

complaint

Mr S is unhappy that when he made a claim for theft on his motor insurance policy The Society of Lloyd's (Lloyds) cancelled it from the start and returned his premium, on the basis that he had misrepresented where his motorbike was kept overnight when taking out the policy.

background

I issued my provisional decision in June 2015. I've attached a copy to this decision. I explained I had carefully considered all of the available evidence and arguments from the outset, in order to decide what was fair and reasonable in the circumstances. I had also taken into account relevant regulatory rules as well as the law and good industry practice at the time the policy was sold.

Having done so, I was minded to uphold Mr S's complaint. This was because I thought that Mr S answered the questions put to him about his motorbike storage honestly and in good faith at the point of sale. I think the insurer's questions were not clear or detailed enough in this case. So, I didn't think Mr S had misrepresented the facts and it was my view that his policy shouldn't have been cancelled. So I explained I intended to ask Lloyds to put things right.

Mr S has accepted my provisional decision. Lloyds has confirmed it has no additional information to submit. The deadline for further submissions has now passed.

my findings

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

As neither party has provided any further evidence or submissions in response to my provisional decision, having reconsidered the complaint again in its entirety, I have reached the same decision as before, and for the same reasons.

what the business should do to put things right

I require Lloyds to:

1. Reinstate the policy and consider the claim on the basis that Mr S's motorbike was stored in a garage, in accordance with the policy terms and conditions
2. Remove the voidance from all internal and external records and issue a letter to Mr S confirming this.
3. If Mr S has had to pay a higher premium to any subsequent insurers (because of having to declare the voidance) that cannot be refunded then Lloyds should pay the additional premium he has paid (subject to evidence) plus 8% simple interest (less tax if properly deductible).

my final decision

My final decision is that I uphold Mr S's complaint. The Society of Lloyd's should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 3 September 2015.

Clair Bantin
ombudsman

copy of provisional decision complaint

complaint

Mr S is unhappy that when he made a claim for theft on his motor insurance policy The Society of Lloyd's (Lloyds) cancelled it from the start and returned his premium, on the basis that he had misrepresented where his motorbike was kept overnight when taking out the policy.

background

Mr S took out the motor insurance policy in August 2013. When he took out the policy Mr S was living in a flat within a block of flats. This block contained an underground secured area for vehicles, for the exclusive use of residents, and this was where Mr S stored his motorbike.

Mr S initially completed an online application, during which he was asked to specify where the motorbike would be stored overnight. From the options available, Mr S specified that it would be stored in a "locked garage". Mr S then had a conversation with a sales representative and once again confirmed that his motorbike was stored in a garage, and that this was a brick built structure at his home address.

Subsequently, Mr S was sent a Statement of Fact, along with other paperwork, and asked to confirm that the contents were correct. This Statement of Fact set out the details Mr S had given about his circumstances, including an entry reading "Garaged" in response to a question about storage details.

Mr S's motorbike was stolen from his home address in March 2014 and he submitted a claim. In April 2014 Mr S was told that his claim wouldn't be considered, and that his policy was being cancelled from the start due to misrepresentation of his motorbike storage and his premium returned in full.

Mr S didn't agree and felt that Lloyds had treated him unfairly. Lloyds investigated his complaint but was not minded to change its decision. Mr S then referred the matter to this service.

Our adjudicator didn't uphold the complaint, saying that Mr S had been asked a clear question about where his motorbike was stored, and that the underground storage facility in which it was kept would be considered a carpark rather than a garage by the average layperson. Our adjudicator also found that, had Mr S disclosed that his motorbike was stored in a carpark, he wouldn't have been offered cover.

Mr S wasn't happy with this and so asked for the matter to be referred to an ombudsman. This is the final stage of our process.

my provisional findings

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

I disagree with the adjudicator that the average layperson wouldn't have considered the storage facilities linked to Mr S's flat to be a garage. Unless directed otherwise by the questions asked during the application process, which I will discuss in detail below, I find it reasonable that Mr S would have described the area in which his motorbike was stored as a garage. Clearly, it was a *communal* garage for use by a number of residents, rather than a *private* garage for Mr S only, but I cannot see that Mr S was asked to make this distinction or would have realised that it was important to do so.

