

The complaint

Mr K has complained about his boat insurer Travelers Insurance Company Limited which avoided his policy (treated it as though it had never existed) and, by association, declined his claim made when his boat had been submerged.

What happened

Mr K bought his boat in 2020 and insured it, via a broker, with Travelers. In November 2023 the boat was damaged during a storm. Mr K made a claim to Travelers for the damage. Travelers asked Mr K for various details and became concerned about a number of things it felt had been misrepresented to it when the policy had been arranged.

Having completed some investigations, Travelers wrote to Mr K. It said that he had misrepresented to it about previous convictions, claims and the price he'd paid for the boat. It said that given the fact of incorrect information having been provided to it, Mr K had likely acted deliberately or recklessly. So it said as well as avoiding the policy, thereby declining the claim, it wouldn't be refunding any premium. Mr K complained to the Financial Ombudsman Service.

Our Investigator felt Travelers had reached a fair and reasonable conclusion, both regarding the misrepresentation and that Mr K had acted deliberately or recklessly. So she didn't uphold the complaint.

Mr K remained unhappy. His complaint was referred to me for an Ombudsman's decision.

I was minded to reach a different conclusion to that of our Investigator. Having carefully considered the slightly unusual circumstances behind this complaint, I wasn't persuaded that Travelers had shown that a misrepresentation had most likely been made to it. So I issued a provisional decision to explain my views to both parties. My provisional findings were:

“There is legislation – the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) – which sets out the rights and obligations of both parties when arranging policies of insurance and at renewal. CIDRA is designed to level the playing field between both parties and to set out what each can expect from the other. For example, a policyholder can expect an insurer to ask clear questions about important things it wants to be told about and an insurer can take any answers given (or the fact of detail not given) at face value as being likely correct. CIDRA also sets out what insurers can do if incorrect information is given.

Without going further into what the legislation allows then, at this point, Travelers first has to show that it was given incorrect information by Mr K when he arranged the policy. To clarify here, whilst Travelers did refer to convictions and previous claims when it wrote to Mr K, it has confirmed that the only incorrect detail it is relying on to avoid the policy is in respect of the price Mr K said was paid for the boat.

Mr K, when arranging the cover was asked to state the price paid for the boat. He gave a value of £67,000. When Travelers, during the claim, asked Mr K for proof of this he said he didn't have the invoice for the boat – it had been lost when the boat was submerged. Mr K

said he'd paid for the boat partly in cash, partly by a £12,000 bank transfer and, the lion-share, by part exchanging a camper van. Mr K said the bank was no longer trading, so he couldn't show the bank transfer. He said he had the contact details for the boat's seller but couldn't get hold of them.

When Travelers involved the loss adjuster, the loss adjuster made some enquiries to trace the boat's seller. The boat's seller said the total price for the boat had been £11,500, paid by bank transfer and no vehicle had been exchanged.

As far as I can see it was based on this detail from the seller alone that Travelers made its decision that Mr K had given incorrect information when arranging the policy. I appreciate that Travelers had some concerns when Mr K couldn't evidence the purchase. But I note Mr K has been consistent throughout about his recollection of the boat's purchase. I haven't seen anything from Travelers to justify or explain its decision to take the word of the seller over that of its policyholder.

I note that the seller was not formally interviewed or asked to sign a statement. I also note that, at no time, were enquiries undertaken about the camper van. Transfer of ownership of this type of item would usually be documented. If Travelers felt minded to take the seller's word over Mr K's I think it's not unreasonable to say it should have looked for some independently verifiable data to support that conclusion – such as the logbook for the camper van.

For a significant issue for a policyholder, such as avoidance, it seems slightly unfair to me for Travelers to have just accepted the word of a third-party. A third-party, for all Travelers knew, who might have good reason for not being upfront with the loss adjuster about receiving a large cash sum and a vehicle. On balance I don't think Travelers has provided a reasonable level of evidence to show that incorrect information was most likely given to it when the policy was arranged.

