

complaint

Mr W complains that underwriters at the Society of Lloyd's wouldn't pay out in full on his motor insurance when his motorbike was stolen.

background

Mr W left his motorbike in a secure public car park while he went on holiday. On his return, he found it had been stolen so he claimed on the insurance.

Lloyd's looked at his claim. It agreed the bike had been stolen and agreed Mr W had a valid claim. But it reduced the settlement to around 70% of the full value of the bike because it said Mr W had made a misrepresentation when he renewed the policy.

Mr W's insurance only covers him for social domestic and pleasure use – not commuting. The bike was stolen from a car park near his place of work. When he rang the insurer to claim for the theft, the conversation included the following:

- *Do you remember what you used it for? [on the journey before it was parked and stolen]*
- *It was a very short journey I just rode it to my place of work a few streets away*
- *Do you tend to use your bike much for your commute to work?*
- *No I tend to use it for pleasure and pastimes*
- *...*
- *I always keep it in a car park*
- *Is that normally where you would keep it in the day time if you weren't using it?*
- *Yes, or parked outside my work if I bring it to work but that's not too often*

Lloyd's said that, on the basis of what Mr W had said in that conversation, and in light of the fact that the bike was stolen from a car park near his place of work, Mr W was using the bike for commuting. It said it would have insured him had he declared commuting use, but the premium would be higher – and so it was reducing the value of the claim proportionately.

Mr W said he didn't commute to work. He understood commuting to mean regular travel to a place of work. He didn't do that – he was in the habit of walking or using the bus to get to work. But around five times a year, he took the bike to his workplace as he could access outside water and power there to clean the bike and recharge the battery. He couldn't do that at home because he lives in a flat with no outside space.

Our investigator didn't think it was fair for Lloyd's to reduce the value of the claim, because she didn't think Mr W had failed to take reasonable care not to make a misrepresentation when he renewed the policy. She said Lloyd's should pay the claim in full. Lloyd's didn't agree and asked for an ombudsman to look at the complaint.

my findings

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

Lloyd's has relied on the Consumer Insurance (Disclosure and Representations) Act (CIDRA) to proportionately reduce Mr W's claim, and it's relevant law for me to take into account.

In brief, the Act says a consumer taking out insurance has a duty to take reasonable care not to mislead the insurer. If reasonable care isn't taken and a misrepresentation is made, the insurer should assess whether it's a qualifying misrepresentation – that is, one that would have affected the basis on which the policy was issued. If the misrepresentation is reckless, the insurer can cancel the policy from the start. If it was careless but not reckless, the insurer can cancel the policy if it can show it would never have issued it if it had known the truth – or can vary the policy to what it would have been. And if a claim's made, it can reduce the value of the claim proportionate to the underpayment of premiums resulting from the misrepresentation.

Applying that to this case, I don't think there's any doubt that Lloyd's would have offered Mr W a policy that included commuting if he'd asked for one. But that policy would have been more expensive, so – if it can show CIDRA applies – Lloyd's can reduce the claim proportionately. In other words, if there was a misrepresentation then it was a qualifying one.

That means the first question I have to decide is whether there was a misrepresentation at all. If there was, I then have to decide if it arose because of a failure by Mr W to take reasonable care.

I accept what Mr W says about his patterns of usage of the bike. It had low recorded mileage, and the area where he lives and works is also consistent with what he says.

Mr W lives in an upper storey flat right in the centre of a large city. He has no parking or access to outside space where he lives. So he keeps the bike in local public car parks – not always the same one. Because he works also in the centre of the city, and near where he lives, it's quicker for him to go straight to work on foot or by bus than to travel to collect the bike then ride to work.

Mr W says – and I accept – that a few times a year, he does take the bike to work. He does this because at his place of work – but not at his home, or in the car parks where he keeps the bike – there's access to outside power and water, which he uses to clean and maintain the bike. When the bike was stolen, he'd done this then parked it in a nearby car park to return and collect when he got back from holiday.

That's the factual background of Mr W's usage of the bike. When the policy renewed, Lloyd's sent him a form to complete.

One of the questions on the form was *"Is the motorcycle used for commuting?"* Mr W replied *"No"*.

Mr W says he answered "no" because he understood "commuting" to mean regular travel to a place of work – travelling on a regular basis or even every day. He doesn't do that – he goes to work on public transport or walks. He does occasionally take the bike to his place of work – but his purpose in doing so is to clean and maintain the bike, not to get to work.

I've looked carefully at the form Mr W completed. It doesn't contain a definition of the word "commuting". Nor does the policy itself. So I think the word must be understood in this context to have its ordinary everyday meaning.

I agree with Mr W that "commuting" carries a connotation of regularity – one's commute is one's regular journey to work. Mr W's regular journey to work is not on the bike.

Given where he lives, he would have to take the bike somewhere away from his home to clean and maintain it every so often. I don't think the fact that he does this at his place of work rather than somewhere else is enough to turn the occasional journeys to do that into a commute. I don't think Mr W did use the bike for commuting. I therefore don't think Mr W made a misrepresentation when he answered "no" to that question.

If I'm wrong about that, and "commuting" does mean any journey to a place of work, however infrequent and whatever other purposes were combined with the journey, then answering "no" would amount to a misrepresentation. However, I still wouldn't think that CIDRA applied, since I think Mr W answered the question honestly and carefully according to what he reasonably believed it to mean – and I think he took reasonable care to answer it accurately even if the answer turned out to be inaccurate.

I therefore don't think it can be said, in the particular circumstances of this case, that Mr W failed to take reasonable care not to make a misrepresentation. And, as a result, I don't think it was fair for Lloyd's to make a proportionate reduction to his claim. It should pay it in full.

my final decision

For the reasons I've given, my final decision is that I uphold this complaint. I direct the Society of Lloyd's to pay Mr W's claim in full, subject to the policy excess. If it has already paid the proportionate amount, it should pay the balance. If it has not yet paid anything, it should pay the full amount. In either case, it should add simple annual interest* of 8% to the amount it now pays out. Interest should run from 27 September 2017 to date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 November 2018.

Simon Pugh
ombudsman

** If the Society of Lloyd's considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*