea to do any more.

### **My final decision**

My final decision is that I don't uphold this complaint.

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

Geraldine Newbold  
**Ombudsman**