

The complaint

I, a limited company, complains that Haven Insurance Company Limited declined its claim on its commercial motor insurance policy following the theft of its van. It wants Haven to pay the claim. I is represented in this matter by its solicitors.

What happened

Whilst I owned the van, the policy was taken out by Mr J, a director. I's van was stolen whilst its driver was making a delivery to a customer. Haven initially made an offer to settle the van's outstanding finance. But it withdrew this after further investigation. Haven said the van had been insured for an incorrect type of use. Mr J had insured the van for "Business use (carriage of own goods)" but Haven said it was being used for "Haulage (delivering goods for hire or reward)".

Haven initially voided the policy as it said that if Mr J had declared the correct usage, then it wouldn't have provided cover. It later said that it declined the claim as the van was being used for a purpose not stated on the policy certificate and this entitled it to apply an exclusion from cover. Haven later sent I a request to pay £304.31.

Our Investigator recommended that the complaint should be upheld. Haven thought Mr J was using the van for carriage of goods for hire or reward. But the Investigator didn't agree. He thought Mr J was a shopkeeper carrying business-related goods, which is what he declared when he took out the policy and what he was doing when the van was stolen.

So he thought if Haven had avoided the policy it should reinstate it, remove any records for the avoidance and consider the claim under the remaining terms and conditions of the policy. If it decided to settle the claim, it should include any interest paid to the finance company since the claim was declined or, if the finance was settled, add interest from this date. Haven should then reconsider its request for £304.31.

I's representatives agreed with this. But Haven replied that the policy provided for carriage of own goods, not delivering goods to a paying customer. It said this was "Delivering Goods for Hire and Reward" which was excluded from cover.

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.

Haven has provided us with its file, and, like the Investigator, I've considered the grounds on which it repudiated the claim. I can't see from its file that it relied on The Insurance Act 2015 to avoid the policy and decline the claim. I think it's response to the complaint and the Investigator's view state that this was because of an exclusion from cover. So I'll consider whether Haven's acted in line with the terms and conditions of the policy and fairly and reasonably.

Mr J described the circumstances of the theft when he reported the van's disappearance. He said he had been out making shop deliveries. He parked and locked the van and left it unattended for a few hours. When he returned, it was no longer there. There was no broken glass evident, and no CCTV footage was available to show how the van had been taken.

Haven at the time had no concerns about the theft circumstances. But it validated the claim, and the underwriters repudiated it because of the usage of the van.

I can see that the Insurance Product Information Document (IPID) states exclusions from cover which includes:

“Using the vehicle for a purpose not specified in the certificate or schedule”.

The Certificate of Insurance states the following limitation:

“7. Limitations as to use.

Use for social, domestic and pleasure purposes and for the policyholder's business for the carriage of own goods but excluding use for racing competitions, pacemaking, rallies, or any contest, reliability or speed trials or conveyance of passengers or goods for hire and reward.”

This is also stated in the policy booklet under General Exclusions. So I think the exclusion was sufficiently brought to Mr J's attention for Haven to rely upon it. And so I've thought about whether it was fair and reasonable for Haven to decline the claim because the van was being used outside the purpose stated on the certificate.

The policy had been taken out through an online comparison site, and Haven relied on the definitions of use that this provided Mr J at the time when he was asked what he used the van for. These included:

“Business use (carriage of own goods) - Where the vehicle is used for carrying business-related goods, tools or equipment belonging to yourself, your business partner or your employer. For example, builders, shopkeepers and cleaners would require this cover. Please note: This excludes the carriage of goods or passengers for hire or reward.

Haulage (delivering goods for hire and reward) - Where the vehicle is used specifically for the carriage of goods for hire or reward. For example. Delivery drivers. Couriers and Haulage contractors will need this level of cover. This excludes the carriage of passengers for hire or reward.”

In its response to I's complaint, Haven said Mr J was covered for:

“...Carriage of Own Goods use. Following a theft claim... it was brought to our attention that the insured vehicle was being used for hire and reward purposes, delivering goods to customers.”

But I'm not satisfied that it was fair and reasonable for Haven to decline the claim because of this. The above definition of Business Use includes the example of “shopkeeper”, which I think is close to the nature of I's business and the purpose Mr J was using the van for. The goods belonged to I, so they were arguably its own goods. And so I think Mr J was acting within the policy's limitations of use when the van was stolen.

And so I think it was unfair and unreasonable for Haven to rely on the exclusion to decline the claim. If the policy has been avoided, then I think it should be reinstated and any records of this should be removed. And I think it should now consider it under the remaining terms and conditions of the policy.

If it decides to settle the claim, then I think Haven should add interest as I has been without its money for some time. The van was on finance, and I can't see whether or not this has been repaid. If not, then Haven should consider any additional interest payments I has paid on the finance agreement since the date the claim was declined. If the finance has been cleared, then it should add interest to the settlement from the date this was done until the date of payment.

I haven't seen from Haven's file any explanation for its demand of payment of £304.31. So I think, if this is still applicable, then Haven should provide I with an explanation for this.

Putting things right

I require Haven Insurance Company Limited to do the following:

1. If the policy was avoided, then it should be reinstated, and any record of the avoidance removed from databases.
2. Consider the claim under the remaining terms and conditions of the policy.
3. If a payment to the finance company is then made, then Haven should refund any additional interest payments I has paid on the finance agreement since the date the claim was declined. If the finance has been cleared, then Haven should add interest at the rate of 8% simple per annum to the settlement from the date the finance was cleared until the date of payment.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Haven Insurance Company Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask I to accept or reject my decision before 13 May 2024.

Phillip Berechree
Ombudsman