

## The complaint

Mr K complains that West Bay Insurance Plc (“West Bay”) decided he’d made a qualifying misrepresentation when he took out his motorcycle insurance policy and, as a result, they’ve avoided his policy and declined his claim for the theft of his motorcycle.

## What happened

Mr K was involved in a road traffic accident where the police and ambulance services were called. Mr K says he was admitted into hospital and the police then moved his motorcycle to a place they assured him was safe. While receiving treatment in hospital, Mr K’s motorcycle was stolen, so he made a claim under his insurance policy. West Bay declined the claim and avoided Mr K’s policy on the basis he’d made a ‘careless misrepresentation’ when taking out the policy. Mr K complained about West Bay’s decision. West Bay responded and explained the misrepresentation related to Mr K’s answer to a question asking where his motorcycle will be kept overnight. They explained Mr K answered this saying it would be in a locked private garage, but it was instead kept in a shared building.

Our investigator looked into things for Mr K. He thought West Bay hadn’t acted unfairly in avoiding the policy and declining the claim. Mr K disagreed so the matter has come to me for a 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.

Having done so, I’ve decided not to uphold the complaint. I understand Mr K will be disappointed by this but I’ll explain why I have made this decision.

My starting point is Mr K’s motorcycle insurance policy which sets out the terms and conditions. In the introduction section it says, “*This contract is entered into on the basis that...you have taken all reasonable care to answer all questions asked honestly, accurately and to the best of your knowledge.*” Then, under a section headed ‘General Conditions’ it says failure to take reasonable care to avoid misrepresentation in relation to the information provided could result in the policy being cancelled or a claim being rejected.

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.

West Bay thinks Mr K failed to take reasonable care not to make a misrepresentation when, during the sales journey, he didn't disclose that his motorcycle would be kept in a locked building which is accessible to other residents. West Bay say this doesn't meet their acceptability criteria, so they had to void the policy.

The first point I've considered is whether Mr K took reasonable care not to make a misrepresentation. I've looked at the information Mr K was presented with during the online sales journey and this shows he answered 'Locked garage' when asked about overnight storage of his motorcycle. West Bay say had Mr K answered this question 'Locked compound' – as they believe he should've done – then they wouldn't have provided cover.

So, I've looked at Mr K's circumstances to see whether he could reasonably have been expected to answer the question in the way West Bay have described. Mr K says, when applying for the policy, he confirmed his motorcycle would be kept in a garage – which he says it was. He says the definition of a garage being "*a private, locked garage*" is something which was inferred by West Bay and wasn't made clear to him at any stage of the application process.

A screenshot of the sales journey shows, when answering the question above, Mr K was presented with a drop-down box listing options to answer this question. There's a help text box which provides a description of each option available. The description of 'Locked garage' includes "*This should be a garage used only for you and people living with you, not a shared garage for multiple residences*" There's no dispute here that Mr K's motorcycle was kept in a locked building but one that is accessible to other residents. I can see, when West Bay asked for clarification of this arrangement, Mr K explained he's not the only one who has access to the garage, but everyone who was provided with a key. One of the other options available on the drop-down box is 'Locked compound' and the description of this is "*A secure site, fenced all the way round and gated, with access only available to key or code holders.*"

While I acknowledge the differing opinions between Mr K and West Bay about the description of a locked garage, I think the question was clear – particularly because of the descriptions provided in the help text box. I think the key feature here to help a customer distinguish between a locked garage and locked compound is the reference to who has access. The former describes it should only be accessible by the person applying for the policy and people living with them. Whereas the latter option allows for it to be accessible to other people with a key. I think it's also important to add, the description for locked garage says, specifically, it shouldn't be a shared garage for multiple residences - and I believe this further helps to distinguish between the two options and would reasonably remove any ambiguity. So, while I do acknowledge Mr K's points, I think there's no doubt Mr K's motorcycle wasn't stored overnight in a way which falls within the description of a locked garage. And, I think West Bay's suggestion for how Mr K should've answered this question is reasonable. So, given that I believe the question was clear and specific, I don't think Mr K took reasonable care when answering it.

There's been a misrepresentation here but an insurer will only be entitled to take action if it's a 'qualifying misrepresentation' in accordance with CIDRA. So, I've now considered whether the information provided by Mr K amounts to a qualifying misrepresentation.

The next point I've looked at is whether the misrepresentation actually made a difference to West Bay. In other words, if the information West Bay received had been accurate, would

they have offered the insurance policy at all or only on different terms - including whether they would've charged more.

