complaint

Mr R complained that MCE Insurance Company Limited unfairly cancelled his motorcycle insurance policy and declined his claim.

background

After Mr R's motorcycle was stolen he claimed under his policy with MCE. But MCE declined his claim. They said that when he'd taken out his policy he'd deliberately given them incorrect information about the garage where he kept his motorcycle. They said if they'd known about that, they'd have charged him a higher premium.

As a result, MCE avoided Mr R's policy, meaning they treated it as if it hadn't existed from the start. But Mr R said that he'd hadn't deliberately misrepresented about the garage, but had just made a careless mistake. But MCE wouldn't change their view so Mr R brought his complaint to us.

The investigator recommended that his complaint should be upheld. He thought that Mr R's representation had been simply careless and so MCE should pay his claim less the difference in premium. MCE disagreed so Mr R's case was passed to me to decide.

I issued my provisional decision on 1 August 2019 saying that I intended to uphold Mr R's complaint. MCE made some further comments which I deal with below.

my findings

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

Where a complaint arises from non-disclosure of information important to an insurer, we look to see that they asked a clear question, that the information given would affect whether the insurance was offered, and whether the person has acted carelessly, or deliberately or recklessly in not disclosing the information.

An insurer assesses risk on the basis of the information given to them and they use that to decide if they will offer cover. So MCE were entitled to rely on what Mr R said to them in his replies. MCE have told us that they would still have insured him if they'd known the true position, but would have charged him more.

MCE said that when Mr R took out the policy he gave them incorrect information and that this was deliberate or reckless. They said that they'd asked him clear questions about where he stored his motorcycle, and that under the Consumer (Disclosure and Representations) Act he had to take reasonable care to give them accurate and complete answers to those. They said they'd also sent him the policy document which included what they meant by "garage" and it was up to him to check that. They said they'd later put it in an email too, but I didn't take any account of that, as we expect MCE to ask clear questions when the individual take out the policy, not afterwards.

In the recording of the relevant call when Mr R took out his policy, MCE asked about the garage as follows:

"MCE - Where are you going to keep both motorcycles?

Mr R - in the garage at home
MCE - is that garage brick, concrete, steel or stone?
Mr R - it's brick
MCE - We class a garage as a locked structure for housing motor vehicles constructed of brick, concrete, steel or stone which is your private property. Anything else outside of that description is not treated as a garage. Can you confirm your garage meets these requirements?
Mr R - it does indeed."

But when MCE investigated where Mr R kept his motorcycle they found that it didn't meet their definition of garage, and refused his claim. MCE say that this was because it wasn't "*a locked structure for housing motor vehicles ".* They said it was made of steel and was covered with a tarpaulin which was unlockable.

So it wasn't a garage as they defined one, and they saw it more as Mr R keeping his motorcycle on private property. They said that if he had answered their questions properly they would have charged him more for his insurance.

Mr R claimed that he didn't know why he said the garage was brick, it was just a mistake. But he didn't think this was relevant to his claim as his motorcycle hadn't been stolen from his own garage anyway, but from somewhere away from his home. But I did think that it was relevant and that MCE were entitled to rely on his answers.

But I didn't think that one difference - whether it was built of brick or steel, was the real issue here. In fact MCE's definition of garage includes both brick and steel. Instead MCE's concern, and reason for refusing his claim, seemed to be more about the structure not being "*a locked structure for housing motor vehicles constructed of brick, concrete, steel or stone."*

Mr R describes the structure as a *"purpose built garage made by my father 35 years previous. It is lockable with a steel exterior and a wooden door covered in tarpaulin for weather protection. I kept my motorcycles in there and have never had any issues."*

From the photos of the structure I saw that part of the structure is tarpaulin and a lock is visible, but whether or not it's lockable or there is a wooden door wasn't clear. And that isn't anyway a matter for this Service to decide. What is relevant is that I thought that MCE did ask Mr R clear questions about the nature of his garage. And I thought that if Mr R had been more careful in answering those questions, he would have thought about what it was made of and that it wasn't made only of the materials MCE listed. If he'd said that, I thought that would likely have prompted MCE to ask more questions and decide that Mr R's structure was not a garage in their terms.

But although I didn't think that Mr R answered their questions correctly, I didn't think that his answers were deliberately or recklessly incorrect. I thought they were careless instead. And so I agreed with the investigator - who clarified that in his opinion he'd meant that the misrepresentation was careless not reckless.

I agreed that Mr R failed to take reasonable care not to misrepresent when he answered MCE's questions about his garage. And as MCE have said they would have insured Mr R anyway, but would have charged him several hundred pounds more for his insurance, I thought that they should reinstate his policy and settle his claim.

However I thought that the settlement should, in accordance with the remedies available under CIDRA, be on a proportionate basis. In other words MCE may reduce any settlement amount in the same proportion that the premium Mr R did pay bears to the premium that he would have paid if he hadn't made the careless misrepresentation. I considered that MCE should also add interest to that settlement amount, and remove notice of the avoidance of his policy from internal and external databases.

In their response to my provisional decision, MCE reiterated that they still felt that =‘s answers to their questions about the garage were a deliberate misrepresentation, but I don't consider that they raised anything new and I think that my provisional decision did fully consider the issues. And so I don't see any reason to change that decision.

my final decision

For the reasons I've given above and in my provisional decision, it's my final decision that I uphold this complaint and I require MCE Insurance Company Limited to do as follows:

- pay the claim in line with the terms and conditions of Mr R's policy, but reducing any total settlement proportionately, in the same proportion that the premium Mr R paid for his policy bears to the premium he should have paid.
- add 8% simple interest to that amount from the date they decided to avoid the policy to the date of settlement
- correct all internal and external databases and remove any avoidance marker from his name and give him written confirmation once this has been done.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 September 2019.

Rosslyn Scott
ombudsman