

## **complaint**

Mr J is unhappy Ageas Insurance Limited avoided his motor insurance policy when he made a theft claim.

## **background**

In 2015 Mr J took out a policy with Ageas for his motorbike, via an insurance intermediary, and renewed it in 2016. When he took out the policy he provided the information required including his home address (property F) and he said the vehicle was kept in a locked garage or outbuilding overnight at this address.

Mr J's wife lives in another property (property M). While Mr J is there his motorbike is chained up, but not kept in a garage. Unfortunately, in January 2017 when he stayed there overnight, his motorbike and some accessories were stolen. He made a claim on his policy. The insurer checked, and the property doesn't have a garage. This discovery prompted further enquiries, which revealed Mr J had been on the electoral roll at property M since 2014. And DVLA records showed his driving licence was registered at property M.

Ageas said Mr J made a misrepresentation when he took out the policy and when he renewed it. As on both occasions he gave property F as his home address when it was actually property M. And it's said it wouldn't have insured him if he'd said his home address was property M and he didn't keep his motorbike in a garage overnight. So, it avoided Mr J's policy (cancelled it as if it never existed), and refunded all the premiums.

Mr J maintains he lives at property F with his parents and brother. He's said his brother pays the mortgage, but has a poor credit history, so Mr J wanted to build up a positive credit history for himself at property M. He says he occasionally stays overnight at property M. So he doesn't think he made a misrepresentation about his home address. And he's said Ageas shouldn't have avoided his policy and refused his claim, as it's the same as if he was staying overnight at a friend's address and his motorbike was stolen.

Ageas pointed out Mr J had a motorbike stolen from property M in 2013, which suggests his links to that property go back many years. And it thinks this and the other evidence shows it's most likely it was his home address when he took out the policy and renewed it.

Our investigator didn't think Ageas had done anything wrong. Mr J then provided letters from his wife and a neighbour who both said Mr J visits but doesn't stay at property M. This didn't change Ageas's or our investigator's view on the case. So it's come to me for a decision.

## **my findings**

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 come to the same conclusion as our investigator, and for the same reasons. Let me explain why.

For complaints which turn on whether a consumer has misrepresented their circumstances to an insurer, we take the relevant law into consideration - the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Even before this legislation existed, it's the approach we'd follow, as we think it usually produces a fair and reasonable outcome. And I think it does in this case.

CIDRA requires a consumer to take “reasonable care not to make a misrepresentation” when buying or renewing an insurance policy. This means providing accurate and truthful answers to an insurer’s questions, upon which they assess the risk of offering insurance. If the consumer fails to take reasonable care in providing the wrong information, and the insurer wouldn’t have offered the cover based on the correct information, it can avoid the policy.

So I need to consider whether Mr J misrepresented his home address as property F when it was really property M when he took out the policy and renewed it. And I also need to consider whether he made a misrepresentation when he said his motorbike was kept in a garage overnight. And if he did make misrepresentations, I need to go on to consider whether this was because he failed to take reasonable care.

So I’ve looked at the information Mr J provided when he originally bought the policy in 2015, and when he renewed it in 2016. Mr J originally bought the policy via an intermediary, which asked him a series of questions. There’s no recording of the original phone call or the renewal call, so I’ve looked at the statement of facts and the policy schedules that were sent to Mr J as I think these show the information he provided.

The statement of fact from when the policy was originally taken out in September 2015 gives Mr J’s home address as address F. And “Yes” is ticked in response to questions about the vehicle being kept at the home address, and in a locked garage or outbuilding overnight. And the same information is included in the statement of fact for the renewal in 2016.

Both documents ask Mr J to read the information carefully and say “*This information must have been given to the best of your knowledge as your answers are likely to have influenced acceptance of your application and on what terms and conditions*”.

It goes on to say “*if the information provided is not complete and accurate we may cancel your application and refuse to pay any claim*”. But Mr J didn’t change any of the information.