As Travelers hasn't satisfied me that it's most likely that incorrect information was given to it about the purchase price when the policy was arranged, I can't say it was fair of it to avoid the policy based on a misrepresentation having occurred. Which means that Travellers will now have to reinstate the policy, to the point it would have renewed after the loss, removing the record of the avoidance from its own and any industry database. It will also have to consider the claim.

To be clear, Travelers confirmed it was not relying on anything to do with the convictions or previous claims when it avoided the policy. It won't now be able to change its mind in that respect and revisit those issues.

I understand that Mr K did complete some 'make safe' works to the boat. I think Travelers should consider its liability for any costs Mr K incurred in that respect as part of the claim, along with any costs such as for storage.

I think Mr K was upset by the avoidance. I think Travelers should pay him £250 compensation. I'm not sure if Mr K has suffered distress and inconvenience because of his boat not being usable – but, if he has, as I don't know that the claim itself will or would have succeeded, I can't reasonably award compensation in that respect."

Mr K said he was relieved by the decision – that the most important thing for him was the insurance record. He said he'd like the claim for his boat to now be honoured so he could move on.

Travelers objected to my findings. It said:

- I was wrong to assume that “Mr K has been consistent throughout about his recollection of the boat’s purchase. I haven’t seen anything from Travelers to justify or explain its decision to take the word of the seller over that of its policyholder.”
- Under the Insurance Act Mr K had a duty to give a fair presentation of risk, yet he’d been unable to show it that he had done so.
- It wasn’t its duty to verify the information provided/not provided (at policy inception).
- The bill of sale had been provided to it by the seller (copy now shared with us).
- The seller was adamant there was no vehicle involved in the sale.
- Mr K hadn’t presented any evidence of such an exchange.
- Mr K – Travelers said – clearly lied.
- I – it said – must have misunderstood things or not read its file.
- Previous convictions might not have been disclosed to it.
- There was a failure to disclose a previous claim too.

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.

Travelers, in its reply, said I was wrong to assume Mr K had been consistent and there was nothing to explain its decision to take the seller’s word over his. But, having said that it then did not explain why it felt those “assumptions” were wrong. Let me be clear – they were not assumptions, they were my findings having read and considered the file of submissions from both parties. I’m satisfied that I’ve understood the situation perfectly well and have reached a fair and reasonable decision based on both the situation at hand and the relevant legislation.

On that note, I explained provisionally that the relevant legislation is CIDRA. Nothing Travelers has said makes me think I was wrong in that respect. But, in any event, if an insurer wants to rely on its policyholder having done something wrong in order to avoid its liability, that is an argument for it to make and support with a reasonable level of evidence.

Here, really the only evidence Travelers found and sought to rely upon was what the seller told it. And the bill of sale. Having now seen the bill of sale – I’m not persuaded this adds anything to or assists Travelers’ argument. It is an unsigned word document – so it doesn’t show it’s most likely that Mr K entered into that contract, on that basis, with the seller. So it doesn’t show that Mr K bought the boat for less than he said he did and, therefore, gave Travelers incorrect information. It does not show, and I’m satisfied that Travelers has not shown, that Mr K lied.

I note that Travelers’ last two comments came from its loss adjuster. I’m disappointed to see these concerns being raised again. Travelers itself confirmed it was only relying on the sale price to avoid the policy. As I said provisionally, Travelers cannot reasonably now seek to rely on arguments it chose not to pursue in the first instance. That would be unfair.

Having reviewed the responses, my view hasn’t changed. As such, my provisional findings, along with my further comments here, are now those of this my final decision. If Mr K accepts it within the deadline given, Travelers will be bound to comply with my awards.

Putting things right

I require Travelers to:

- Reinstate the policy to the point it should have renewed.
- Remove the record of the avoidance from its own and any industry database.
- Consider the claim under the terms of the policy – in undertaking this review it cannot

- revisit the issues regarding convictions and previous claims.
- Pay Mr K £250 compensation.

My final decision

I uphold this complaint. I require Travelers Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 September 2024.

Fiona Robinson
Ombudsman