DRN-1841372

The complaint

Mr H complains MCE Insurance Company Limited (MCE) has voided his motorcycle insurance policy and unfairly accused him of misrepresentation.

What happened

In March 2019, Mr H took out an insurance policy for his motorcycle through a price comparison website. The policy was provided by MCE.

In July 2019, Mr H called MCE and made a claim on his policy as his motorcycle had been stolen away from his home. While investigating his claim, MCE determined Mr H had made a misrepresentation when taking out the policy which it deemed to be deliberate or reckless. It said Mr H didn't store his motorcycle in a 'locked garage' overnight as he'd declared on his initial application. Instead, it was kept in shared communal storage and this didn't meet the policy's definition of a garage. MCE also said Mr H benefitted from a reduced premium as a result of the deliberate/reckless misrepresentation. It voided his policy from inception, i.e. treated it as though it never existed – meaning that the claim wouldn't be considered, and it retained the premiums paid.

Mr H complained to MCE and when it didn't change its decision, he referred the matter to our service. I issued a provisional decision on this complaint in early May 2020, setting out that I didn't intend to uphold the complaint.

I set out that the relevant law was the Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA). And that this set out that it was the consumer's (Mr H's) duty to take reasonable care not to make a misrepresentation. And that if MCE could show he had made a qualifying misrepresentation, then there were certain remedies available to it. So, my first consideration was whether Mr H took reasonable care not to make a misrepresentation.

I considered whether Mr H had breached his duty and in deciding this considered whether the insurer asked a clear and specific question – the answer to which a policyholder is presumed to realise is relevant to its assessment of proposed risk. MCE provided screenshots of the questions Mr H was asked on the price comparison website. He was asked where he kept his motorcycle for overnight storage and MCE has said the options he was presented with were:

- Driveway
- Locked Garage
- Road

The screenshot didn't show that definitions of these parking areas were given alongside the questions. Mr H selected 'Locked Garage'.

I carefully considered the pictures Mr H provided MCE of where he kept his motorcycle overnight and what he told MCE about the storage area. Although he described it as a storage cupboard, Mr H explained he was able to store his motorcycle there and provided measurements to show he could manoeuvre the motorcycle in the way he described.

As MCE (by virtue of the price comparison website) didn't provide definitions of what the parked areas meant when it asked this question, it was left to Mr H to work out what matched his circumstances when answering it. I looked at the ordinary definition of 'garage' and considered it could be argued that this matched the storage area where Mr H kept his motorcycle overnight. But I couldn't see from the available pictures how the area would have locked.

Having carefully considered the available information, the location Mr H kept his motorcycle overnight didn't strike me as one most reasonable people would think of when using the words 'locked garage'. Even if Mr H was able to secure his motorcycle with a lock, the room itself didn't appear to have a facility to be locked. I was also mindful that Mr H said he presumed someone else could access the area. So even if area could've been locked, it seems to me that it could've been accessed by others who could potentially leave it unlocked.

I then went on to say that MCE did provide Mr H with an express definition of garage in the policy terms and conditions and his key facts document. So he had time to amend his answers, if on reflection, they weren't quite right. MCE defined garage within the policy as:

> *A locked structure for housing motor vehicles of brick, concrete, steel or stone which is your private property. It is not: a rented or owned space in a shared car park; a parking area in/under flats; any form of locked compound; any building not built for housing motor vehicles such as a home or a workplace*

And I said that, had Mr H read the documentation, he ought reasonably to have concluded that his motorcycle wasn't being stored in something that MCE or most other people would define as a locked garage or his private property. Or he should have at least felt the need to check using the contact details MCE provided for this very purpose. So, I was satisfied there was a misrepresentation here in breach of duty and that Mr H's motorcycle wasn't in fact being stored in a locked garage as per the policy's definition.

So I then had to determine if this was a qualifying misrepresentation. Under CIDRA Section 4(1), an insurer only has a remedy against a consumer when:

> *(a)the consumer made the misrepresentation in breach of the duty set out in section 2(2), and*
>
> *(b)the insurer shows that without the misrepresentation, that insurer would not have entered into the contract (or agreed to the variation) at all, or would have done so only on different terms.*

I'd already concluded this misrepresentation was in breach of Mr H's duty to take reasonable care. And as MCE had provided underwriting evidence that it would've insured Mr H but charged a higher premium (if he hadn't misrepresented), I said MCE was entitled to a remedy under CIDRA.

I then considered what type of misrepresentation Mr H had made, referencing Section 5(2) and 5(3) of CIDRA. I didn't think Mr H's representation was deliberate or dishonest as there was no indication he selected one option over the other in order to reduce his premiums or to obtain any other more favourable terms. But then I considered whether his actions were reckless. And I determined they were because I considered it was clear from the documentation issued to him at the point of sale that the definition of garage was important to MCE from a risk perspective. The documentation providing the Key Facts had a section titled "Are you sure your vehicle is garaged?" And it asked the insured to read and check the definitions. It also provided a warning saying *"If we do not believe that where you keep your*

vehicle can be classed as a garage, you will not be able to make a valid claim. Please check with us if you are unsure."

MCE showed Mr H accessed an email it sent shortly after the sale which also included the section *"Are you sure your vehicle is garaged?".* Policies allow a 14-day free cancellation period precisely to allow consumers time to check/correct important information or change their mind if on reflection the terms and conditions don't meet their demands and needs. The duty of reasonable care doesn't end immediately after leaving the price comparison website.

