

## **The complaint**

Mr M is a sole trader. He complains that Haven Insurance Company Limited (Haven) declined his motor theft claim and avoided his policy from inception.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them in detail here.

To briefly summarise, on 6 September 2023, Mr M took out a motor insurance policy underwritten by Haven.

In January 2024, Mr M made a claim under his motor insurance policy following the theft of his vehicle.

During the claim validation process, Mr M confirmed he had three fault claims. Haven said Mr M had only declared two claims when taking out the policy.

Haven explained that Mr M had a duty to ensure he made a fair presentation of risk. Haven said that in this instance, incorrect information provided on the statement of fact led them to provide cover, but if they had been aware that Mr M had three fault claims, their underwriter confirmed they wouldn't have accepted the risk and cover wouldn't have been provided.

Haven concluded that Mr M made a qualifying breach and in line with the remedies available to Haven under the Insurance Act 2015, they avoided the policy from inception, effectively treating it as if it never existed and declined Mr M's claim. Haven treated the breach as deliberate and therefore didn't refund the premium paid by Mr M.

Mr M disputed Haven's decision to decline his claim and avoid his policy. In Summary, he maintained he had disclosed the claim from March 2023 to Haven.

Our Investigator considered the complaint. He thought that Haven had acted fairly and reasonably in avoiding Mr M's policy and declining his claim. He was satisfied that Mr M failed to make a fair presentation of the risk. Mr M didn't agree with the Investigator and asked for an ombudsman's 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.

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 it all.

The relevant legislation in this case is the Insurance Act 2015 (the Act). This is because the policy Mr M took out to cover his van is a commercial contract. This required Mr M to make a

fair presentation of the risk he wanted Haven to insure when he took out the policy to cover the van.

If Mr M failed to make a fair presentation and Haven can show this was what the Act describes as a qualifying breach; and that they would have offered the policy on different terms but for this breach, or not at all, they may then have the right to avoid it (treat it as if it never existed) and refuse any claims under it. Whether Haven are entitled to avoid the policy will depend on whether Mr M's breach was deliberate or reckless. If it was, Haven would be entitled to avoid the policy, even if they would have offered it on different terms. If it was neither deliberate nor reckless, Haven would only be entitled to avoid the policy if they wouldn't have offered it all but for the breach.

I'm satisfied from the evidence Haven have provided that when Mr M took out the policy, he was asked whether he had any motor accidents, claims or losses in the past five years, no matter who was at fault or if a claim was made. I'm satisfied Mr M disclosed two claims, one dated February 2022 and another from June 2022, however he didn't disclose the claim from March 2023.

From the information provided by Mr M, I note that he did disclose the claim from March 2023 under another policy he held with Haven in April 2023. The disclosure resulted in an increased premium being charged by Haven. I'm satisfied that Mr M should have disclosed the claim for the policy in question too, as he should have been aware of it when he took out the policy in September 2023.

As Mr M failed to disclose the claim, I think he did fail to make a fair presentation of the risk he wanted Haven to insure. I appreciate Mr M has said he did make Haven aware, however this was under a different policy. It wouldn't be reasonable to ask Haven to check Mr M's other policies, including previous policies, to cross reference the claims disclosed. I think Mr M needed to answer the question he was asked about his claims history correctly when taking out this policy.

I note that Mr M said Haven renewed terms under a different policy after he disclosed the claim from March 2023, and so he's unhappy Haven have avoided this policy. Haven have explained that they considered a different combination of risk for each policy based on, for example, the age and value of the vehicle, as well as other risk factors which may differ. What I need to decide here is whether Haven have acted reasonably in avoiding Mr M's policy.

I have seen evidence of the underwriting criteria Haven used at this time which shows that Haven wouldn't have offered the policy to Mr M if they had known about the third claim. This means I am satisfied Haven has shown that Mr M's breach of his obligation to make a fair presentation of the risk was a qualifying one.

I have also considered Mr M's actions in not disclosing the third claim under this policy, even though he had disclosed it five months prior under a different policy. I also note that the undisclosed claim was a more recent event when compared to the claims Mr M did disclose, and so he should have been aware of it when taking out this policy. Based on this, I don't think Haven acted unreasonably in finding that he acted deliberately or recklessly. I am therefore satisfied Haven was entitled to retain the premium Mr M had paid when they avoided the policy.

As I'm satisfied Haven was entitled to avoid the policy, I'm also satisfied they were entitled to turn down Mr M's claim under it, as the avoidance means that – in effect – the policy never existed.

In summary, I'm satisfied Haven was entitled to avoid Mr M's policy for a deliberate or reckless qualifying breach under the Act and decline his claim. This means I do not consider Mr M's complaint should be upheld.

### **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 Mr M to accept or reject my decision before 22 May 2025.

Ankita Patel  
**Ombudsman**