

## **The complaint**

Mr A complains that Markerstudy Insurance Company Limited avoided his motorcycle insurance policy (treated it like it never existed).

## **What happened**

Mr A took out a motorcycle insurance policy with Markerstudy Insurance in March 2020. When his bike was stolen in June 2022, Mr A tried to make a claim. Mr A renewed his motorcycle policy through a broker in 2022 with a different underwriter.

Markerstudy Insurance said he'd answered the question it asked about where his motorcycle would be kept overnight incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid the policy from March 2020.

Mr A brought his complaint to us and our Investigator thought it shouldn't be upheld.

Mr A said that his original complaint was against the broker. He said that he'd called the broker when he was given seven days to provide a response about the misrepresentation before the cancellation would take place. He'd asked if he could cancel the policy and was advised to wait until he heard from the insurer. Mr A says he should have been given the opportunity to cancel the policy before the insurer did, so that he didn't have a cancellation recorded by an insurer.

## **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.

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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.

Markerstudy Insurance thinks Mr A failed to take reasonable care not to make a misrepresentation when he said he would keep his motorcycle in a garage at his home address overnight.

I've looked at the Statement of Fact provided by Markerstudy which shows the following: "bike kept overnight" - with the response "Garage".

When Mr A made a claim, Markerstudy reviewed the address and found there was no garage there. Mr A said he used to keep the motorcycle at his grandparent's address overnight, but he moved from that address. The location of the bike when it was stolen was on the driveway of his home.

Under the schedule Markerstudy issued to Mr A when he bought the policy, it set out the endorsements which applied. The relevant endorsement which applies to Markerstudy's decision reads:

*"Excluding Theft when not in private garage*

*You have agreed that you will keep your vehicle in your private locked garage or building, at your home address, to which only you or anyone with your permission have access. If a theft or attempted theft happens at any time and within a 500 metre radius of your home address when the vehicle is not locked in the garage or building we will not pay the claim..."*

I think Mr A failed to take reasonable care when answering this question.

If Markerstudy had known the correct information, it wouldn't have offered Mr A a policy. It has provided evidence from its underwriters to support this. So I'm satisfied this was a qualifying misrepresentation.

Markerstudy has said Mr A's misrepresentation was careless and this provides the lesser of negative outcomes for Mr A, as Markerstudy provided a refund of his premiums.

I agree with Markerstudy's categorisation of the misrepresentation. I've looked at the actions Markerstudy Insurance can take in accordance with CIDRA.

Markerstudy can avoid the policy, decline any claim made and provide a refund of the premiums for careless misrepresentation. As it has done this, I think it has acted reasonably.

I appreciate that Mr A has asked if he'd been given the opportunity to cancel the policy via the broker, would this have changed the outcome before Markerstudy's decision. It wouldn't have - as the avoidance was backdated to when Mr A took out the policy for misrepresentation, which Mr A appears to accept. So Mr A wouldn't have been able to avoid declaring a cancellation by an insurer in these circumstances.

Therefore, I'm satisfied Markerstudy Insurance was entitled to avoid Mr A's policy in accordance with CIDRA. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Markerstudy Insurance to rely on it to avoid Mr A's policy produces the fair and reasonable outcome in this complaint.

**My final decision**

For the reasons set out above, my final decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 December 2023.

Geraldine Newbold  
**Ombudsman**