

The complaint

A company, which I'll refer to as M, complains that Mulsanne Insurance Company Limited (Mulsanne) avoided a commercial vehicle insurance policy taken out by its director (Mr H), and rejected a claim for theft of the vehicle.

M is represented by Mr H.

Although there are a number of different parties involved in this complaint, for ease of reading, I will only refer to Mulsanne and M.

What happened

Both parties are familiar with the background of this complaint, so I will only summarise some of the key events here.

In August 2022, M took out a Pukka Services Commercial Vehicle Motor Insurance policy underwritten by Mulsanne. When doing so, M said its director was the owner and registered keeper of the vehicle.

In November 2022, the vehicle was stolen, and M made a claim to Mulsanne under the policy. M provided a signed statement which stated it had paid £9,000 from a business account and a further £3,000 from a personal saving account towards the cost of the vehicle. Mulsanne asked M to provide evidence of these transactions, however M was unable to show bank account statements confirming these payments were made. Instead, M provided a handwritten receipt stating £12,000 cash had been paid.

Mulsanne asked M for evidence of the payments it made to the third-party for the vehicle. M said it couldn't provide any further evidence because it hadn't paid for the vehicle yet. M explained that it does regular business with the previous owner of the vehicle, and they owed M money, some of which has been written off against the value of the vehicle. M maintained that its director is the owner and registered keeper of the vehicle.

Mulsanne weren't satisfied that M had sufficiently demonstrated that it purchased the vehicle from the previous owner and therefore they didn't think it was the owner of it. Mulsanne concluded that M had failed to make a fair presentation of the risk in accordance with its obligations under The Insurance Act 2015 ('the Act') when taking out the policy and that this was what the Act describes as a deliberate or reckless qualifying breach. They said they wouldn't have provided the policy if M had answered the question asked about ownership correctly. So, they avoided the policy, retained the premium and refused M's claim on this basis. M complained to Mulsanne, but they wouldn't alter their decision to avoid the policy and decline its claim.

M asked us to consider its complaint about Mulsanne. One of our Investigators did this. He issued his view on the complaint. In this he explained that he agreed that M had failed to make a fair presentation of the risk when taking out the policy. He was satisfied that if M had made a fair presentation of the risk, Mulsanne wouldn't have offered cover. On this basis he said he was satisfied that M made a qualifying breach which was deliberate or reckless.

M did not agree with our Investigator and so the case has been passed to me for a decision.

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'm not upholding this complaint. I'll explain why.

Both parties have provided detailed submissions to support their position. I want to assure them I've read and carefully considered everything they've said, but I won't comment on everything.

I'd like to start by explaining that this complaint has been brought to the Ombudsman Service by M. The policy in question was taken out by M's director, however I consider he was acting for the purposes of his trade, business or profession, so the Ombudsman Service can't consider a complaint brought by the director in his personal capacity. But in this case, M says the vehicle was used for business purposes and it owned the vehicle in question. M is therefore potentially a beneficiary under the policy. I've therefore considered this complaint on the basis that the complainant is M and it is potentially entitled to benefit from the policy. However, in order to benefit from the policy, M needs to demonstrate that it owned the vehicle and had an interest in it.

The issue for me to decide in this instance is whether or not it is fair and reasonable for Mulsanne to avoid M's policy and decline its claim on the basis they have set out in their avoidance letter.

Mulsanne made the decision to avoid M's policy on the basis of a breach of the duty of fair presentation made by M when taking out the policy in 2022. When considering whether Mulsanne acted fairly, the starting point is the Insurance Act 2015. Under this Act, commercial policyholders, such as M, have a duty to make a fair presentation of the risk to the insurer when taking out a policy. This means they have to disclose either:

- everything they know, or ought to know, that would influence the judgement 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.

Where there has been a failure to fairly present the risks to an insurer, and this gives the insurer a right to a remedy under the Act, this is called a qualifying breach.

The Statement of Fact that was sent to M in 2022 included the following two statements:

“Who is the Legal Owner of the vehicle?”

