

complaint

Mr T has complained about how MCE Insurance Company Limited (“MCE” for short) has dealt with his claim on his motorcycle insurance policy.

Background

In January 2019 I issued a provisional decision upholding this complaint. In short I didn't think it fair for MCE to rely on its terms and conditions to not settle Mr T's claim.

Both Mr T and MCE have responded to my provisional decision. MCE made further comments. Mr T accepted my position without further comments.

My findings

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

MCE has said it accepts Mr T was trying to sell his motorbike but he still must abide by the agreed terms and conditions. Particularly his putting the keys in the ignition “*increased the risk of his vehicle being stolen*” and that he has “*not take reasonable care to safeguard his vehicle*”. MCE go on to say “*the circumstances of the theft is classed as thief hijacking rather than using trickery or deception to get possession of the vehicle; I disagree and believe that hijacking a vehicle while the owner of the vehicle is present, is still classed as trickery/deception.*”

Hijacking is seizing control of something (in this case a bike). Tricking/deceiving into handing over control is a different thing in my opinion. And bearing in mind Mr T's comments quoted in my provisional decision I see what happened here to be more like hijacking the motorbike than simply using trickery or deception to get possession of it. So I don't think this argument by MCE is persuasive.

In relation to the other points MCE has made I note that MCE hasn't brought up any other new arguments or evidence but has essentially repeated earlier arguments which I've dealt with in my provisional decision. As such I see little to be gained by repeating what I've already said in my provisional decision. And I remain of the opinion that it would be unfair for MCE not to settle this claim. So MCE must settle Mr T's claim in accordance with the claims settlement terms in his policy and add interest to the amount due to him. MCE should pay interest on the settlement amount at 8% simple per year† – from the date the bike was stolen to the date of settlement.

† HM Revenue & Customs requires MCE to take off tax from this interest. MCE must give Mr T a certificate showing how much tax it's taken off if he asks for one.

my final decision

I uphold this complaint about MCE Insurance Company Limited and direct it to settle to claim as I have described above. Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 26 March 2019.

Rod Glyn-Thomas
ombudsman

Copy of Provisional Decision

complaint

Mr T has complained about how MCE Insurance Company Limited ("MCE" for short) has dealt with his claim on his motorcycle insurance policy.

background

Mr T says that MCE has treated him unfairly because it hasn't paid his claim following the theft of his motorcycle. He's explained it was stolen when he was advertising it for sale and had arranged to meet a potential buyer at a pre-arranged location. The motorcycle was turned on to hear the engine run. He's said the potential buyer *"asked me if he can sit on the bike to check gears while standing still, he had no helmet or anything else with him"* and *"so we were talking while he was on the bike and then suddenly he kicked a gear and drove off."*

MCE turned the claim down on the basis that the policy says it will not pay out where there has been loss or damage:

- *"as a result of theft if at any time the ignition keys have been left in or on the motorcycle."*

It's also says Mr T has breached the following condition:

- *"You shall at all times take all reasonable steps to safeguard your motorcycle from loss or damage."*

MCE says that Mr T started the engine and the third party *"got on your motorbike and then rode off on it."* So it says Mr T left the keys in the ignition. And – it also thinks it he failed to take reasonable steps by allowing the potential buyer to sit on his motorcycle why it was running.

Our investigator didn't think Mr T's complaint should be upheld, as she felt MCE was entitled to turn down Mr T's claim. Mr T doesn't agree and has asked for an ombudsman's decision.

my provisional findings

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

Having done so I currently think I should uphold this complaint.

The terms of the policy make clear that it may not pay out when the ignition keys have been left in or on the motorbike. Mr T accepts they keys were in and the engine was running whilst he was talking to the potential buyer who stole the motorbike. However, as MCE should know, our approach to this sort of term is that for it to be fair for MCE not to pay the claim Mr T would have had to have left the keys in the motorbike and left it unattended. But this wasn't the case. Mr T had brought the motorbike to where he met the potential buyer and was present when the person who took the bike rode off on it. So I don't think MCE is entitled to rely on this term to not pay out on Mr T's claim.

As MCE has pointed out, the terms also state that Mr T has to take reasonable steps to safeguard the motorbike. However, for me to think it's fair for MCE to rely on this term to reject Mr T's claim, I'd have to be satisfied that Mr T realised there was a risk his motorbike would be stolen and took inadequate steps to prevent this, that is, that he acted recklessly. This could have been the case if Mr T actually handed over full control of the motorbike to the potential buyer, who then stole it. Although, this would depend on why he did this and what he was thinking at the time. But, I don't think he did hand over full

control. He simply allowed the potential buyer to sit on the motorbike, but was present and hadn't given him permission to test ride it. And I don't think Mr T had any idea the potential buyer intended to steal it, so I don't think MCE is entitled to rely on this term either to reject Mr T's claim.

The terms of the policy also say it doesn't cover loss or damage to a motorbike resulting from fraud, trickery or deception. MCE didn't rely on this term in its original decision regarding Mr T's claim. But our investigator did consider it and commented on why he felt MCE could rely on it. MCE hasn't responded to this, but I think it's fair to consider whether it's entitled to rely on it, as I suspect if I asked it to reconsider the claim knowing it couldn't rely on the two terms I've dealt with above, it would rely on this term instead.

There's no doubt Mr T lost his motorbike as a result of trickery and deception. But our approach in deciding whether it's appropriate for an insurer to rely on this sort of clause to reject a claim is to consider whether the seller willingly relinquished control of the car or motorbike without taking reasonable steps. Mr T didn't relinquish control of the motorbike at all; he let the potential buyer sit on it to test the gears, which I'd say is a reasonable thing to do in the circumstances. And he stayed right by the motorbike and didn't let the potential buyer ride it off, for example on a test ride. Having spoken to Mr T I note he has described how he remained within "hands reach" of the bike throughout and that when the thief started to drive the bike he had to swerve to avoid hitting Mr T as he was so close to the bike at the time. So – I think what happened is more like a thief hijacking the motorbike than simply using trickery or deception to get possession of it. And I don't think it would produce a fair and reasonable outcome to this complaint if I were to allow MCE to rely on the theft, trickery and deception exclusion to reject Mr T's claim.

So, I intend to make MCE settle Mr T's claim in accordance with the claims settlement terms in his policy and add interest to the amount due to him. MCE should pay interest on the settlement amount at 8% simple per year† – from the date the bike was stolen to the date of settlement.

† HM Revenue & Customs requires MCE to take off tax from this interest. MCE must give Mr T a certificate showing how much tax it's taken off if he asks for one.

my provisional decision

For the reasons set out above, I've provisionally decided to uphold Mr T's complaint and order MCE Insurance Company Limited to settle his claim in accordance with the claims settlement terms in his policy. I also intend it to add interest to the amount due to Mr T at eight per cent per annum simple from the date Mr T's bike was stolen to the date of actual payment.

Rod Glyn-Thomas
ombudsman