DRN-2587412

The complaint

Ms A complains that MCE Insurance Company Limited ("MCE") wouldn't pay a claim she made under her motorcycle insurance policy when her motorcycle was stolen, and has voided her policy from the outset, that is treated it as of no effect from inception, and refused to return her premium. She is represented in bringing this complaint by her boyfriend, Mr G.

What happened

In January 2020, Ms A spoke on the phone with MCE and agreed to take out a policy covering her motorcycle. She confirmed the postcode of the address at which it would be kept, which was her boyfriend's address.

She was asked: '*When the bike is parked or stored at the …. address, where will it be kept?*' Ms A answered '*A garage'*. MCE asked '*What is the structure of the garage?'* and she replied '*A solid building attached to the house'.*

Following the sale, Ms A was sent documents:

- reminding her she had to take reasonable care to ensure she answered all questions honestly to the best of her knowledge and didn't misrepresent any answers, and
- explaining that MCE had a clear definition of what was meant when a policyholder said a bike was *"garaged",* and this didn't include *"Any building not built for housing motor vehicles such as a home or a workshop".*

Ms A didn't contact MCE to change the information she had given. In May 2020, Ms A's bike was stolen when she was using it elsewhere. She contacted MCE and claimed under her policy.

In the course of its investigations, MCE found that rather than storing the bike at her boyfriend's address, Ms A was in the habit of keeping it inside his house at that address. It said she had been asked a clear question about storage, but Ms A had provided incorrect information, although she had been provided with a clear definition of what MCE meant by *"garaging".*

MCE said if it had been aware of the true situation, it would have charged a higher premium. So it considered Ms A had made a qualifying misrepresentation for the purpose of the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"), which it deemed to be deliberate or reckless. It said that in accordance with the terms of CIDRA, it would avoid the insurance policy (that is treat it as of no effect from the outset), refuse all claims, and retain all the premiums she had paid.

Our investigator didn't recommend that this complaint should be upheld. Although Ms A argued that how she stored the bike was equally secure, and made no difference to how the theft was carried out, he said this wasn't relevant to her complaint.

The investigator said Ms A was asked a clear and open question at the time of the sale, and the answer she gave MCE at the time of the sale wasn't correct. Looking at the documents she was sent, he thought she ought to have realised that keeping the bike inside the home didn't meet MCE's definition of a garage. That ought to have prompted her to tell MCE the bike was actually being kept inside the house.

That being so, he was satisfied MCE had shown that:

- Ms A knew the information she gave it was untrue or misleading, or she didn't care whether it was untrue or misleading; and

- she knew that where the vehicle was kept was relevant to MCE, or did not care whether or not it was relevant to them.

If MCE had been aware of the true position, he was satisfied it would have charged Ms A more for the policy. So under the provisions of CIDRA he was satisfied MCE was entitled to void the policy and keep the premiums, without considering her claim.

Ms A responded to say, in summary, that:

- if the nature of the vehicle storage was so important to MCE, it should have checked this at the time the policy was taken out, not when a claim was made; and
- if the policy was voided, she thought her premium should be refunded.

The investigator explained that an insurer wasn't required to check such information at the outset, provided it made its requirements clear, as MCE had in this case. And where a policyholder had made a misrepresentation recklessly, as he thought Ms A had, CIDRA didn't require an insurer to return any premiums. It was only where the misrepresentation was made carelessly that the premiums would be refunded.

Ms A also said:

- she hadn't set out to provide false information; the bike had indeed been kept in a garage directly opposite her boyfriend's house as originally intended, or in his house when he was working on it every now and again, which she viewed as equally secure;
- from internet checks she and her boyfriend had made beforehand they thought storage in the house was acceptable to insurers as *"garaging",* as witnessed by the following quote:

  'Every insurer is different in what they will allow to be classified as a garage. The most common types that are acceptable must be brick built, with a concrete base, four walls, a roof and lockable point of entry.

  Now some insurers will accept a wooden shed or a metal bike shed, providing that they are securely locked and permanently fixed to the ground'; and

- she had always taken great care of her bike, including when parking it overnight. While she acknowledged she might have been careless in considering what definition of *"garage"* was acceptable to MCE, she didn't accept she had behaved recklessly.

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.

At my request, the investigator asked Ms A if she could provide any evidence of the extent to which her bike was stored in the garage and elsewhere. Mr G responded to say that the bike was kept partly in the garage (which belonged to a nearby neighbour), partly in Mr G's house, and partly in his wooden garden shed secured to the concrete floor. He couldn't provide any further evidence as to the storage.

When provided with this information, MCE provided evidence from its underwriters that if it had been told of these storage arrangements at the outset this would still have resulted in Ms A being charged more for her policy. MCE reiterated that when applying on the phone for the policy Ms A was asked an open question about where the bike would be stored. She had the opportunity to give correct and exact details of this but failed to do so.

I think Ms A had two opportunities to explain the storage arrangements accurately to MCE. As well as the initial phone conversation, she was sent documents explaining the importance to MCE of her providing accurate information, and describing exactly what it understood by a bike being *"garaged".* However, she failed to tell MCE what the actual storage arrangements were to be.

When it investigated the storage arrangements after the theft of the bike MCE concluded that Ms A had misrepresented the storage arrangements either deliberately or recklessly, and if it had known the true position it would have charged more for the policy. It said that in accordance with the terms of CIDRA, it would avoid the insurance policy (that is treat it as of no effect from the outset), refuse all claims, and retain all the premiums Ms A had paid.

Having considered all the circumstances, I can't say that MCE acted unreasonably in deciding that Ms A's misrepresentation of the storage arrangements was more than just careless, and was either deliberate or reckless. I'm satisfied that had it known the true position it would have charged more for the policy. That being so, I conclude it was entitled under the terms of CIDRA to avoid the policy, as it has done, refuse Ms A's claim, and retain the premiums she has paid.

My final decision

My decision is that I don't uphold this complaint, and make no order against MCE Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 11 August 2021.

Lennox Towers
Ombudsman