

The complaint

Mr W has complained about the way his commercial motor insurer, Haven Insurance Company Limited ('Haven') dealt with a claim he made on his policy.

Haven is the underwriter of this policy i.e. the insurer. During the claim Mr W also dealt with other businesses who act as Haven's agents. As Haven has accepted it is accountable for the actions of its agents, in my decision, any reference to Haven includes the actions of the agents.

Mr W's complaint was brought to us by his representative, Miss G. For ease I will refer to Miss G's comments as Mr W's.

What happened

Mr W had a motor insurance policy for his van. In November 2023 he made a claim under his policy after someone collided with the back of his van while he was stationary.

When Mr W reported the incident to Haven, he said he had been commuting to work at the time of the accident. Haven told him that, in that case, his claim wouldn't be covered as his policy only covered social, domestic and pleasure usage and not commuting. Haven also proceeded to cancel the policy a week later due to a breach of the policy terms and conditions.

Mr W wasn't happy about this and complained. He said that when he bought the policy he was searching for commercial policies as he used his van for work. He added that the policy documents he was sent said he was covered for 8,000 business miles, the policy was a commercial one and so he thought he was covered for commuting.

Haven considered Mr W's complaint but didn't uphold it. It said the reference to business miles would have only been relevant if he had cover for business purposes. Haven also said that under its terms and conditions there is an exclusion which states that it will not cover any claim for loss etc. if the vehicle is used for purposes other than those listed in the certificate of motor insurance under limitations as to use. It added that its terms give it the option to cancel a policy with immediate effect if, among other things, there is a breach of any of the terms, exceptions and exclusions.

Mr W then brought his complaint to us. He said he didn't want to have a policy cancellation on his record as this impacted future policies and premiums. He said he also wanted his claim to be covered.

One of our investigators reviewed the complaint and thought it should be upheld. He thought Mr W had selected social, domestic and pleasure in terms of what he used his vehicle for but he didn't think this was done recklessly or deliberately. Haven said that had Mr W selected commuting it would have still insured him but for a higher premium so our investigator said it should cover his claim on a proportionate basis. He also said that it should remove any internal or external records of the policy's cancellation and issue Mr W with a letter confirming that the policy was cancelled in error.

Mr W accepted our investigator's view but Haven didn't. It said that the online journey and the question regarding the usage of the car is very clear. So it asked for an ombudsman's decision.

The matter was then passed to me to decide. Before I issued my decision, I asked Mr W whether he has taken out a new policy and also whether the van had been repaired. Mr W said that he had to take out another policy a few days after his Haven policy was cancelled. He said the van is driveable and though he has done some temporary repairs so he can continue to use it he hasn't repaired it fully.

I then, through our investigator, informed Haven that I was planning on making the same award as the investigator, but I would also be asking it to refund Mr W's premium for his new policy while the two policies overlapped. This is bearing in mind that Haven is entitled to its premium as it will be settling the claim proportionately. I said, otherwise, Mr W would be paying two premiums over the same period for the same van. I also said that I would be asking Haven to pay the extra premium Mr W had to pay due to having a cancellation on his record. And finally, that I would also be asking it to reimburse Mr W for the cost of the temporary repairs on a proportionate basis plus interest in addition to settling the claim proportionately. And to redo the repairs if they are not lasting and effective.

Haven agreed to proportionately settle the claim. Nevertheless, it said that Mr W's new insurer should be able to reimburse him for any extra premium he had to pay due to the cancellation marker.

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.

When Mr W bought his policy, he had a responsibility- under the Insurance Act 2015 ('the Act')- to make a fair presentation of the risk. And for Haven to take any action at all it needs to show that Mr W didn't do this and that he made what's known as a qualifying breach.

Under the Act a qualifying breach is a breach for which the insurer has a remedy against the customer because they would either not have sold them the policy, or would have done so on different terms.

Haven said that Mr W bought the policy online through a broker's site and has provided an example of the questions Mr W was asked. These include the following:

"What will you be using your vehicle for?"

Haven said that Mr W selected “social, domestic and pleasure”. The other options included “carriage of own goods”, “carriage of goods for hire & reward” and “more”. Further options appear if one selects “more” and these include, among others “SDP + Commuting”. Haven provided copies of the statement of fact document which it says is based on Mr W’s answers as well as his other policy documents which show that the cover provided was only for social, domestic and pleasure usage. I think this shows that, on balance, Mr W didn’t give a fair presentation of the risk as he didn’t include commuting when he answered the question about the use of the vehicle.