I accepted it might be too much to expect a policyholder to read the detailed terms and conditions. But I said that is why the regulator requires insurers to provide consumer policyholders with accessible, easy-to-read summaries such as the one MCE sent to Mr H. It seemed to me that not reading even this did amount to recklessness. I also considered this key here, because it seemed Mr H had to select a 'best option' out of the those provided for overnight storage. He should've been aware that his storage cupboard isn't a typical 'garage'. So this is further reason why I thought not checking the summary was reckless.

Ultimately, I considered MCE entered into a contract with Mr H based on incorrect information. And he ought to have known, and was provided with enough information to know or at least check, that his storage facility wouldn't have been classed as a locked garage, as represented at proposal. So, I thought it would be unfair to classify this as 'careless'. It therefore follows that MCE was entitled to void the policy and reject the claim. And in such circumstances, CIDRA allows the insurer to retain the premium. So I considered MCE had acted fairly.

I acknowledged Mr H also previously claimed on his insurance with MCE for another incident and it didn't re-visit his answers when he claimed at that time. However motor insurance is renewed annually. And I didn't consider it was unreasonable for MCE to have looked at and checked the details Mr H provided when processing this claim - especially as this was a second claim for him.

MCE didn't provide any further comments in response to my provisional decision. Mr H disagreed and said:

- He answered everything to the best of his ability and with the limited information MCE made available at the time of taking out the policy. In his opinion, where he stores his bike is more secure than what MCE define as a garage as it has a stronger door and more secure lock. He'd like to know if MCE would uphold a claim if it was a shared garage which fitted its description of one.
- It's unfair I've reached this decision because of the small print that was missed, and an email being sent that he doesn't remember opening and reading. He considers MCE should've called him at the time of purchase to discuss the garage definition.
- He doesn't understand why this is considered as a second claim when the previous claim was made on the third party's insurance policy as he wasn't at fault. At that time, MCE wasn't concerned about where he stored his bike.
- He'd like MCE to remove the write-off category from his bike as if it wasn't insured it can't be an insurance write-off. Mr H would also like MCE to refund the premiums paid as he wasn't reckless.

Mr H also sent us two videos of where he kept his bike overnight. He explained he'd sent these to MCE along with the pictures of the storage room when they were requested. The videos show that not only is the storage room lockable with a key, but that it's also located in a gated area which requires a key to gain access.

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.

I've carefully considered Mr H's response to my provisional decision. Having watched the videos he's provided, I accept the storage room can be locked. And so I do appreciate why he selected 'locked garage' as the closest option to his situation on the comparison website. But the fact remains it isn't actually a garage, it's a storage cupboard that can be locked, but also can be accessed by other people. And MCE did provide Mr H with a specific definition of garage in the policy terms and conditions, and the key facts document, which he had access to *before* he purchased the policy and during his cooling off period.

Mr H's locked storage room doesn't meet MCE's definition – it's not his private property. I know he feels his bike storage location is more secure than a garage as defined under the policy terms. But I don't agree, as Mr H is relying on other residents to ensure his bike does remain in a locked area. And, in any event, the policy terms form the basis of the contract between him and MCE. So it remains there was a 'qualifying' misrepresentation, which, considering the information MCE gave him, I still find to be reckless. And so MCE is entitled to retain the premiums he's paid and I won't be asking it to refund these.

In relation to Mr H's question about what MCE would do if it was a *"shared garage that fits there [sic] description of one".* I think it would have to be quite a unique situation for there to be a lockable *'shared* garage' that could meet the definition of *'your private property'.* But in any event, I'm deciding Mr H's case, not hypothetical claims situations.

Mr H has said the policy definition of garage was small print, but again I disagree. One of the reasons Key Facts documents are now required is to prevent the problem of 'small print'. They're a short document that contains the key information you need to read. And in this case the document has a separate section about the definition of a garage, in clear font. I'd also add that Mr H had to tick to confirm he'd read and accepted the important policy information and the terms and conditions *before* he purchased the policy.

Mr H feels MCE should have followed up his application with a phone call if the garage definition was that significant. But I'm satisfied it was made clear from the documentation he was issued that this was important to MCE. And MCE did send a follow-up email to Mr H about this, which it has shown he opened. Ultimately as Mr H is taking out this cover and MCE provided him with what he needed to understand its definition, it is his responsibility to read this information and check he's taken out the policy correctly – after all, he is the one who wants to be covered.

In relation to this being a second claim, Mr H states he wasn't at fault during the previous incident. But that doesn't mean a claim isn't recorded on Mr H's insurance policy, it just shows as a non-fault claim. I've previously explained why I don't find it unreasonable for MCE to have wanted to check details provided by Mr H when processing the second claim. And just because it didn't check this previously doesn't mean it wasn't entitled to also have done this when he notified them of the previous incident.

Mr H has asked for the write-off category to be removed as he feels this shouldn't have happened if MCE is saying his bike wasn't insured. Mr H's bike was recovered and inspected while the claim was still being processed. I don't think it was unreasonable for MCE to have started looking at the bike while it was still making enquiries about where Mr H stored it. And it has a duty to quickly and accurately report a write-off category under the 'Code of practice for the categorisation of motor vehicle salvage (September 2017)'. This says all recovered vehicles must be notified to Motor Insurance Anti-Fraud Theft Register (MIAFTR) and this record must not be deleted.

The decision to void the policy happened after MCE concluded the bike was a write-off and had reported this to MIAFTR. Given the circumstances, I don't think MCE needs to take any further action. It should follow the code, so it needed to report this as soon as reasonably practical and now can't delete the record. So I'm not asking MCE to do anything more. As this is now a historical record, Mr H should contact MIAFTR and/or the DVLA if he wants to discuss having the record amended/removed.

My final decision

For the reasons set out above, I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to either accept or reject my decision before 21 June 2020.

Amy Osborne
Ombudsman