

## **The complaint**

Mr G has complained that Covea Insurance plc avoided (treated it as if it never existed) his commercial motor insurance policy and declined to pay his claim. He wants it to settle his claim. Mr G is represented in this matter by his friend, Mrs L.

## **What happened**

Mr G took out a commercial motor insurance policy with Covea through a broker after completing an application on an online comparison site. When his van was damaged in an accident, he tried to claim on his policy.

Covea declined his claim, avoided his policy but refunded the premiums he'd already paid. When Mr G complained, it said he'd answered the question he'd been asked about whether the van was leased incorrectly. It said Mr G's van was on short-term hire and it didn't offer cover for this. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim.

Mr G brought his complaint to us, and our Investigator thought it shouldn't be upheld. She agreed there had been a qualifying misrepresentation. She believed it was careless. And she thought Covea was entitled to avoid the policy and, as it never existed, it didn't have to settle Mr G's claim.

Mr G doesn't agree with the Investigator and has asked for an ombudsman's decision. Mrs L thought Covea should have asked, through the broker, who the registered keeper was if it wasn't Mr G. She thought that lease and hire were very similar and Covea could have provided cover with additional terms or extra premium.

## **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 G said he acted with honesty and integrity when he took out his policy, and I have no reason to doubt this. I can understand that the avoidance of the policy and repudiation of his claim has caused him frustration and disappointment.

Mr G held a commercial motor insurance policy with Covea. So I'm satisfied that the relevant law in this case is the Insurance Act 2015. This requires Mr G to make a "fair presentation" of the risk to the insurer when taking out a policy. This means he has to disclose either:

- everything he knows, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or
- enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

And if a complainant fails to do this, the insurer has certain remedies provided the misrepresentation is - what The Act describes - as a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the commercial customer hadn't made the misrepresentation.

The Insurance Act sets out that when a commercial customer fails to provide fair presentation, this is what should happen:

- If it was deliberate or reckless the insurer can avoid the policy and refuse all claims and it doesn't have to return the premiums
- if the qualifying breach was neither deliberate or reckless and the insurer wouldn't have provided the insurance, it may avoid the contract and refuse any claims, but it must return the premiums;
- if the insurer would still have provided the insurance but on different terms (other than the premium) the policy is to be treated as if it had been provided on those terms; and
- if the insurer would have charged a higher premium, it may take a 'proportionate' approach to any claims

Covea thinks Mr G failed to give a fair presentation of risk when he told his broker that he leased his van. Mr G applied for his policy online and then completed the purchase in a call with his broker. In this call, the broker asked Mr G, amongst other questions:

*"You are not the registered keeper? You have put lease down?"*

And Mr G confirmed this information was correct. But in the validation of Mr G's claim, Covea found that he had three monthly rental agreements for his van that he extended for a year. So it thought Mr G had made a misrepresentation when he stated that he leased the van.

Mrs L thought there had been confusion about what the term "lease" rather than "hire" meant. And she thought this should have been better explained at the time of purchase of the policy. But I disagree because Mr G's rental agreements are for short term rentals, not a lease, which he extended. They refer to "hirer" multiple times. And I think Mr G should have realised this. I note that when he notified his claim he said the van was "a rental".

Covea has provided evidence from its underwriters which shows that if Mr G had not made this misrepresentation it wouldn't have offered cover at all. The van's registered keeper wasn't a lease company but a rental company. Covea doesn't cover short-term hire or rental agreements and so Covea wouldn't accept this risk at all. So Mrs L's thoughts that additional terms or extra premium could have been applied aren't feasible. This means I am satisfied Mr G's misrepresentation was a qualifying one under The Insurance Act.

Mrs L thought the broker should have asked who the van's registered keeper was. But I don't think this would have been relevant as Covea would have offered cover for Mr G or a lease company as the registered keeper and Mr G confirmed that he leased the van.

I also think Mr G's misrepresentation wasn't a reckless or deliberate misrepresentation. This is because I think Mr G made an honest mistake. I don't think he intended to mislead Covea. And so I think Covea fairly refunded his policy premiums.

Therefore, I'm satisfied Covea was entitled to avoid Mr G's policy in accordance with The Insurance Act 2015. And, as this means that – in effect – his policy never existed, Covea does not have to deal with his claim following the damage to the van.

### **My final decision**

For the reasons given above, 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 G to accept or reject my decision before 30 April 2024.

Phillip Berechree

**Ombudsman**