

complaint

Mr V has complained about Markerstudy Insurance Company Limited's decision to cancel his motorcycle policy as if it never existed and that it refused to deal with a claim he made when his bike was stolen.

background

Mr V bought his motorbike policy with Markerstudy through a comparison website. His motorbike was stolen while he was staying overnight at his girlfriend's home so he made a claim to Markerstudy.

While Markerstudy was investigating Mr V's claim, it found out that when Mr V bought his policy, he didn't tell it that the address where he kept his bike overnight wasn't his home address. The address Mr V gave it was his friend's address, where his bike was usually kept overnight. Markerstudy also said that Mr V had told it that his bike was kept in a garage overnight, but it thought this wasn't correct. It said that his friend's address had an underground car park, not a garage. So it said that it wouldn't have been able to provide Mr V with this policy if it had known this. It decided that Mr V had carelessly misrepresented these facts so it cancelled his policy as if it never existed and it didn't deal with his claim.

Mr V complained to Markerstudy as he thought its decision was unfair. He also thought that the gated underground storage area at his friend's address was a garage so he had answered the question honestly when he bought his policy. Markerstudy didn't agree, so Mr V asked us to look at his complaint.

The adjudicator who investigated it recommended that Mr V's complaint should be upheld. He was of the view that Markerstudy had failed to show that it wouldn't have provided cover if it had known that Mr V's home address was different to where his bike was kept overnight. He also felt that it was reasonable of Mr V to assume that his bike was kept in a bricked garage because when he answered this question, the comparison website and Markerstudy failed to clarify to him what wasn't covered under the description of "garaged". So he recommended that Markerstudy do the following;

- Consider Mr V's claim for the theft of his motorbike under his policy. Remove all details of the cancellation as if it never existed from internal systems and external information sources (including the Claims Underwriting Exchange).
- Provide Mr V with a letter of indemnity.
- Pay Mr V the sum of £150.00 compensation for the distress and inconvenience caused by its decision to cancel his policy.

Markerstudy didn't agree. I then issued a provisional decision on 10 September 2015. I was of the view that Mr V had been asked a clear question about where he kept his bike overnight, which he didn't answer correctly. And Markerstudy had now shown that it wouldn't have given Mr V a policy if it had known he kept his bike at a friend's house overnight. So I didn't intend to uphold his complaint.

Markerstudy accepted my provisional decision. Mr V didn't accept my provisional decision. He said he paid for insurance and he didn't know that the information he gave it would leave him uninsured. He has been left without his bike and he feels that the decision not to pay his claim is completely unfair.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When an insurer decides to cancel a policy as if it never existed, it needs to show that when the consumer bought its policy, it asked a clear question which the consumer answered incorrectly. It then needs to show that, had it known the correct information, it wouldn't have provided its policy at all because the correct facts didn't meet its underwriting risk criteria at the time.

Markerstudy provided screenshots of the comparison website application questions that Mr V was asked.

He was asked to provide his own home address. Then he was asked if this was the address where his bike was kept overnight. The comparison website provided the following explanatory note about overnight parking next to this question;

"If your bike is kept at a location other than your own home postal address for more than once a week, enter the additional postcode here"

I think the comparison website application asked Mr V clear questions about his home address and the address of where he kept his bike, making a distinction between the two. After receiving the quotations online, Mr V called Markerstudy to buy the policy. The call handler asked Mr V what his postcode was and he gave the postcode of his friend's address, not his own. Mr V also quoted the full address of his friend's house as his address, so I'm satisfied that Mr V was asked a clear question by the call handler but didn't answer it correctly.

Further, when Markerstudy sent Mr V his policy documents it showed his name and address as his friend's and not his own home address. So Mr V had the opportunity to tell Markerstudy when he received his policy documents that the information wasn't correct, but he didn't.

I therefore think that Markerstudy was reasonable when it decided that Mr V had carelessly misrepresented the facts about his address.

However, Markerstudy hadn't shown that this information meant that its underwriting criteria hadn't been met. So the adjudicator felt that Markerstudy should instead reinstate Mr V's policy, apply the appropriate premium on the basis of his home address being different to that where the bike was being kept, and deal with his claim for the theft of his bike. I think this was a reasonable recommendation to make with the information available.

In response to the adjudicator's opinion, Markerstudy has now provided its underwriter's comments. Its underwriter said;

"We did not void the policy due to it being in an underground car park. The information given about his address was incorrect. We may cover a vehicle at a different address but would not have in these circumstances (not family, too far away) which we and the brokers have confirmed."

As Markerstudy has shown that its underwriters wouldn't have offered a policy to Mr V if it had known that the address where he kept his bike wasn't his home address, I don't think Markerstudy's decision to cancel his policy as if it never existed was wrong. Consequently I don't think it should deal with Mr V's claim for the theft of his bike.

Markerstudy told Mr V that it also thought that he had misrepresented the fact that his bike was garaged, although it said that this was an ancillary reason to the address issue. Markerstudy's underwriting criteria under the title of "Garaging" says;

"Bikes must be kept in a brick built garage. Watch underground/under flat parking areas – we do not consider these to be garages"

However, Markerstudy hasn't shown that this explanation was ever given to Mr V when he chose "garaged" on the online application. So he couldn't have known that his definition of "garaged" didn't match Markerstudy's. Further, in the investigators report after Mr V's bike was stolen, they referred to the storage area where the bike was usually kept overnight as a "secure car park/garage" and photos of the storage area show it to be brick construction with security gates. So I don't think Mr V misrepresented the fact that his bike was garaged overnight.

If this was the reason why Markerstudy cancelled Mr V's policy as if it never existed, I would decide that this was unreasonable. But as this issue is only in addition to the address issue, my final decision is on that point only.

my final decision

I know that Mr V feels that this decision is unfair, but for the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 19 November 2015.

Geraldine Newbold
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