“Who is the Registered Keeper of the Vehicle?”

And it explained that if any of the information provided on the Statement of Fact was incorrect, this could mean that any future claims may not be paid, and policy cancelled.

It is not in dispute that M said its director was the legal owner and registered keeper of the vehicle. However, M maintains that the answers provided to the above statements were accurate.

Mulsanne says there is a breach and it has confirmed that if accurate information had been

provided in relation to the ownership of the vehicle, the policy would not have been offered.

The statement of fact asked a clear question about the legal owner of the vehicle, and M said its director was the legal owner of the vehicle. From the evidence I have seen, M has provided a number of different version of events to explain how the financial transaction took place when it purchased the vehicle from the previous owner. Initially, M had told Mulsanne that it could not provide evidence of payment for the vehicle. M then said the vehicle was bought through a business transaction from a well-known supplier. M explained the supplier owed it money, so no direct payment was made, and the third party's debt was written off in exchange for the vehicle. When requested by our Investigator, M provided invoices of the outstanding debt for the third party, which it says was written off against the value of the vehicle. I agree with our investigator that some of the invoices provided by M were dated after the date it says it acquired the vehicle. I don't consider this evidence persuasive enough to demonstrate that a financial transaction took place for the purchase of the vehicle.

M's version of events have been inconclusive and furthermore, it has been able to provide very little evidence to substantiate what it says happened during this sale transaction. I have seen a handwritten receipt which M provided to Mulsanne during the early stages of its investigation, but the receipt says it paid for the vehicle in cash. M also told Mulsanne, it had paid for the vehicle from two separate bank accounts. It then said no payment was made and the third party's debt was written off for the purchase price of the vehicle. I'm not persuaded by the evidence provided to demonstrate a financial transaction took place. Based on the evidence I've seen, I'm satisfied that it was reasonable for Mulsanne to conclude that M wasn't the legal owner of the vehicle, and that, it therefore failed to fairly present the risk.

Mulsanne have provided confirmation from their underwriter that if the question about the legal owner of the vehicle had been answered correctly, they wouldn't have offered terms. Based on this evidence, I'm satisfied that, had the appropriate disclosures been made, Mulsanne wouldn't have offered terms to M. Therefore, I think M made a qualifying breach when incepting the policy.

The remedies available to Mulsanne depend on whether a qualifying breach is either deliberate or reckless, or, neither deliberate nor reckless. Mulsanne have treated M's breach as deliberate or reckless. They said that M ought to have disclosed information about the owner correctly.

The Insurance Act says:

"An insured will have acted deliberately if it knew that it did not make a fair presentation. An insured will have acted recklessly if it "did not care" whether or not it was in breach of the duty, but this is intended to indicate a greater degree of culpability than acting "carelessly"."

Based on all the circumstances, I think Mulsanne acted fairly in deciding that M's breach was deliberate or reckless. I say this because I think M would have been aware it wasn't the legal owner of the vehicle when it incepted the policy. I therefore agree with Mulsanne that M ought to have disclosed this information which it failed to do.

I also note that M said it was the registered keeper of the vehicle. This alone isn't sufficient to demonstrate it was the legal owner of the vehicle. The V5 registration document provided by M does demonstrate the vehicle was registered to its director, however it wasn't registered until after the theft took place. I am therefore not persuaded that M was the registered keeper three months prior when it incepted this policy. But in any event, I don't need to make a finding on this as I consider it to be clear that there was a breach on the

question about the legal owner of the vehicle, and from what I have seen, I am satisfied that Mulsanne wouldn't have offered the policy based on the breach. I therefore don't think it's necessary for me to go further and consider any issues around this question as it won't change the outcome.

Taking everything into account, I don't think Mulsanne acted unfairly in avoiding M's policy from inception, retaining the premium paid and declining the claim in question for not making a fair presentation of the risk.

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 M to accept or reject my decision before 30 December 2024.

Ankita Patel
Ombudsman