

The complaint

Mr R has complained about Markerstudy Insurance Company Limited's decision to reject a theft claim he made under his motorcycle insurance policy.

What happened

Mr R bought a motorcycle insurance policy with the insurer, Markerstudy in April 2018 which provided cover for several motorbikes Mr R owned. In October 2018 Mr R added a new motorbike to the existing policy.

Unfortunately Mr R's motorbike was stolen from a retail car park in November 2018 while he was shopping. He reported the incident to Markerstudy. After investigation, it decided to reject Mr R's claim.

Mr R complained to Markerstudy. Markerstudy accepted that it hadn't been clear about the reason why it rejected his claim. It said the reason was because Mr R had misrepresented the facts about where the motorbike would be stored overnight. When Mr R added the motorbike to his policy, he said the bike would be kept in a garage overnight. But when he made a claim, he said he kept the bike in his garden as there wasn't enough room in the garage – due to having other bikes stored there.

Markerstudy apologised for not being clear and paid Mr R £50 compensation for its failing. But it said its decision was correct as Mr R's policy has a garage clause. So if Mr R's motorbike wasn't stored in a garage overnight, Markerstudy wouldn't offer a policy. It refunded the additional premium Mr R paid when he added the motorbike to his policy. It removed the motorbike from Mr R's existing policy.

Mr R brought his complaint to us. He believes Markerstudy is using the garage clause under his policy to avoid paying his claim as the theft didn't happen from his home.

Our investigator thought Markerstudy had correctly acted in line with the Consumer Insurance (Disclosure and Representations) Act 2012 also known as 'CIDRA' when reaching its decision. He agreed there had been a qualifying misrepresentation. He explained the steps and remedies available to the insurer under the Act. So although the theft didn't take place while Mr R's motorbike was in his garden overnight, the issue was that Markerstudy would not have provided cover if it knew this. Markerstudy had asked Mr R a clear question about where his bike would be kept overnight when he added the motorbike to his existing policy. If Mr R had said where the motorbike was actually kept, Markerstudy wouldn't have offered cover.

So the investigator didn't recommend Mr R's complaint should be upheld.

Mr R didn't agree. So the case has been passed to me to decide.

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.

Where a complaint arises from non-disclosure of information important to an insurer, we look to see that it asked a clear question when the policy was taken out. We check that the information given would affect whether a policy was offered or its terms. And we check whether the policyholder has taken reasonable care to provide accurate information. If not, we consider whether they did so deliberately, recklessly or carelessly. Markerstudy said that Mr R carelessly misrepresented the facts in order to buy his policy. I have taken account of CIDRA as it applies in this case.

When Mr R called to add the bike in question to his existing policy, Markerstudy asked him where it would be kept overnight. Mr R said it would be kept in his garage. But this wasn't true. Mr R told Markerstudy when he made his claim that there wasn't room for this bike in his garage. So it was kept overnight in his garden. I think Markerstudy asked a clear question. I don't think Mr R took reasonable care to provide accurate information in his answer. So I'm satisfied that a qualifying misrepresentation was made.

I appreciate that Mr R says his property has a number of features in place to make it secure, so reducing the risk of theft. But it's for the insurer to determine and decide what it's prepared to provide insurance for. It does this by asking a series of questions when a customer applies for a policy. An insurer's underwriting criteria is commercially sensitive – and so it doesn't share this information with customers. But we can ask an insurer to provide us with proof from its underwriter to show it treated its customer fairly when reaching its decision. I'm satisfied from the evidence provided that Markerstudy wouldn't have offered Mr R cover for the bike in question under his existing policy if he'd told it wouldn't be garaged overnight.

I've looked at the policy wording provided by Markerstudy to Mr R when he added this bike to his policy. It highlighted the existing garage clause endorsement. And under the title "Misrepresentation" it explained that if this was identified, it may reject a claim and void a policy. So I think Mr R had a further opportunity to contact Markerstudy if he had any concerns about the information he'd provided when he received his amended policy documents.

I agree that Markerstudy's initial explanation as to why it rejected Mr R's claim wasn't as clear as it should have been. And I do sympathise with Mr R for the fact that he had his motorbike stolen. But I think Markerstudy's decision to reject Mr R's theft claim and remove cover from his existing policy was reasonable and in line with CIDRA. So I think its compensation payment of £50 for not being clear is fair in this case.

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 R to accept or reject my decision before 18 June 2020.

Geraldine Newbold
Ombudsman