Lloyds has argued that the area was, in fact, a carpark. In my view this is also a reasonable description of the facility. But it is not the only acceptable description. Mr S has consistently referred to the area as a garage, and I think that he viewed it as such. (I note that our adjudicator has cited a

reference by Mr S to the space as a “carpark”, but this is after the dispute had arisen and he appears to be employing the language used by the business, for clarity in correspondence. So I don’t think any conclusion about inconsistency or confusion can be drawn from this.)

If Lloyds had a specific definition of the term *garage*, and wished to offer cover only to customers with storage facilities meeting that definition, then the onus was on Lloyds to make this clear during the application process. I will now discuss the questions Mr S was asked and other information he received during the insurance application process.

When making his online application, Mr S was asked where the motorbike would be kept overnight and given three options from which to select: “*locked garage*”, “*private driveway*”, or “*on the road*”. There was also a note intended to clarify further, which read:

“This is to help us establish how secure your motorcycle is overnight. For the purpose of this question, a garage refers to a lockable brick built/concrete sectional garage, which is at the home address. This does not include wooden structures e.g. sheds or any garage which is not at the home address. Any off-road parking other than “on a private driveway” or “in a locked garage” should be entered as “on the road”.”

Mr S has told us that the facility in which his motorbike was stored was locked and secured, brick built and at his home address. He considered it to be a garage and so he selected “*locked garage*” from the list of available options. This appears to me to be a reasonable choice, based on the information available to him.

I have also listened to the telephone recording of the conversation between Mr S and the sales representative. The relevant extract is as follows:

Sales representative: *And where will the vehicle be kept overnight?*

Mr S: *In our garage.*

Sales representative: *And is that brick built at the home address?*

Mr S: *Er, yes.*

There is no further discussion or clarification, so I think Mr S’s answer was made in good faith. I also note that Mr S’s address made it quite clear that he was living in a block of flats at the time of the sale. So I might have expected this to prompt further questions from the sales representative, given the likelihood that – as the resident of a flat - Mr S’s had access at his home address to the sort of garage that it seems Lloyds had in mind.

Finally, I have considered the paperwork Mr S was sent after the telephone conversation with the sales representative. I think, by this point, it wouldn’t be unreasonable for Mr S to have assumed that he had already given the relevant information, so I don’t know how closely he read this documentation. However, even if he noted the options listed on the form in respect of storage (namely “*Street, Car Park, Garage, etc*”), I wouldn’t expect this to have prompted him to contact Lloyds to clarify the position. The Statement of Fact refers to the motorbike as “*Garaged*”, which I think Mr S believed was the case.

So, taking everything into account, I think Mr S answered the questions honestly and in good faith. I think the insurer’s questions were not clear or detailed enough in this case. So, I don’t think Mr S misrepresented the facts when taking out the policy. It follows that I intend to uphold this complaint and direct Lloyds to put things right as set out below.

what the business should do to put things right

I intend to require Lloyds to:

4. Reinstate the policy and consider the claim on the basis that Mr S's motorbike was stored in a garage, in accordance with the policy terms and conditions
5. Remove the voidance from all internal and external records and issue a letter to Mr S confirming this.
6. If Mr S has had to pay a higher premium to any subsequent insurers (because of having to declare the voidance) that cannot be refunded then Lloyds should pay the additional premium he has paid (subject to evidence) plus 8% simple interest (less tax if properly deductible).

my provisional decision

For the reasons I've explained, I intend to uphold Mr S's complaint.

If either Mr S or The Society of Lloyd's has anything else they'd like me to think about before making a final decision, they should let me know in writing within one month.

Clair Bantin
ombudsman