

complaint

Mr L has complained that Markerstudy Insurance Company Limited unfairly cancelled his motorcycle policy as if it never existed and refused to deal with a claim he made following the theft of his motorbike.

background

Mr L bought his policy with Markerstudy through a comparison website in September 2014. His bike was later stolen so he contacted Markerstudy to make a claim. While it was investigating his claim, Markerstudy found out that Mr L had stored his bike in a quail shed in his back garden. It said that Mr L had told it his bike was garaged when it was kept at his home address, so he had misrepresented the facts. It said that if it had known where Mr L's bike was being kept overnight, it wouldn't have provided a policy at all to him. So it cancelled his policy as if it never existed and didn't deal with his claim for the theft of his motorbike.

Mr L complained to Markerstudy. He said it was his first motorcycle policy and he didn't intend to mislead it. He said he chose from one of three options given to him when he applied for his policy: these were; 'driveway, road or locked garage' and he chose 'locked garage' as this was the nearest description to where he stored his bike and he wasn't given any alternative options. He wanted Markerstudy to deal with his claim and reinstate his policy.

Markerstudy said that its statement of fact explained to Mr L what it meant by 'garaged', and as there wasn't a garage at Mr L's home address, it decided he had carelessly misrepresented the facts about where his bike was stored overnight. So it didn't agree to deal with his claim or reinstate his policy.

Mr L remained unhappy so he brought his complaint to us. The adjudicator who investigated it recommended that it should be upheld. He thought that Mr L had answered this question correctly, as 'locked garage' was the closest description and he had no other option that fitted where he kept his bike. He recommended that Markerstudy should remove the cancellation from all internal and external databases and deal with Mr L's claim. He recommended it compensate Mr L for £200 for the trouble and upset its cancellation had caused him, and if it settled his claim by way of a 'total loss' for his motorbike, it should also pay Mr L interest at 8% simple interest rate per year from the date his bike was stolen to the date it pays him.

Markerstudy didn't agree, so the matter has been referred to me to decide.

my findings

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

Where an insurer cancels a policy as if it never existed, we look at the questions the consumer was asked to see if they were clear. If they were, we then look at how the consumer answered those questions. If, as a result of answering certain questions incorrectly and the consequences are serious to the consumer, we also look at whether the insurer brought this to the consumer's attention.

Mr L applied for his policy online and the question relating to where his bike was kept overnight gave him the following options from a dropdown box: *“Driveway, Locked Garage, or Road”*.

Markerstudy said that it isn't for it to provide an exhaustive list of options as to what it accepted as a 'locked garage', and it was for Mr L to contact his broker if he had any doubt about the storage of his bike in his quail shed as being suitable.

However, when Mr L completed the application online, while there were explanatory notes for some questions, no guidance at all was given around this question. So Mr L couldn't have known that his quail shed didn't meet Markerstudy's definition of a 'locked garage'.

So I think it's unfair of Markerstudy to assume that Mr L should have contacted his broker to clarify the definition when no help or advice was given to Mr L when he answered this question. I therefore don't think Mr L was careless in his choice: he simply chose what was closest to his circumstances in the absence of any warning of the seriousness of not meeting its definition of 'locked garage' when he applied for the policy.

In Markerstudy's schedule which it sent to Mr L after he bought his policy, it listed three endorsements; one of which read "Excluding theft when not garaged". On the following page it listed the definition of its endorsements, which for this one, read as follows;

“We will not pay any claim under Section 2 for loss or damage by theft or attempted theft when the insured motorcycle is parked at the insured's permanent place of residence and/or the declaring garage address, unless the motorcycle is kept in a properly constructed and locked garage.”

Markerstudy said that Mr L signed his agreement to the endorsements in his schedule, even though it's clear that a quail shed doesn't meet its definition of a properly constructed locked garage. So its decision to cancel Mr L's policy on the basis that he carelessly misrepresented his facts was correct.

Markerstudy has also provided its underwriting criteria, and this goes further again as to what it actually defines as a properly constructed garage, being *“garage defined as a privately owned building made of brick, stone, steel or concrete. Communal parking cannot be classed as garaging.”*

I think that it was Markerstudy's responsibility to clearly explain to Mr L in its schedule or proposal form which set out the questions Mr L had answered, exactly what it would and wouldn't accept as 'garaged'. Its underwriting criteria was precise as to what it defined as a properly constructed and locked garage. So to be fair and reasonable to Mr L, I think that Markerstudy should have given him this important information in its statement of facts, but it didn't. I think it didn't go far enough to highlight to Mr L that his policy may be cancelled if his circumstances didn't meet its precise definition, as well as refusing his claim. If it had highlighted to Mr L this important information when he bought his policy, I think Mr L would have been in no doubt that his quail shed didn't meet Markerstudy's definition of 'garaged'.

Consequently I think Markerstudy's decision to cancel Mr L's policy and not deal with his claim was unreasonable. I think it should put Mr L back in the position he would have been in had it not cancelled his policy as if it never existed and compensate him for the trouble and upset its decision has caused him. It should now deal with his claim for the theft of his motorbike and if it pays him for the 'total loss' of his bike under the claim, it should add interest to this payment at 8% simple interest per year from the date of the theft to the date it pays him.

my final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Markerstudy Insurance Company Limited to do the following:

- Amend all records for Mr L on internal and central databases (including the Central and Underwriting Exchange) to remove the cancellation of his policy as if it never existed.
- Reinstate his motorcycle policy and deal with his claim for the theft of his motorbike.
- If it settles Mr L's claim by way of 'total loss' it should also pay interest at a rate of 8% simple interest per year from the date of the reported theft of his bike to the date it pays him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 October 2015.

Geraldine Newbold
ombudsman