

complaint

Mr D has complained that MCE Insurance Company Limited unfairly rejected a theft claim he made under his motorcycle insurance policy.

background

Mr D bought a motorbike insurance policy with MCE through a comparison website in June 2017. In May 2018 he made a claim as his bike was stolen.

MCE discovered that Mr D kept his bike in an underground car park overnight. It said because Mr D said his bike was kept in a garage overnight, he'd deliberately misrepresented the facts when he bought the policy. So MCE decided to cancel his policy as if it didn't exist, reject Mr D's claim and keep the premium he paid.

In February 2019 our investigator thought MCE had acted unfairly. He agreed that Mr D had misrepresented where he kept his bike overnight. But he didn't think Mr D had done so deliberately. He thought Mr D had been careless when he applied for the policy. The premium and excess Mr D would have paid if he'd selected 'car park' would have been higher. So the investigator thought MCE should deal with Mr D's theft claim on a proportionate basis. He recommended MCE pay a percentage of the total claim equal to the percentage of premium Mr D actually paid. And he thought it was fair for MCE to deduct the correct higher excess from the settlement it paid Mr D for his theft claim.

Mr D accepted the investigator's view. MCE didn't agree. It said Mr D deliberately misrepresented the facts, so it correctly avoided his policy.

So the case has been passed 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 a complaint arises from non-disclosure of information important to an insurer, we look to see that it asked a clear question when the policy was taken out. We check that the information given would affect whether a policy was offered or its terms. And we check whether the policyholder has taken reasonable care to provide accurate information. If not, we consider whether they did so deliberately, recklessly or carelessly. MCE said that Mr D deliberately misrepresented the facts in order to buy his policy. MCE has placed reliance on the terms of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) and I have taken account of the Act.

MCE has provided a screenshot of the key question Mr D was asked about where he kept his bike overnight when he applied for the policy. The options Mr D had to choose from included garage, car park and locked compound. Mr D chose 'garage'.

Mr D kept his bike in a communal underground car park overnight. I think Mr D was asked a clear question, but he didn't choose 'car park' which I think was more closely suited to where he kept his bike. So I think Mr D misrepresented the facts here.

Mr D's policy documents also set out MCE's definition of 'garage'. So I think MCE gave Mr D a further opportunity to check if the location of where he kept his bike overnight met the definition under the policy.

MCE said it emailed Mr D along with other consumers in April 2018 to clarify its definition of 'garage' in more detail and to give them the opportunity to contact it if they were in any doubt. It said Mr D opened the email several times. So it said this supports its view that Mr D deliberately misrepresented the facts – as he was aware of the definition and didn't contact MCE in April 2018.

But I don't think it's fair or reasonable for MCE to rely on this email. I think it was for MCE to be clear about its definition when Mr D bought the policy. And from its records, Mr D opened the email once in April 2018. He then opened the email again after he made his claim to MCE. I don't think this shows that Mr D acted recklessly when he applied for the policy.

Mr D said he kept his bike parked securely between his car and a concrete wall in a residential gated security patrolled underground parking lot with CCTV. He's very unhappy that MCE decided he deliberately misrepresented where he kept his bike. Mr D said he believed 'garage' was the most suitable description for his location. He said he's chosen MCE as his insurer for the past seven years.

MCE needs to show that Mr D acted in a reckless or deliberate way when he answered the question about where he kept his bike – in order to reasonably decide to cancel his policy as if it never existed and keep the premium he paid. Having considered Mr D's reasons for choosing 'garage' as the overnight location, I don't think he answered the question knowing his answer to be untrue – or that he didn't care if it was misleading or not. I think he should have given more care to his answer.

So in line with CIDRA, I think MCE should apply a proportionate approach in this case. MCE has provided us with two quotes to show the difference in premium Mr D would have paid if he'd chosen 'car park'. So we know that MCE would have offered Mr D a policy – but on different terms. I therefore think MCE should deal with Mr D's theft claim in line with the investigator's recommendation.

my final decision

My final decision is that I uphold this complaint. I require MCE Insurance Company Limited to deal with Mr D's theft claim by paying a proportionate settlement as a percentage equal to the percentage of premium he paid for the policy. I think it's fair for MCE to deduct the correct higher excess based on the 'car park' location from the settlement it pays Mr D.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 September 2019.

Geraldine Newbold
ombudsman