For Haven to take any action at all it needs to show it would have either not insured Mr W, or done so, but on different terms. Haven has provided evidence which shows it would have still insured Mr W if he had selected “commuting” but for a higher premium. I’m, therefore, satisfied that Haven has shown that Mr W has made what is known as a “qualifying breach”.

The remedies available to Haven depend on whether a qualifying breach is either deliberate or reckless, or, neither deliberate nor reckless. Haven hasn’t said what type of breach it believes this is but it cancelled the policy and refused to cover the claim. From what I have seen, bearing in mind that Mr W was searching for a commercial policy, he bought a policy which has “commercial” in its title, believed that he was covered for 8,000 business miles, on balance, I don’t think this breach was deliberate or reckless. I think Mr W’s intention and belief was that he was covered to use his van for work.

The remedy available to Haven where the qualifying breach is neither deliberate nor reckless and where it would have charged a higher premium is to deal with a claim on a proportionate basis. Cancelling the policy is not one of the remedies available under the Act and in any event I don’t think it was fair or reasonable that the policy was cancelled in the circumstances bearing in mind what I said above.

Haven said that it was entitled to cancel the policy under its terms and conditions. I have considered this but in the specific circumstances of this case, I don’t think this would be fair and reasonable. I say this because, as I said above, I am persuaded by Mr W’s argument that his genuine intention was to take out a policy that would cover him for work and this is why he searched for a commercial policy and took out a policy he genuinely believed would cover him.

Mr W’s policy was cancelled in November 2023 but the policy term wasn’t due to expire until August 2024. This means that Mr W had to take out a new policy for a period where he should have still had cover with Haven.

Mr W said he had to take out a new policy and has paid a higher premium. Mr W said his new insurer is aware of what happened with Haven and because Mr W would have had to declare the cancellation when he took his new policy out I think this would, more likely than not, have led to the increase in his premiums. So I think it’s fair for Haven to pay the additional premium Mr W had to pay due to having had a policy cancellation. Mr W will have to ask his new insurer for evidence of how much extra he was charged due to the cancellation and provide this evidence to Haven. Haven should also issue Mr W with a letter to say that the policy was cancelled in error and that it has refunded him the difference so he can present this to future insurers.

Haven said that Mr W's new insurer should be able to issue a refund once the cancellation is removed from his record. If that is the case, then it won't be necessary for Haven to pay this. So I partly agree with Haven's point.

Also, as Haven is now paying this claim, it is entitled to the premium for the policy. However, as Mr W had to buy another policy, he's also paid to insure his car for a period of time the policy with Haven should have covered his van for. Therefore, if Haven seeks payment of the original premium it will need to deduct the amount Mr W paid the new insurer to insure his van, while his van should have been insured under the policy with Haven.

I also understand that Mr W said that the accident he was involved in was non-fault. If that is the case and Haven, after settling Mr W's claim proportionately, makes a recovery against the at-fault party we think it would be good industry practice for it to recover the full claim amount rather than the proportionate amount- though this isn't something it has to do.

My final decision

For the reasons above I have decided to uphold this complaint. Haven Insurance Company Limited must:

- Settle Mr W's claim on a proportionate basis depending on the premium he would have paid had he also selected commuting. The settlement should be in line with the remaining terms and conditions.
- Refund Mr W any reasonable costs he had to pay out for temporary repairs on a proportionate basis (as above), subject to him providing evidence in support. It must also pay 8% interest* per year simple on this amount from the date it was paid to the date it pays him. If these repairs aren't lasting and effective it must redo them or issue Mr W with a cash in lieu payment to ensure the van is repaired to acceptable industry standards. This is again on a proportionate basis as above.
- Remove any record of the policy cancellation from any internal and external databases.
- Refund the extra premium Mr W had to pay to his new insurer due to the cancellation subject to Mr W providing evidence in support. It must also pay 8% simple interest* per year on the amount it pays from the date Mr W paid it to the date it pays him back. If Mr W pays his premium monthly then Haven must only pay interest on the amount Mr W has paid already and not on the full amount. If Mr W's insurer refunds this extra premium then Haven doesn't have to.
- Issue a letter confirming that Mr W's policy was cancelled in error. It should also mention that it refunded him any difference in premium (as above) unless Mr W's new insurer has issued him with a refund instead.
- As Haven is paying the claim it's entitled to the premium. If Haven seeks payment for this it will need to deduct what Mr W paid for his new policy, for the time it would overlap with his Haven policy.

*If Haven Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 November 2024.

Anastasia Serdari
Ombudsman