The renewal reminder letter dated 8 September 2016 warns “*inaccurate or undisclosed information can invalidate cover.*”

The documentation also contains a list of applicable endorsements including the M31 Garaging Warranty which excludes cover for theft or damage between the hours of 10pm and 7am “*unless your motorcycle is kept in a locked and secured building and is (1) at your private dwelling place or (2) any other address specifically agreed by us*”. Mr J didn’t say that his bike might sometimes be kept overnight at property M, or would be chained up rather than kept in a locked garage.

*Mr J’s home address*

Mr J maintains property F is his home address, not property M. So I’ve looked at the available evidence which links him to both properties.

The only tangible evidence linking Mr J to property F is a council tax bill. But it was dated after the theft happened, and was in three names, with his being the third. Mr J’s wife has provided a letter explaining she and Mr J were having difficulties, so he lives with his family at property F. He’s just overseeing the renovation work at property M. Mr J says the night he left his bike at property M overnight was a “one off”. And a neighbour has provided a letter saying Mr J visits property M but doesn’t live there.

But this evidence isn't independent, so I don't find it as persuasive as the more official evidence relating to property M (the electoral roll and DVLA record), which go back to 2014. Also, when he made his claim Mr J provided a list of 15 modifications he'd added to his motor bike. And the receipts and eBay invoices for some of these items (helmet, gloves etc) showed property M as the delivery address. Mr J says this is because his wife was there to accept the deliveries.

Mr J explains he's on the electoral roll at property M to build up a good credit record. But, although Mr J may not have realised it, a credit record refers to an individual, not an address, so there was actually no need not to have property F as his address on the electoral roll. So taking all of this into account it seems most likely Mr J's home address is actually property M, even if he sometimes stays at property F. So, I think he misrepresented his home address when he both took out and renewed his insurance policy.

#### *overnight storage of the bike*

Mr J's policy is based on his bike being kept in a locked garage overnight (at property F). I think Mr J knew providing accurate information about the overnight storage of his bike was relevant. And he understood the insurance was granted on the basis of it being garaged overnight at property F. So I think Mr J made a misrepresentation when he said his motorbike would be stored in a garage or outbuilding overnight. And I think he made a further misrepresentation not to point out this wasn't the case when he renewed the policy in 2016.

Bearing in mind I think property M was Mr J's home address and he didn't normally keep his motorbike in a garage there overnight, it follows that I think he failed to take reasonable care not to misrepresent when he said otherwise. After all, he must have known how important it was to provide the correct home address and for his motorbike to be kept in a garage overnight, yet despite this, he said his home address was property M.

Ageas has said it wouldn't have provided insurance if Mr M had given his home address as property M and said his bike wouldn't be kept overnight in a locked garage. To support this it's provided a screen shot of its system for the 2016 renewal, generating a quote using the post code of property M which says "*unable to calculate new premium – unacceptable postcode for un-garaged bike*".

It couldn't provide a similar screenshot from 2015 when the policy was taken out. So instead it provided the "change history" from its electronic rate-book which is used to calculate risk for insuring bikes. This shows there were no changes made up to September 2015 to the terms under which it would insure bikes, and where they should be kept or stored. This makes it more likely than not the same terms would have applied in 2015 when Mr J originally took out his policy.

In other words, had Mr J tried to get insurance for an un-garaged bike using the post code of property M, Ageas would not have insured him, as it considered the risk unacceptable. This reflects Mr J's previous claim for a stolen bike from property M in 2013. So I'm satisfied Ageas is entitled to avoid both Mr J's policies.

Mr J believes the policy requires the motorbike to be "usually" garaged, but that's not right. The endorsement means there's no cover unless the bike is garaged overnight. And the timing of the theft is not relevant either. Ageas hasn't declined Mr J's claim because his

motorbike wasn't garaged, it's avoided his policies. And this means – in effect – both policies didn't exist and so Ageas doesn't have to meet any claims under them.

In summary, I'm satisfied Ageas is entitled to avoid both Mr J's policies on the basis there's been a qualifying misrepresentation. So it's not appropriate for me to uphold Mr J's complaint.

**my final decision**

My final decision is I don't uphold this complaint, and don't require Ageas Insurance Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 23 February 2018.

Sarah Milne  
**ombudsman**