

## **The complaint**

Mr F complains that West Bay Insurance Plc (“WBI”) unfairly avoided his motorcycle insurance policy after he made a claim following the theft of his motorcycle.

References to WBI include its agents.

## **What happened**

In April 2021, Mr F made a claim under his motorcycle insurance policy with WBI after his motorcycle was stolen from a parking bay.

WBI asked Mr F to provide images to show where his motorcycle was stored at his home. After receiving photographs from Mr F, WBI said it was declaring his insurance void from the inception date for careless misrepresentation. It said that when Mr F had taken out the policy, he had provided inaccurate information. Mr F had said that the vehicle was garaged at his home address, but it had turned out that it wasn't.

Mr F complained to WBI, but it maintained its position. It said if it had been aware that the motorcycle wasn't stored in a garage overnight when Mr F had taken out the policy, it would have considered it to be an unacceptable risk.

Mr F remained unhappy, so he asked our service to consider his complaint. Our investigator looked into his concerns, but she didn't think his complaint should be upheld. She thought WBI had acted fairly, in line with the relevant legislation, when it avoided Mr F's policy and declined his claim.

Mr F disagreed with our investigator's view. He said he believed he had taken reasonable care not to make a misrepresentation when he took out the policy. His previous policy had been underwritten by the same insurer. He'd assumed WBI would be consistent in its acceptance / underwriting terms.

Mr F said that the definitions weren't immediately visible when he applied for the policy online. They were behind a drop-down menu. As WBI had previously accepted his circumstances as a locked garage / building, he did not expect its definitions to change.

Mr F said WBI had not offered to refund his premium as it should have done for a careless misrepresentation. He also felt that cancelling all cover was disproportionate as it only affected the theft risk on the policy. There could have been more damaging consequences for him if he had been involved in an accident. He also felt it was worth noting that the circumstances of his loss weren't affected by the garaging provisions as the bike was stolen from outside his office.

As Mr F disagreed with our investigator's view, his complaint 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.

Having done so, I've decided not to uphold Mr F's complaint. I'll explain why.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

### *Reasonable care*

WBI says Mr F failed to take reasonable care not to make a representation when he said his motorcycle was kept in a "*locked garage*" in his online application for the policy.

Mr F applied for the insurance via a comparison site. WBI has sent us screenshots of the online application form. There are several options to select for "*overnight storage*". Mr F has commented that the definitions for each option weren't immediately available. They were behind a drop-down menu.

When determining whether a consumer took reasonable care, the law gives examples of things that ought to be taken into account. One of these examples is any relevant explanatory material – like guidance alongside questions at the point of sale. I can see a "?" indicating there was further information to help answer the question. And by clicking on the "?", the definitions for each "*overnight storage*" option would appear. So, I'm satisfied that Mr F was asked a clear question about where the motorcycle was stored overnight, and he was also given enough information to help him to answer it accurately.

*"Locked garage" is defined as: "A locked structure for housing motor vehicles, such as cars or motorbikes. It should be constructed of brick, concrete, steel or stone and on private property. This should be a garage used only for you and people living with you, not a shared garage for multiple residences."*

One of the other options to answer the question was "*kept on private property*" which is defined as: "*If you keep your bike on private property which isn't a garage, drive, locked compound or car park, as an example this would cover keeping your in bike your rear garden, or inside your home. Private property does not have public access.*"

Mr F says his motorcycle was stored in his front garden, behind a wall and hedge, and wasn't visible from the road. Given the definitions above, I think it's reasonable for WBI to expect him to have answered the question as "*kept on private property*" rather than "*locked garage*".

Mr F feels he took reasonable care when applying for the insurance because his current policy was underwritten by WBI. He says he'd assumed it would be consistent in its acceptance / underwriting terms.

He's provided a copy of his insurance proposal form with WBI from 2017, where the question "*is this vehicle kept in a garage overnight?*" is answered as "yes" with the handwritten comment "*behind a brick wall / locked gate not visible from the road*". Mr F says he declared his motorcycle as garaged on the form because he'd previously had written acceptance of his parking arrangements from WBI.

Mr F says WBI should reasonably have been expected to know how his motorcycle was stored because his previous policy was underwritten by it. But WBI says Mr F's application was considered to be new business rather than a renewal. I acknowledge what Mr F has said about WBI having details of his previous policy because he'd provided these in connection with his no claims bonus. But I don't think this is enough to say that WBI should have realised that the information Mr F supplied on the online application was inaccurate. Even if Mr F had been renewing his previous policy, the duty for him to take reasonable care not to misrepresent would still have applied. So, having considered Mr F's points, I think it was fair for WBI to have concluded that Mr F failed to take reasonable care not to make a misrepresentation when he applied for the policy.

#### *Qualifying misrepresentation*

If a consumer fails to take reasonable care, the insurer has certain remedies providing the misrepresentation is, what CIDRA describes as a "*qualifying*" representation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

WBI has provided evidence of its underwriting criteria, which shows that it would have declined cover if it had been made aware that the motorcycle wasn't kept in a locked garage overnight. So, I'm satisfied that Mr F's misrepresentation was a qualifying one. The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

WBI has treated the misrepresentation made by Mr F as "*careless*" rather than "*deliberate or reckless*". I think this is fair. If a qualifying breach is careless and the insurer wouldn't have provided the insurance on any terms, it may avoid the policy and refuse all claims, but it must return the premiums.

Mr F has commented that WBI didn't offer to refund his premium. But in a letter (dated 27 April 2021) advising Mr F of its decision to declare his insurance void from inception, WBI says:

*"As the contract of insurance no longer exists, you are entitled to a refund of premium, minus any applicable fees charged by us or your broker. We will contact your brokers and authorise a release of premium."*

Mr F says he didn't receive this letter and only found out that his policy had been avoided after repeatedly chasing both WBI and his broker. WBI has noted emailing Mr F's broker on 27 April 2021 requesting that they advise Mr F of the avoidance and to send him the letter. It's also noted (on 24 May 2021) that the brokers called as Mr F was unaware of the avoidance and WBI re-sent the void letter to the brokers. So, I don't think WBI is likely to be responsible for Mr F not being made aware that it was willing to refund his premiums.

I appreciate Mr F feels that fees shouldn't be deducted from the refund of his premium. But the terms and conditions of the policy say that if there is misrepresentation the insurer may:

*“Cancel or void your policy (treat it as if it never existed), including all other policies which you have with them, and apply a cancellation premium charge.”*

So, I'm satisfied that the policy's terms and conditions allow WBI to apply a cancellation charge.

Mr F says he believes WBI's decision to cancel all cover was disproportionate because it only affected theft on the policy. He's also commented that the circumstances of his loss/claim were not affected by the garaging provisions as the motorcycle was stolen from outside of his office.

As I've explained, CIDRA entitles an insurer to cancel a policy from the start if it can show it wouldn't have offered the policy at all, so I can't say its actions were disproportionate. It follows that I'm also satisfied that it was fair for WBI to have declined the claim, regardless of where the motorcycle was stolen from. I say this because there was effectively no policy in force when the theft occurred.

I know my answer will be disappointing for Mr F, but overall, I think WBI has acted fairly and reasonably, in line with the relevant law and the policy's terms and conditions.

### **My final decision**

For the reasons I've explained, I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 April 2022.

Anne Muscroft  
**Ombudsman**