

The complaint

Mr H complains Haven Insurance Company Limited unfairly declined his motor insurance claim.

Mr H's been represented for the complaint. For simplicity I've referred to the representative's actions as being Mr H's own.

What happened

In May 2023 Mr H took out a Haven motor insurance policy. In mid-June 2023 he was involved in a motor collision. He claimed against his Haven policy. But Haven declined the claim and cancelled the policy.

Haven said when Mr H had taken out the policy he had said his occupation was Job A. But during the claim process he had indicated he had started a new occupation - Job B – from early June 2023 (For anonymity reasons I haven't used the actual job titles). Haven said had Mr H declared Job B as his occupation, when taking out the cover, it wouldn't have accepted the risk. It explained his policy terms required him to notify his broker of changes to his occupation. Haven went on to say as he hadn't advised his broker of the change in occupation it was declining his claim and cancelling his policy. Haven said that his car had been declared a total loss Category B. It said it would be disposing of the salvage with any profits paid to the finance provider for the car.

Mr H responded to say there had been an error. He said he didn't start Job B until mid-July 2023. He provided a letter, from an organisation stating he had been voluntarily performing Job A, until 30 June 2023.

Haven issued a complaint response. It continued to decline the claim. It said the reason for his policy being cancelled and the claim declined was dishonesty in relation to the claim. It said he'd said during the claim process that he changed from Job A to Job B with effect from early June 2023. It explained he had then claimed a different start date for Job B – mid-July 2023. But it said its online investigation had shown he started Job B in May 2023.

Haven said Mr H had breached a general condition of the policy – requiring him to provide information, when making a claim, that's true to the best of his knowledge. So it said it was entitled to cancel the policy and refuse to deal with his claim. As additional grounds for cancelling or avoiding the policy Haven referred to a fraud term in the policy. Finally it said again that had Mr H declared Job B when taking out the policy it wouldn't have offered cover.

Mr H wasn't satisfied, so referred his complaint to the Financial Ombudsman Service. He said he changed occupation from Job A to Job B after the loss. He provided Haven with a letter from both relevant organisations confirming his end and start dates. He said despite that evidence it refused to accept his timeline. As a result he's been left with finance payments to meet for the insured vehicle.

Our Investigator noted Haven had been unclear about the grounds it was using to decline the claim, cancel the policy and retain the premium – misrepresentation, not notifying of a change of occupation during the policy or dishonesty. He noted it had failed to provide key evidence it was relying on despite various requests for it.

The Investigator said Haven hadn't provided persuasive evidence Mr H misrepresented his occupation when taking out the cover. The Investigator said even if Mr H had changed roles in early June 2023, and notified Haven on that date, because of a policy seven-day cancellation notice requirement Mr H would have been insured on the date of loss. The Investigator felt Haven hadn't provided persuasive evidence of dishonesty.

So he concluded it wasn't fair for Haven to have declined Mr H's claim. He recommended it pay him a total loss settlement in line with the terms of the policy. He didn't ask it to reinstate the cover. But he recommended it pay Mr H £500 compensation.

Haven didn't accept the Investigator's recommended outcome. It raised further misrepresentations by Mr H. One was regarding a potential non-disclosure of a second occupation. Haven said if this Service didn't accept it avoiding the policy on that ground it would rely on a failure to declare an unspent conviction. I provided Mr H with an opportunity to respond to Haven's latest positions.

I then issued a provisional decision. As its reasoning forms part of this final decision I've copied it in below. In it I explained why I considered it fair for Haven to, due to Mr H misrepresenting an unspent conviction, avoid or cancel the policy and decline the claim. I invited both to provide any further comments or evidence they would like me to consider before issuing this final decision.

what I've provisionally 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr H and Haven have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

Based on what I've seen so far, the unspent conviction ground is the most unequivocal ground put forward by Haven for avoidance or cancellation and decline of the claim. As the others involve some element of ambiguity I've considered it first. And as I intend to find it fair for Haven to rely on it to avoid the policy and decline the claim, I don't feel it necessary to address the other proposed grounds here.

First, I'm satisfied it's fair for Haven to have introduced the unspent conviction grounds at this stage. I've no reason to believe it was previously aware of the issue. It appears to have discovered it during research following this Service raising questions about its earlier reasons for cancelling or avoiding the policy.

The relevant legislation for me to consider is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It gives insurers the ability to take certain action, like avoiding a policy, if a 'qualifying misrepresentation' has been made.

I've first considered if there was a misrepresentation. Haven's provided screenshots of questions, on an aggregator website, it says Mr H was asked when taking out the policy. One of those questions was 'Do you have any unspent non-driving

convictions?'. Haven says Mr H gave incorrect information by answering 'no'. Mr H says he doesn't remember being asked a question about non-motoring convictions. I forwarded him the screenshot for his comments. He said he doesn't remember being asked the question – he thought he was being asked about motoring convictions.