West Bay say Mr K's motorcycle being kept in a locked compound is an unacceptable risk based on their underwriting criteria. And, had this been disclosed by Mr K when taking out his policy, they wouldn't have offered cover. West Bay have provided our service with their underwriting criteria and, having reviewed this, I think they wouldn't have provided cover had Mr K disclosed that his motorcycle would be stored overnight in a locked compound. I say this because the circumstances of Mr K's case, when compared against the underwriting criteria, show that cover would've been declined. There's a few factors here which relate to Mr K's circumstances and link to West Bay's underwriting acceptability criteria. I've looked through these carefully, and this demonstrates West Bay wouldn't have offered Mr K a policy. I understand Mr K will want to know more detail around the underwriting criteria but this information is commercially sensitive so I can't refer to specific parts of the underwriting criteria.

So, taking this information into account, I think Mr K has made a qualifying misrepresentation. I can see West Bay believe the qualifying misrepresentation was careless and I'm minded to agree. West Bay have also provided evidence which shows they wouldn't have offered a policy. So, I don't think they have acted unreasonably in voiding Mr K's policy from the inception date. And, given that's the case, CIDRA allows West Bay to refuse any claim and return any premiums paid. And, I can see West Bay have made arrangements for the broker to refund the premium.

I note Mr K says his selection was set out in the Proposal Form – which he says forms the basis of the contract of insurance. He says this makes reference to his car being kept overnight in a 'garage' but there's no definition here. Mr K says there's a difference between a garage and a private garage and refers to the former being a covered structure used for parking vehicles and the latter being a structure accessible only to the owner of a private house or flat. Mr K says he made it clear in his claim that his motorcycle was kept in a garage – which implies it was kept in a covered structure for parking vehicles and not in a private garage. Mr K says West Bay have changed this into a private garage – which isn't what he disclosed as being the parking arrangement for his motorcycle.

Mr K took out the policy online, so the Proposal Form was generated following Mr K providing all relevant information. I accept this does say "Garage" beside a question asking where Mr K's motorcycle will be kept overnight. So, I do understand why Mr K is concerned West Bay are treating this as a 'private garage' rather than a 'garage'. I can see Mr K makes reference to distinguishable features between the terms and definitions of garage and private garage. I have carefully considered Mr K's points, but I'm not persuaded West Bay have acted unfairly. I say this because, the information on the Proposal Form has been taken from answers Mr K provided when applying for the policy. And I can see Mr K selected 'locked garage' from the options available. As mentioned above, there were, I believe, clear explanations provided for locked garage and locked compound. Without any explanatory information, I agree this can create some confusion and ambiguity for customers when deciding which option to choose – as this would no doubt lead to a customer relying on their own interpretation and definition of those terms. But in this case, I believe any ambiguity was removed, particularly as the description for locked garage says this option applies where the garage is used only by Mr K and people living with him – and that wasn't the case here. I acknowledge Mr K's point that the question of where his motorcycle is kept overnight isn't relevant here as it was stolen following an accident, and not from where it's kept overnight. I do understand Mr K's point here and I can see there is an endorsement showing on Mr K's policy schedule headed 'Excluding theft when not in private garage'. This says, "*You have agreed that you will keep your vehicle in your private locked garage or building, at your home address, to which only you and anyone with your permission have access. If a theft or*

*attempted theft of your vehicle happens at any time and within a 500 metre radius of your home address when the vehicle is not locked in this garage or building we will not pay the claim. This restriction does not apply to any loss or damage occurring whilst your motorcycle is parked away from your home during the course of a journey."*

The first point I would make in relation to this is that this endorsement demonstrates that West Bay are of the understanding that Mr K's motorcycle is being kept overnight in a private, locked garage – which is only accessible to him and anyone with his permission. So, I don't think West Bay brought in the requirement for Mr K's motorcycle to be in a private locked garage themselves or after he made a claim. And it's clear this applied from the start of the policy and was based on Mr K selecting the 'locked garage' option when taking out the policy. The second point is that, while I accept where Mr K's motorcycle was kept overnight isn't material to the circumstances of the theft, West Bay haven't declined the claim on the basis of any breach of this endorsement. Instead, the reason they've voided the policy and declined the claim is because they wouldn't have offered a policy had Mr K not chosen the 'locked garage' option. These are steps they're able to take under CIDRA where a careless qualifying misrepresentation has been made, so I can't say they've acted unfairly.

I acknowledge Mr K queries why the information on the Proposal Form – which says his motorcycle is kept in a 'garage' – isn't treated as the basis of the contract rather than information he provided when applying for the policy. The Proposal Form sets out the key information which an insurer will take into account when offering a policy. As mentioned above, I agree this refers to 'garage' rather than 'private garage' but this was on the basis of the answers Mr K provided when applying for the policy.

I understand Mr K will be disappointed, and I acknowledge his reasons for why he believes West Bay have acted unfairly in voiding his policy. I wish to reassure Mr K I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

### **My final decision**

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 August 2023.

Paviter Dhaddy  
**Ombudsman**