

## **complaint**

Mr M has complained that Tradewise Insurance Company Limited unfairly avoided a number of his motor trade policies.

## **background**

Mr M bought a Tradewise policy in 2013 through a broker. The policy renewed each year. In 2018 Tradewise said he hadn't told it about his criminal conviction either when he bought the policy, or at each renewal. Tradewise said it wouldn't have sold him the policy if it had known about the criminal conviction. So, it avoided (which means to cancel from the start as though it never existed) every policy since 2013 and asked him to pay the outstanding premium for 2018.

Mr M didn't think this was fair. He said he didn't think he had to declare the conviction as it was from 2003. Tradewise said due to the nature of the conviction it wasn't ever considered 'spent'. So, Mr M should have declared it when buying his policy.

Mr M brought his complaint to us. He told us about the impact this had on his business. While we were looking into things our investigator asked Tradewise if it would be willing to not avoid the policies between 2013 and 2017, as Mr M had already claimed on them. Tradewise said it would agree to that in an effort to resolve things. It also said it would return the premium Mr M paid in 2018, as it hadn't paid out on a claim.

I issued a provisional decision on this complaint on 11 March 2020. In that decision I said:

*Tradewise has agreed to not avoid Mr M's policies between 2013 and 2017. I think that's a fair outcome, as he's benefitted from the cover and now won't have these avoidances recorded against him. That means I'm only going to consider whether it was fair and reasonable for Tradewise to avoid his policy in 2018.*

*When Mr M renewed his policy in 2018, he had a duty to make a fair presentation of the risk, under the Insurance Act 2015 (the Act). And for Tradewise to take any action, it needs to show that he made what's known as a qualifying breach.*

*I can see from the statement of fact that Tradewise wanted to know whether Mr M had ever had any criminal convictions. There isn't any dispute that Mr M had a criminal conviction, only about whether he needed to declare it. I understand that Mr M's conviction doesn't become spent due to the length of his sentence. That means he should have declared it to Tradewise when renewing his policy in 2018, as the information he'd previously given was incorrect.*

*I've thought about what Mr M's said and accept he didn't deliberately not tell Tradewise about his conviction. I can see he declared a number of motoring offences and I accept it's unlikely he'd have done this if he was trying to withhold information. Even though he mentioned the conviction in a phone call with Tradewise's investigator, I think Mr M made a genuine mistake in not telling Tradewise about his conviction when renewing his policy.*

*Under the Act, if Mr M gives incorrect information - and Tradewise wouldn't have covered him if it had known the correct information - it becomes what's known as a qualifying breach. A qualifying breach is either deliberate or reckless or neither deliberate nor reckless. As I think Mr M made a genuine mistake, I accept the qualifying breach was neither deliberate*

*nor reckless. As Tradewise has shown it wouldn't have covered Mr M if it had known the correct information the Act allows it to avoid the policy and return any premiums paid in this situation. So, I'm not going to interfere with Tradewise's decision to avoid Mr M's 2018 policy.*

*Tradewise said the claim Mr M made in 2018 has now been settled without any payments made, so it will return his premium. This is what I'd expect it to do in the circumstances. So, Tradewise should now return Mr M's premium from 2018.*

*I appreciate this had an impact on Mr M's business, but I don't think that's Tradewise's fault for the reasons I've given above. So, I'm not going to ask it to pay any compensation for this.*

Tradewise didn't provide any further comments and Mr M didn't respond.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither Tradewise nor Mr M provided any additional comments I see no reason to depart from my provisional findings.

### **my final decision**

For the reasons set out above, and in my provisional decision, I partly uphold this complaint and require Tradewise Insurance Company Limited to:

- Reinstatement of the policies between 2013 and 2017 and remove any record of the avoidances;
- Reimburse Mr M's premium for 2018.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 May 2020.

Sarann Taylor  
**Ombudsman**