complaint

Mr O is unhappy that MCE Insurance Company Limited (MCE) has declined his claim for a stolen motorcycle, voided his policy and kept the premium.

background

Mr O completed his application for annual motorcycle insurance on 6 August 2018 using an online comparison website. The policy started the day after on 7 August.

On 18 August 2018, Mr O's motorcycle was stolen and in November 2018, he contacted MCE to report the theft. MCE asked Mr O to provide details of where the motorcycle was kept when not in use. Mr O said it was parked in a garage. As part of the claims process, Mr O sent MCE photographs showing the location of where the motorcycle would have been parked. They showed that it was parked in an underground car park.

In March 2019, MCE wrote to Mr O informing him that he had breached his duty as a customer under the Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA). This was because when Mr O took out the policy, he said the motorcycle would be parked in a garage. The photos however showed that it was parked in a secure underground car park. MCE therefore decided to void the policy from inception, retained all paid premiums and refused the claim as it was entitled to do so under the Act. It explained Mr O had made a qualifying misrepresentation which it deemed to be deliberate or reckless. This meant the policy would be treated as if no cover had been in place at any time and any claims made would also not be covered. MCE added that had the question been completed correctly by Mr O, the premium on the policy would have increased.

Mr O was unhappy with MCE and referred his complaint to this service. Our investigator looked into the complaint and didn't uphold it. She thought under CIDRA the misrepresentation Mr O had made was qualifying and was deliberate or reckless. This meant that MCE was entitled to void the policy, not return the premiums and not pay the claim.

As he didn't agree, Mr O asked for an ombudsman to make a decision. So the complaint has been passed to me.

In summary Mr O says he believes the underground garage in his case has a designated space and is secured electronically by a gate. He believes that MCE is making this purely about semantics and is using this as an excuse to decline the claim.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
In doing so, I also need to take into account relevant law and regulations, guidance and standards and, where appropriate, what I consider to have been good industry practice at the time.

Because the policy in question was entered into after 6 April 2013, the relevant law I have to consider is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Under this legislation, a consumer has a duty to take reasonable care not to make a misrepresentation when applying for or renewing insurance. The law sets out a number of considerations which include that insurers should ask clear and specific questions about

facts they consider to be material to the risk under proposal. An insurer only has a remedy against consumers if they breached their duty of reasonable care and there was a 'qualifying misrepresentation', i.e. one which adversely affected the insurer's ability to assess the risk. And the insurer's remedy will turn on whether the qualifying misrepresentation was deliberate or reckless, or merely careless (in which case there may be a more proportionate remedy than voidance depending on what would have happened without the misrepresentation). The burden of proof lies on the insurer who's alleging breach of duty/misrepresentation.

So taking the above into account and to show the policyholders had deliberately not disclosed relevant information to the detriment of its underwriting, MCE first has to provide evidence that a clear and specific question was incorrectly answered in breach of the duty of reasonable care; and this adversely affected the risk it was proposing to cover.

In other words, MCE has to provide evidence to show:

- What question was asked;
- What answer was given; and
- The answer given was incorrect.

When he took out the policy, Mr O completed questions with an online comparison site and answered these relating to the proposed risk of insuring the motorcycle. I've seen information provided by MCE which shows Mr O completed answers to questions on the comparison website relating to where the motorcycle would be parked.

The question asked was '*where is the bike kept overnight?'*

The choices Mr O had when he completed the question were as follows:

- *Garage*
- *Public Road*
- *Drive*
- *Car Park*
- *Locked Compound*
- *Private Property*

And, Mr O completed the question by saying the bike would be kept in a garage. While I appreciate Mr O believes that by saying he parked the motorcycle in a garage, it's purely a case of semantics and he believes parking in a garage to be the same as parking in a secure underground car park with electronic gates. I've considered this point and while I acknowledge that might be what Mr O's understands, I'm afraid I don't agree the two definitions to be the same.

I think the question Mr O was asked was clear and the options had been clear enough in order that Mr O could have chosen the correct answer from those. Based on the question asked, I think Mr O answered it incorrectly. The closest option was *"locked compound"* but he chose *"garage"*. As such, I think Mr O breached his duty of reasonable care and this affected the risk that MCE was proposing to cover. I therefore think the risk was misrepresented and it was a qualifying one.

I've also looked at what the policy documents said. The key facts document which provides some of the key points relating to the policy specifically refers to what a garage is and what it isn't.

