

## **complaint**

Mr M has complained that MCE Insurance Company Limited unfairly cancelled his motorcycle insurance policy as if it didn't exist and refused to deal with his theft claim.

## **background**

Mr M renewed his motorbike insurance policy with the insurer MCE via an online comparison website in October 2017.

In July 2018 he made a claim to MCE as his bike had been stolen. MCE said Mr M had deliberately misrepresented where he kept his bike while at home. So it didn't deal with his claim and it cancelled his policy as if it didn't exist. MCE kept the premium Mr M had paid for the policy.

MCE said that Mr M obtained quotes online using both the option of 'car park' storage overnight and 'garage' storage. The cheaper quote was garage parking as this was deemed more secure – but MCE said this didn't accurately describe where Mr M kept his bike. MCE said its policy clearly sets out the definition of garage storage. As Mr M chose the cheaper quote, MCE believed the misrepresentation was deliberate and reckless.

MCE said it sent Mr M an email in April 2018 which he opened. This clarified the definition of storage even further – and so it said Mr M had the opportunity to check with MCE that his insurance covered his circumstances. It gave him a further opportunity to contact MCE to check he was insured. As he didn't act on the email, MCE said its decision was correct.

Our investigator thought MCE hadn't acted reasonably. Mr M spoke to MCE a few days before he bought the policy online. When asked, Mr M said he kept his bike in a garage underneath a block of flats. The investigator thought MCE had the opportunity to ask Mr M further questions or clarify its definition of a 'garage' and other storage options. But the agent didn't do this. Even though Mr M didn't buy his policy during this call, the investigator thought it was obviously something Mr M was aware of when he bought the policy through MCE online a few days later. In other words, Mr M wouldn't have thought there was anything wrong in stating his bike was kept overnight in a garage. So the investigator didn't think Mr M had deliberately misrepresented where he kept his bike.

Even though Mr M had opened the email MCE sent in April 2018, the investigator didn't think this was enough for MCE to say Mr M had acted recklessly.

So the investigator recommended MCE do the following:

- Consider the claim and settle it in full if there are no other policy terms that prevent this.
- Provide Mr M with a pro rata refund of his premium.
- Pay Mr M £200 for the distress and inconvenience caused by having the policy voided.
- Remove any adverse information from any databases that the voidance has been reported to and;
- Provide written confirmation of this.

Mr M accepted the investigator's findings. MCE didn't agree. 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 policy has been cancelled due to misrepresentation, we look at the Consumer Insurance (Disclosure and Misrepresentations) Act 2012. This is the act that applied to Mr M's policy and what MCE should follow when reaching its decision.

To decide if there is a qualifying misrepresentation, we consider two things: did the consumer take reasonable care not to misrepresent? And secondly, how clear and specific were the insurer's questions?

MCE rejected the investigator's view because it believes Mr M's actions – obtaining quotes online for both garage parking and car parking – shows he deliberately misrepresented where he parked his car. But I think the phone call Mr M had with MCE on 5 October 2017 – five days before - makes a difference in this case.

The agent called Mr M as his renewal date was approaching and he provided a quote. The agent asked Mr M where he parked his bike overnight. Mr M said he parked it in a garage underneath a block of flats. The agent then asked Mr M what the garage was constructed of and gave him a list of options. Mr M said the garage was constructed of brick.

I haven't seen anything to show me what additional guidance or explanation Mr M was given when he answered this question during his online application. The policy booklet MCE sent to Mr M after he bought the policy gives a definition for a garage as follows:

*"A locked structure for housing motor vehicles constructed of brick, concrete, steel or stone which is your private property. It is NOT (MCE's capitals)  
A rented or owned space in a shared car park  
A parking area in/under flats."*

While I think the definition of a garage is clear here, I think the description Mr M gave during the phone call with MCE should have prompted the agent to make further enquiries with him. Even though Mr M didn't take up the policy during this call, I think it made a difference. The agent didn't clarify – given Mr M's description of the garage as being underneath a block of flats – that it might not meet MCE's definition of a garage. I think it was the agent's responsibility to be clear here.

MCE said the price and excess when Mr M chose car parking was much higher than garage parking. And so this indicates that Mr M deliberately chose the cheaper garage parking option in order to buy the policy.

However when Mr M called MCE it initially gave him a quote of £980 for garage parking. The agent offered a £100 discount later in the call, bringing the price to £880. Mr M said he was hoping it would be less than this, so he decided not to take up the policy in this call. This was with an excess of £950.

MCE has provided further quotes to show the difference in online quotes ranged between £692.59 (for garage parking) with an excess of £950 and £1000.41 (for car parking) with an excess of £2,000. MCE said Mr M actually paid £745.88 for his policy with garaged parking and an excess of £950.

But I think this also shows that there was a significant difference between the garage parking quotes MCE provided in a call - and online. The difference was between £692.59 and £980. And so I don't think the difference MCE has highlighted is enough to show that Mr M acted in a deliberate or reckless way by choosing garage parking – as there was a significant difference between quotes Mr M obtained for the same parking option.

The broker acting on behalf of MCE sent Mr M an email in April 2018 clarifying its definition of parking. I think this was an email MCE sent to a number of customers. It said in the email that if Mr M wasn't sure if he was adequately insured, he should contact MCE. While I think the email was clear, I don't think it makes a difference here. I don't think it's fair to rely on an email MCE sent six months after it sold a policy to Mr M as evidence he acted recklessly.

So I agree with all but one of the investigator's recommendations to put things right. If MCE meets Mr M's total loss claim, this means Mr M owes the full year's premium as his contract of insurance is for a year. So I don't think Mr M is entitled to a pro rata refund. The investigator has since explained this to both parties.

I think MCE's decision has caused Mr M unnecessary distress and inconvenience. For this I think it should pay him £200 compensation.

### **my final decision**

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

- Consider Mr M's theft claim and settle it in full if there are no other policy terms that prevent this.
- Pay Mr M £200 for the distress and inconvenience MCE caused by voiding his policy.
- Remove any adverse information from any databases that the voidance has been reported to and;
- Provide Mr M with a letter confirming this.

MCE Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If MCE Insurance Company Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M 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 M to accept or reject my decision before 21 February 2019.

Geraldine Newbold  
**ombudsman**