I think its most likely Mr H was asked the unspent, non-motoring, conviction question. In my experience it's common for a such a question to be asked for motor insurance applications. The answer options were 'yes' or 'no'. I think it's likely he did answer 'no'. Based on information provided by Haven I'm satisfied had he answered 'yes' the application wouldn't have progressed to acceptance.

Based on what I've seen it seems Mr H did have an unspent conviction at the time the policy was being taken out. Haven provided a newspaper article featuring an individual of the same name and local area. In response to that article Mr H didn't deny being the individual in the article. He accepted he had a conviction but said its now spent. Although his most recent correspondence appears to accept it wasn't spent at the time the policy was taken out.

Mr H didn't raise objection to the length of sentence (relevant to when the conviction becomes spent) quoted in the article. He didn't explain, when asked, why or how he considers his conviction spent. I'm satisfied, from my own research and Haven's evidence, that his conviction wasn't spent at the point the policy was taken out.

So it's fair to say the answer of 'no' to the above question was a misrepresentation. But for Haven to take any action, like avoiding the policy and declining the claim, there would need to be a 'qualifying misrepresentation'. For that a few things are required. Firstly there must have been a failure to take reasonable care not to make the misrepresentation.

CIDRA sets out several things to be considered when deciding if a consumer took reasonable care not to make a misrepresentation. One is how specific and clear the questions asked were. Another is any relevant explanatory material.

Mr H says he believed the question was asking about motoring convictions. But I'm satisfied the question asked of him was clear. The accompanying guidance said its important to declare any unspent convictions as otherwise insurance may not be valid.

The policy statement of fact, received by Mr H, also features the question 'Have you been convicted of any non-motoring offences, including offences relating to theft, fraud or dishonesty'. It records the answer as 'false' ie 'no'. That means if Mr H was confused about the original question he had a second chance to understand that incorrect information had been recorded.

Considering everything, including the question and explanatory guidance, I think its most likely Mr H understood the question and that there was a failure to take reasonable care not to make a misrepresentation when he gave 'no' as an answer – and didn't correct it at a later date. Mr H would likely be aware, considering the length of sentence, and time from the conviction that it wouldn't become unspent for some time. If he wasn't sure he could have made enquiries reasonably easily.

Haven also needs to show that without the misrepresentation it wouldn't have offered cover - or would have only done so on different terms. I'm satisfied, based on what I've seen Haven wouldn't have offered cover at all if the conviction been declared.

So it's reasonable to say there's been a qualifying misrepresentation. In these circumstances where no cover would have been offered, CIDRA allows insurers to avoid a policy and decline any claim.

It's not clear if Haven has, technically, avoided or cancelled the policy so far. It's referred to both during the claim and complaint. I'm satisfied in relation to the unspent conviction it's fair for it to avoid the policy and decline the claim. So if it did record a cancellation after the date of loss, when it could if it wishes fairly avoid based on its latest grounds, I'm not going to interfere by requiring it to consider the claim anyway.

It also seems Haven's retained the premium or requested Mr H make full payment of it. As far as I've seen it did that on the basis that the policy terms allow it to retain the full premium when a claim is made.

But when a qualifying misrepresentation is deliberate or reckless CIDRA allows insurers to retain the premium. Mr H has said it was a genuine mistake. But feel it would be fair for the misrepresentation here to be considered reckless or deliberate. CIDRA's test for this includes whether the consumer knew the information he provided was untrue or misleading or did not care whether it was untrue or misleading.

It's not clear exactly when the conviction will become unspent. Haven said it will be 2030. It's possible, based on what I've seen, it will be four years earlier. Either is significantly after the date the misrepresentation was made. I think it's likely Mr H knew, when answering 'no' – so that would be a deliberate misrepresentation. So I don't intend to interfere if Haven wishes to retain the full premium or seek payment of it.

Finally Mr H says his conviction isn't material to the loss or claim. However, that isn't something to be considered under CIDRA. It's material that Haven wouldn't have offered cover at all had he declared the conviction. Had that happened there would be no claim for Haven to consider.

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.

Neither Mr H nor Haven responded to my provisional decision. That means I haven't been provided with any reason to change my mind.

So for the reasons set out above, I'm satisfied, in relation to the unspent conviction, it's fair for Haven to avoid the policy and decline the claim. If it did record a cancellation after the date of loss, when it could fairly avoid the policy, I'm not going to interfere by requiring it to consider the claim anyway. Neither am I going to interfere if Haven wishes to retain the full premium or seek payment of it.

My final decision

For the reasons given above, I don't require Haven Insurance Company Limited to reinstate the policy, pay any claim, refund any premium or to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 September 2024.

Daniel Martin
Ombudsman