Under the section "ARE YOU SURE YOUR VEHICLE IS GARAGED?" it states:

> "*If we do not believe that where you keep your vehicle can be classed as a garage, you will not be able to make a valid claim. Please check with us if you are unsure.*
>
> *A Garage IS:*
> - *A locked structure for housing motor vehicles constructed of brick, concrete, steel or stone which is your private property.*
>
> *A Garage is NOT:*
>
> - *A rented/owned space in a shared car park*
> - *A parking area in/under flats*
> - *Any form of locked compound*
> - *Any building not built for housing motor vehicles such as a home or a workplace"*

The same document states in Section 1 – Loss or Damage:

> *"If you have stated that your motorcycle will be garaged, and a theft or attempted theft occurs within the proximity of the declared garaging address, we may:*
> *- Double the policy excess that applies, and impose an additional premium of £110.*
> *- Not pay the amount for theft or attempted theft."*

I think the above document is clear enough in highlighting the summary points of the policy and to have prompted Mr O to check whether the motorcycle is garaged but it also goes on further to say if he's unsure, he should check with MCE. Based on the above, an underground parking area isn't considered to be a garage.

In his submissions, Mr O has told us the motorcycle was parked in a secure underground car park with electronic gates. I think the closest choice he had to the question about where the motorcycle would be kept overnight was *"locked compound".* Even if he was in any way confused between which answer to opt for, I would've expected him to check his interpretation of the options with MCE. I can't see that he did do that.

Additionally, there was a specific endorsement on the policy schedule which said:

> *"MCE5 Garaged Vehicle Clause, increased Excess*
>
> *You have agreed that you will keep your motorcycle in a locked garage or building either at your home address or an address declared and specifically agreed by us when your motorcycle is not being used.*
>
> *A Garage is a locked structure for housing motor vehicles constructed of brick, concrete, steel or stone which is your private property. It is not a rented or owned space in a shared car park, a parking area in/ under flats, any form of locked*

compound, any building not built for housing motor vehicles such as a home or a workplace.

If a theft or attempted theft of your motorcycle happens within the proximity of your home address or the garaging address when your motorcycle is not in a locked garage or locked building, we will double the theft excess. There will also be an Additional Premium of £110.00. Or not pay the amount for theft or attempted theft."

MCE's argument is that Mr O has knowingly given incorrect information about where the motorcycle would have been parked overnight. And having considered the policy schedule Mr O received from the insurer which notified him of the endorsement together with the key facts document, I'm not persuaded that he took reasonable care in correctly answering that question. So, on balance, I'm persuaded Mr O did make a misrepresentation and breached his duty to take reasonable care.

As I've already indicated above, CIDRA details that an insurer has a remedy against a consumer (Mr O) where the consumer has made a misrepresentation in breach of the duty to take reasonable care, and the insurer shows that, without the misrepresentation, it wouldn't have entered into the contract at all (or would have but on different terms). Such a misrepresentation is referred to as a 'qualifying misrepresentation' and is either i) deliberate or reckless, or ii) careless.

A qualifying misrepresentation will be deliberate or reckless under the Act if the consumer knew the information they provided was untrue or misleading or did not care whether it was untrue or misleading – and knew that it related to something relevant to the insurer or didn't care whether or not it was relevant. Otherwise, the misrepresentation is just treated as careless.

I've looked at the underwriting criteria that would have been applicable at the time Mr O took the policy out. This confirms that had Mr O correctly told MCE the motorcycle was going to be parked on a driveway, it would have increased the premium for cover.

Having reviewed the available evidence, I'm more persuaded Mr O made a deliberate misrepresentation rather than a careless one. I say this because I don't think the question posed to Mr O about where the motorcycle would be parked overnight was unclear or misleading. While he says it's purely about semantics, I don't agree. There is a clear distinction between a garage and secure underground car park with electronic gates.

Ultimately, Mr O has found himself in this position by materially misrepresenting where the motorcycle would have been stored overnight. He had a duty of reasonable care to ensure he fairly presented the risk to MCE but failed to do so. It's not unreasonable for MCE to void the policy. That's the appropriate remedy for a deliberate or reckless misrepresentation.

Voidance means the policy is treated as though it never existed, so it follows no valid claim can arise under it and also premiums would not be refunded to Mr O.
I appreciate this will be very disappointing to Mr O. But I don't think MCE has acted unreasonably or unfairly in all the circumstances and bearing in mind its strict legal rights under CIDRA.

I've also considered the evidence MCE provided when another of his motorcycles was stolen in the previous year. At that point while the claim was accepted, MCE made Mr O aware that he had made a misrepresentation on the same question. However, on that occasion, as the

policy hadn't been affected by answering the question incorrectly, MCE decided to pay the claim. So, in other words, Mr O had been made aware that he had incorrectly completed the same question in the previous year. As such, I would have expected him to think carefully about his answer the following year, when he took the policy out, knowing that the previous year he had completed it incorrectly. At the very least, he ought to have sought clarification from the insurer. I've not seen anything to show that he did do this.

On balance, in the circumstances of this complaint, I'm satisfied the qualifying misrepresentation was deliberate or reckless and not careless. It follows therefore that it's reasonable and fair for MCE to void the policy, keep the premiums Mr O paid and decline to pay the claim. I don't think MCE needs to do anything further.

my final decision

For the reasons given above, I'm not upholding Mr O's complaint against MCE Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 August 2019.

Nimisha Radia
Ombudsman