

## **complaint**

Mr O is unhappy that MCE Insurance Company Limited declined a claim on his motorcycle insurance policy.

## **background**

Mr O's motor cycle was stolen And he's unhappy that MCE has refused to accept his claim because the steering lock wasn't engaged at the time.

MCE said in its final response that it had highlighted the importance of engaging the steering lock and explained why in the documents issued to Mr O. Engaging the steering lock made the motorcycle less desirable to a thief and meant it would only move in circles. Breaking the steering lock will also damage the motor cycle and reduce its value to a thief. The policy made clear the steering wheel lock must be engaged when the motorcycle is unattended. And by not activating it Mr O hadn't acted in compliance with the policy terms.

Our investigator felt this complaint should be upheld. She said:

- Mr O's policy and key facts document say the policy doesn't cover loss or damage from theft where the motorcycle is unattended and the steering lock has not been activated. And Mr O must at all times take reasonable steps to safeguard his motorcycle including by activating the steering lock.
- What she must decide is whether the exclusion has been applied fairly. It is unreasonable for an insurer to reject a claim unless the circumstances are connected to the breach.
- MCE has provided detailed research and information about motor cycle thefts in general. But it hasn't shown that the steering lock not being engaged was material to the theft of Mr O's motorcycle. His motorcycle may've been stolen because the lock wasn't engaged. But it could've also been stolen by another method like wheeling it away on its back wheel or being lifted onto another vehicle. Not activating the steering lock may not have been material to the theft. And the onus is on MCE to show it can rely on the exclusion, not for Mr O to prove otherwise.
- So MCE should pay Mr O's claim less any excess plus interest from the date of the claim until settlement. He should also be paid £100 compensation for the inconvenience he's been caused.

MCE doesn't agree and has asked for an ombudsman review. It says the steering lock being engaged is instantly apparent to any opportunist thief because the handlebars are turned to the side. If the lock has to be broken the motorcycle is damaged and usually written off making it less attractive or usable to thieves. Engaging the steering lock is an express term of the contract which hasn't been met by Mr O.

## **my findings**

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

It isn't disputed that Mr O's motorcycle was left unattended and the steering lock wasn't engaged as is specifically required for cover to be provided under his policy. But in order for MCE to fairly rely on the exclusion set out in Mr O's policy it must show that the failure to engage the steering lock was material to the theft of his motor cycle. But in this case I don't think on balance that it has done so.

MCE has said research shows that engaging a steering lock is a generally a deterrent to a thief. It's immediately apparent the lock is engaged as the handlebars are turned to one side and to get past it the motorcycle will be damaged and possibly written off.

That may well be the case. But the simple fact is even if steering lock had been engaged the motorcycle could still have been stolen by other means. For example it could've been wheeled away on its rear wheel or lifted bodily onto another vehicle. In the case of Mr O's motorcycle it's possible not engaging the steering lock led to the theft but it's also equally likely that it didn't and another method was used to steal it. And in that case the failure to engage the steering lock wasn't material to the theft.

Mr O also says he applied a disc lock to the motorcycle and that is just as effective as a steering lock. I think he took reasonable steps to safeguard his motorcycle. And there wasn't apparently any debris at the scene which may suggest the lock was taken with the motorcycle.

Overall I don't think MCE has provided persuasive evidence to show on balance that the breach of the policy condition – not engaging the steering lock – was material to the circumstances of Mr O's claim. And I'm therefore not persuaded it would be fair for MCE to rely on this exclusion to decline Mr O's claim.

Overall I think the adjudicator's proposed resolution of this complaint is fair and reasonable. And I don't see any reason to change the proposed outcome in this case.

### **my final decision**

I uphold this complaint. To put things right MCE Insurance Company Limited should:

1. Pay Mr O's claim subject to any policy excesses and limits and pay simple interest\* at 8% a year on any sums it pays him from the date of the loss until settlement; and
2. Pay Mr O £100 compensation for the inconvenience he's been caused.

\* If MCE has to withhold income tax from that interest, it should tell Mr O how much it's taken off and give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

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

Stephen Cooper  
**ombudsman**