

The complaint

Mr M complains that Markerstudy Insurance Company Limited declined to settle a claim he made under his motorbike insurance policy.

What happened

Mr M has insured his motorbike with Markerstudy for some time. He thought that the policy would cover theft in any form so long as his motorbike was locked in a garage overnight.

In March 2020, Mr M was working on his son's vehicle in his garage with the door open. Later on, he took his own motorbike out of the garage and parked it at the side of the road outside his house, in a quiet residential area. As he was about to set off, he remembered he'd left his phone in the house. He went to collect it, leaving the key in the ignition. When he returned, the motorbike was gone. It was later recovered but it had been fire damaged.

Mr M says that a screwdriver was found lying on the ground. And he's since been told by the police that the culprit was a known motorbike thief. He therefore thinks the thief probably saw the motorbike while the garage door was open in the morning, returned with the intent to steal it using the screwdriver, and found the bike with the key in the ignition by chance.

Markerstudy investigated the claim but declined it. It said the policy didn't cover damage to or loss of a motorbike if it has been left unattended unless the ignition key is removed.

This came as a surprise to Mr M. He reiterated his understanding that he was covered for any thefts, so long as the motorbike was kept in a garage overnight. He said he would have acted differently if the term Markerstudy was relying on had been brought to his attention. And he argued that it was immaterial that the key was left in the ignition as the thief would have used the screwdriver anyway.

Markerstudy didn't change its position. It said the terms were highlighted in documents sent to Mr M in June 2019 and it was satisfied they had been applied correctly.

Our investigator didn't think the complaint should be upheld. He noted the relevant term had been highlighted in a policy summary at the most recent renewal date, separately to the full policy document. And he felt that, if Mr M thought he'd been misled about the scope of the policy at the outset, he'd need to take that up with the broker that sold it to him.

He was satisfied Markerstudy's decision was fair and in line with the policy terms. His view was that whilst the thief may originally have intended to use the screwdriver, the theft was made quicker and easier by virtue of the key being left in the ignition. Mr M didn't agree, so I've been asked to make a final 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.

The terms of Mr M's policy say it doesn't cover *"loss or damage to the motorcycle arising from theft or attempted theft while you or any other person covered under this policy who is in charge of the motorcycle are not riding it when;*

- *The ignition keys have been left in or on the motorcycle; or*
- *The motorcycle is fitted with a steering lock and this has not been set and put in operation."*

We look at a number of factors when deciding if an insurer has been fair in declining a theft claim. In particular, we consider:

- Where the motorbike was at the time of the incident;
- Whether the rider was in a position to deter the thief, or make the theft unlikely;
- Any mitigating factors that caused the rider to leave the motorbike and keys; and
- The manner in which the policy was sold and whether the exclusion was drawn to the policyholder's attention.

In this case, Mr M left the motorbike at the side of the road, rather than in his secure garage. Although the road is in a quiet residential area, it's easily accessible.

Mr M had dismounted the motorbike and gone inside to retrieve his phone. I appreciate he says he was only gone for around 30 seconds, but this meant he wasn't in a position to deter the thief or intervene. He told Markerstudy he heard a noise while he was inside and by the time he went to investigate the motorbike was gone.

In addition, Mr M left the key in the ignition. I'm satisfied this made it easier for the thief to steal the motorbike, even if they'd initially planned to start it with a screwdriver, and that the circumstances of the claim are therefore connected to Mr M's breach of the policy terms.

Mr M left the motorbike unattended for a very small window of time. It's less likely the thief would have succeeded in their attempt to steal the motorbike during that window if they'd had to bypass its security features and start the engine using a screwdriver. In reality, all they had to do was mount the bike, turn the key and ride away.

There don't appear to have been any special circumstances which caused Mr M to leave the motorbike unattended, like an emergency. He'd just gone inside to collect his phone. Taking all of the circumstances into account, I think it's fair for Markerstudy to rely on the exclusion if it can show it took steps to draw it to Mr M's attention before the theft happened.

I'm satisfied the exclusion has likely been present in Mr M's policy since its outset. I can see that in the policy documents Mr M has sent us from 2011 (the year he thinks he first took out the policy) the statement of fact said *"please note we operate a 'key exclusion' clause. This means that we will not be liable for theft if the keys are left in or on the vehicle."*

Mr M says he thought the policy covered all thefts. As our investigator said, the policy was sold to him by a third party. And it was their responsibility in the first instance to give Mr M information about the policy's features and limitations.

Nevertheless, it's good practice for insurers to provide some kind of policy summary which highlights all of the most significant and unusual features of cover. This should be used to draw attention to exclusions like the one Markerstudy has relied on here, given the potential consequences to the policyholder of a theft claim being declined. I can see that a document of this nature was included in Mr M's 2019 renewal pack, which was originally sent to him in April 2019 and then sent again at his request in June 2019.

Under the heading '*what is not insured?*' the policy summary said, '*damage to or loss of your motorcycle or its accessories when your motorcycle is left unattended unless the ignition key is removed.*' It's clear Mr M received a copy of this because he included it in his submissions to us. I recognise this was the first year a policy summary was provided. But given that each renewal is a new contract, and considering Mr M received the summary in good time before the theft, I'm satisfied Markerstudy took sufficient steps to draw the exclusion to his attention.

The full exclusion was in the policy booklet, available through the broker's website, which also contained guidance on preventing crime. A link to the booklet was included in Mr M's welcome pack in 2011, and a further link was included in the renewal pack in 2019.

Mr M feels Markerstudy can only rely on the term if it can show that he saw it, but I disagree. So long as it's taken steps to highlight the exclusion as a significant limitation of the policy, and has done so separately to the full policy booklet, I think it can fairly rely on it.

Finally, Mr M has asked what the impact would be on his claim if his motorbike was torched by someone other than the person who stole it. But given Mr M's testimony about the police investigation, I'm satisfied the sequence of events which led to the motorbike being fire damaged began with the theft, and that it's therefore excluded on the same basis.

My final decision

For the reasons given above, I've decided not to uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 March 2021.

Mike Walker
Ombudsman