

complaint

Mr M complained about MCE Insurance Company Limited's (MCE) handling of a claim on his motorbike insurance policy.

background

Mr M's motorbike was stolen so he made a claim on his policy. MCE didn't process his claim and cancelled his policy as if it had never existed (known in the insurance industry as avoidance). The reason they gave was that Mr M made a deliberate or reckless misrepresentation when he took out his policy by saying his motorbike would be stored in a garage. But MCE said that the storage location was a car park and not a garage.

Mr M wasn't happy so he brought his complaint to our service. One of our investigators looked into the complaint and felt that MCE treated Mr M unfairly. He said the storage place had all the characteristics of a garage and that it matched the policy definition of a garage. He suggested that MCE should process Mr M's claim and remove any avoidance markers against him.

As MCE didn't agree with the investigator, the complaint was passed to me to decide.

My provisional decision was issued on 23 October 2018. I said:

"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 intend to uphold this complaint. I'll explain why.

I must decide if MCE have handled the claim in a fair and reasonable way.

Mr M took out his policy through an online comparison website and when he was asked where he intended to store his motorbike he was given the following options:

*"Garage
Public Road
Drive
Private property
Car Park
Locked compound"*

Mr M's policy terms say:

"You have agreed that you will keep your motorcycle in a locked garage or building either at your home address or an address declared and specifically agreed by us when your motorcycle is not being used. A garage is a lockable brick, concrete, steel, stone or wooden building with a roof constructed of slate, tile, steel or wood in which to park or keep a motor vehicle, for your sole purpose."

However, MCE haven't shown that this explanation was ever given to Mr M when he chose "garage" on the online application. So I don't think he could've known that his definition of "garage" didn't match MCE's. I've seen the photos provided by Mr M. I can see why he believed it to be a garage. It's a brick built enclosure underneath a

block of private flats and has all the characteristics of a garage. While it doesn't have a door, the only way it can be accessed is through a secure gate that gives access to the grounds of the estate. The Oxford dictionary defines a garage as "a building in which a car or other vehicle is kept". It makes no mention of the need to have a lockable door.

Furthermore, the policy definition refers to either a "locked garage" or "building", but it doesn't say the building has to be locked. Nor was a "building" listed among the options given to Mr M when he bought the policy online. And I don't think it would be reasonable to describe it as a "car park". So I think the online question, and the options to choose from, should have been clearer.

MCE have said that during some of the calls Mr M has referred to where he stored his bike as a "secure car park". But at the same time he has referred to it as a garage and it seems to me that he uses the terms interchangeably. He feels that it could be described as a garage or an enclosed secure car park. But when he took out the policy, he described it as a garage because I think that's what his honest held belief was.

So I don't think Mr M misrepresented the fact that his bike was stored in a garage.

To put things right, I intend to require MCE to process the claim on the remaining terms of the policy. And, if they settle the claim, they should add simple interest at 8% a year to the settlement amount. I also intend to require MCE to pay Mr M £150 compensation for the distress and inconvenience he has suffered. MCE should also correct all internal and external databases to ensure there is no voidance marker against Mr M's record. Finally, I understand that on cancellation MCE didn't refund Mr M's premium for the period he wasn't on cover. I intend to require MCE to calculate the period Mr M was on cover and refund him any remaining premium."

The parties were invited to comment on my findings. Both Mr M and MCE accepted my provisional decision. MCE said that there was no premium refund due to Mr M.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my findings remain the same.

my final decision

For the reasons set out above, I uphold the complaint and require MCE Insurance Company Limited to:

- Process the claim on the remaining policy terms.
- In the event that Mr M is paid a settlement for the theft of his motorbike, MCE should add simple interest to that amount at 8% per year from the date of claim until the settlement is made.¹
- Pay Mr M £150 compensation for the distress and inconvenience caused to him. This should be paid within 28 days of us telling them that Mr M has accepted my final decision. If they pay later than this they must also pay interest on that amount from the date of my final decision to the date of payment at a rate of 8% a year simple.
- Correct all internal and external databases to remove any avoidance marker from Mr M's record.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 December 2018.

Mehmet Osman
ombudsman

¹ If MCE pay interest and consider that they're required by HM Revenue & Customs to take off income tax from that interest, they should tell Mr M how much they have taken off. They should also give Mr M a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.