

complaint

Mr S complains that MCE Insurance Company Limited (“MCE”) refused a claim on his motorcycle insurance policy.

background

Mr S made a claim on his policy following the theft of his motorcycle.

MCE considered the claim but decided to void the policy without a refund of any premiums. This is because it believes Mr S misrepresented the risk when he took out the policy by telling MCE he keeps the motorcycle in a brick garage whilst at his home address. It says this answer wasn't correct because the parking facilities where Mr S lives are a communal car park for residents.

Mr S says his bike was stolen from his friend's house where he was staying overnight – and not from his home. So he doesn't think it's relevant whether it's a garage or not. But he says he contacted MCE in April 2018 to check that his circumstances were considered to be a garage and he was assured they were.

Our investigator wasn't convinced that Mr S had made a misrepresentation. She felt the parking facilities have similar characteristics to a garage. And she said Mr S had contacted MCE in April 2018 to clarify the arrangements. She recommended that the policy be reinstated and the claim considered under the terms and conditions. She also recommended compensation.

MCE didn't agree. It said there was no record of Mr S calling in April 2018, and he was given enough information by email to be aware that his parking facilities wouldn't be considered a garage.

As MCE disagreed with our investigator, the case was passed to me for a decision.

I issued a provisional decision on this complaint. In the provisional decision I said:

MCE says the policy was voided because there was a misrepresentation by Mr S. The law relating to misrepresentation is set out in the Consumer Insurance (Disclosure and Representations) Act 2012 (or 'CIDRA'). CIDRA says a consumer has a duty to take reasonable care not to make a misrepresentation to the insurer. So I've considered what Mr S was asked and how he answered

Mr S bought the policy by phone. I've listened to the call between him and MCE on 25 November 2017. On this call Mr S is asked where his motorcycle is kept when he's at home - "when it is at this postcode, where is it stored or parked?" I'm satisfied MCE asked a clear question.

Mr S answered "it's parked in a garage, made out of brick".

In my judgment Mr S didn't take reasonable care when answering the question. I say this having looked at the photos of the parking facilities, and a satellite view of his home address. I accept that there is a door from the road into the parking area. But it's clear this is a communal parking area. His motorbike was parked in an area described by a sign as a "motorcycle bay" and in the photo I've seen there are a number of motorbikes parked there.

Even if the facilities are to some extent secure, they are open to other residents of the building. I don't agree Mr S could reasonably describe it as a garage, or that any reasonable customer would consider it to be one. MCE says the misrepresentation was deliberate or reckless. Mr S must have known a communal parking area is not the same thing as a garage. In these circumstances I think it was at least reckless.

MCE sent the policy documents to Mr S electronically the day after this call took place. So he had an opportunity to check the position. The policy booklet confirms that 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".

I think this is a clear definition of a garage. And the place where Mr S kept his motorbike doesn't fall within this definition. If Mr S had any uncertainty over what defines a garage, the policy booklet clarifies it. And from this definition, he'd be able to establish that this did not apply to his parking facilities. But from the information I've seen, Mr S didn't open his documents.

MCE has shown that it would not have offered the policy to Mr S at the same price, if it had known the motorbike was to be parked in a communal parking area rather than a garage – the premium would have been quite a bit higher. This means there was a qualifying misrepresentation under CIDRA.

Mr S says he spoke to MCE in April 2018, after receiving an email from them, when he clarified the parking arrangements. If MCE had confirmed at this time that the parking area would be considered a garage, then I think it would be held to that, and wouldn't be able to rely on the earlier misrepresentation.

MCE provided a copy of an email it sent to its customers on 16 April 2018 clarifying the policy definition. This email said: "when you took out your policy with MCE Insurance you advised us that you keep your bike in a garage. We are emailing our customers to remind them that we class a garage as a building for housing a motor vehicle(s) which isn't used communally. If you keep your bike in a shared car park, a parking area under flats or a house/factory/workplace this is not classified as a garage".

Mr S says he contacted MCE in response to this email. And he's shown us his phone records that he called them. But this was on 4 April 2018. As this was twelve days before the email was sent, Mr S says he must have received it earlier. I'm not persuaded this was the case as MCE's records show it was sent on 16 April and that Mr S opened it on the 16 and again on 21 April.

MCE say it didn't receive any calls in April 2018 from Mr S and it has provided us with screenshots of its system to show this. This is contradictory to Mr S's phone records which shows he called on 4 April 2018.

Looking at Mr S' call records, I can see that he called MCE's number at 17:02 for 1.12 minutes. He then called back at 17:03 for 28.41 minutes, and then again at 17:32 for 10.18 minutes. I've thought about why Mr S would call three times, each time calling immediately after ending the previous call. I think the most likely explanation is that Mr S was in a queue waiting to get through, and gave up or was cut off. This would be consistent with the fact that MCE's records show no calls were received from Mr S, and it has no record of a discussion with him.

On balance, having considered all the evidence, I'm not satisfied MCE ever agreed to treat the parking area as a garage – the evidence all points to the opposite.

CIDRA gives further information about the types of misrepresentation and what an insurer can do depending on the type. Where there is a reckless misrepresentation, MCE may void the policy and refuse the claim. And it need not return the premium unless it would be unfair to keep it.

From everything I've seen, I'm satisfied that Mr S did not keep his motorcycle in a garage. And I'm persuaded enough that he knew or ought to have known that it was not a garage, and failed to disclose this to MCE. He was charged a significantly lower premium for his insurance based on the misrepresentation. In these circumstances I think it was reasonable for MCE to void the policy and retain the premiums.

For these reasons, my provisional decision was that I didn't intend to uphold the complaint.

developments

Mr S has replied to the provisional decision. He says

- He doesn't agree he was reckless – he reasonably believed this was classed as a private brick garage due to the venue.
- MCE claim he didn't call them in April but his phone records show he did.
- He'd be happy with the void removed from records rather than getting his money back, as having this recorded against his name raises his insurance premium dramatically – he has not had a bike since as he has been quoted £3,000 for insurance.

MCE has no further comments to add.

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 see no reason to change my provisional decision.

I appreciate my decision is not what Mr S would want, and I've taken into account his comments. But in my judgment, he was asked a clear question and I don't think he did take reasonable care when he answered. As I explained in the provisional decision, I looked at the layout of the parking area, which is a "motorcycle bay". I don't agree that could reasonably be described as a garage – it's very different. It's still my view that Mr S would have known a communal parking area is not the same thing as a garage.

With regard to his phone calls to MCE, I can't be sure what happened, so I have to weigh up the evidence and make a judgment, based on the balance of probabilities. I set out in my provisional view what I thought was the more likely explanation. And these calls were twelve days before the email was sent, so I don't see how he could have been calling in response to the email.

my final decision

My final decision is that I don't uphold the complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 November 2019.

Peter Whiteley
ombudsman