

## **complaint**

Mr A has complained about Markerstudy Insurance Company Limited's handling of his motorbike insurance policy.

Reference to Markerstudy includes their agents.

## **background**

Mr A took out insurance for his motorbike with Markerstudy in September 2017. Markerstudy said one of the conditions was that the motorbike had to be kept in a locked garage at all times it was within 500 metres of Mr A's home.

Early in the morning on 22 October 2017, the motorbike was parked outside Mr A's home address on the street when it was stolen. Mr A claimed on his policy. After investigating Markerstudy didn't pay his claim and they voided the policy, which means they ended it as though it never came into effect. They said Mr A was responsible for careless misrepresentation, because when taking out the policy although he told them he would keep the motorbike in a locked garage, he didn't actually have access to a garage so he couldn't keep it there.

Mr A didn't agree with the decision so he complained. But Markerstudy didn't change their decision. Mr A didn't think that was fair so he brought his complaint to us. Two of our adjudicators looked into the complaint. They felt that Markerstudy's decision was reasonable. As Mr A didn't agree with our adjudicators, the complaint 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. I appreciate this will be disappointing for Mr A, but I'm not going to uphold his complaint. I'll explain why.

In his complaint, Mr A has made a number of detailed points and I've considered all those carefully. But, in this decision, I will focus on what I consider to be the key issues. My role is to decide if Markerstudy have dealt with Mr A in a fair and reasonable way.

Markerstudy have said that what Mr A did amounted to, what is known in the insurance industry, a careless misrepresentation. And there's specific legislation - the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) – that sets out what insurers may do in such a situation. It says that insurers may avoid the policy and refuse all claims if they wouldn't have provided cover had the correct information been given by the policyholder when applying for the policy. Where that happens the insurer must return the premium. In Mr A's case, Markerstudy have shown me information that confirms they wouldn't have insured Mr A had they known his motorbike wouldn't be kept in a locked garage.

To decide if it was fair for Markerstudy to say that Mr A had made a misrepresentation, I have to consider if Markerstudy asked Mr A a clear question; what Mr A's answer was; and whether the answer was incorrect. The issue in this complaint is about where Mr A kept his motorbike. The policy was taken out over the phone. The call was in two parts and was recorded. Markerstudy have provided us with the recording of the second part of the call, but they haven't been able to provide the first part as I understand it couldn't be located. But Markerstudy have provided us with a transcript of the call. According to the transcript, the relevant part of the discussion was as follows:

Markerstudy: *"...and where do you keep it when not using it?"*

Mr A: *"in the garage"*

Markerstudy: *"Yep and I've got that saved as a concrete garage at the home address locked at all times is that right?"*

Mr A: *"Correct"*

I've listened to the second part of the call and the call handler said:

*"you have agreed you'll keep your vehicle in your private locked garage or building at your home or deferred garaging address to which only you or anyone with your permission have access. Theft or attempted theft of the vehicle happens at anytime and within a 500 metre radius of your home and/or deferred garaging address when the vehicle is not locked in this garage or building we will not pay the claim..."*

Markerstudy then sent or made available through their portal various documents to Mr A. Those documents included the policy schedule, certificate, the Key Facts and the Statement of Insurance. During the call Mr A had specifically asked about having access to the portal where all his documents would be stored.

The Key Facts document said the following:

*"If you have declared your motorcycle as garaged, you must keep it in your private locked garage or building, to which only you and anyone with your permission have access."*

*"For a structure to qualify as a garage it must be a private lockable building or shed, to which only you and anyone with your permission have access."*

The policy schedule had the following endorsement:

*"E434 EXCLUDING THEFT WHEN NOT IN PRIVATE GARAGE AT HOME OR DECLARED GARAGING ADDRESS - You have agreed that you will keep your vehicle in your private locked garage or building, at your home and/or declared garaging address, to which only you and anyone with your permission have access. If a theft or attempted theft of your vehicle happens at any time and within a 500 metre radius of your home and/or declared garaging address when the vehicle is not locked in this garage or building we will not pay the claim."*

Mr A's position, as I understand it, is as follows: (1) without the recording of the first part of the call, a conclusion that Markerstudy asked him a clear question couldn't be reached; and (2) He did in fact keep his motorbike in a locked garage. So he said there is no "qualifying misrepresentation" therefore Markerstudy's voidance of the policy was unreasonable.

Mr A said that the garage where he kept his motorbike was underground and secure. It was under the building, which appears to be a block of ground floor houses and flats above. Mr A accepts that the garage was used by other occupants in the adjoining properties and I understand there are allocated parking spots for individual occupants. I have seen two photographs provided by Mr A. The entrance to the underground car park has a large steel door that covers the whole of the entrance and access is gained by a security device like a key fob or card. Mr A said although others also used the car park, it still fell into the dictionary definition of "private" as it was for the exclusive use of only a group of people, namely the occupants of the building.

Mr A said that when taking out the policy he told Markerstudy that while he didn't have an official parking spot in the garage, he was able to leave his motorbike inside the garage in an unused corner until he got a designated spot. He said that as a result of his discussion with Markerstudy, they concluded "*the bike was stored in a private, secured, enclosed garage*". I'm therefore satisfied from the transcript of the first part of the call; the second part of the call; and from what Mr A has said, that he was asked where he kept his motorbike. And I'm satisfied from the evidence that Mr A's answer was that he kept it in a locked garage. I have to now consider whether or not Mr A's answer was incorrect.

One the same day of the theft a message was posted on Facebook saying "*My bike stolen in London last night keep a look out any info appreciated Reg ...*" It also attached two photos of Mr A's bike. The message was posted from a Facebook account that had two names, neither of them were Mr A's names. But the second name was Mr A's surname spelt backwards. Mr A has said that isn't his Facebook account as he doesn't have one. He also said he didn't post that message. But he did say he "*left the task to a friend and he posted up notices on various groups to garner as much interest as possible.*" On 23 October 2017, Mr A forwarded a screenshot of that posting, together with others, to Markerstudy which said "*The missing bike is posted on many groups, this is one of them, see screen shot attached. I will send more...*"

A few days later the following message was posted from the same Facebook account as before on a group called "The UK Motorcycle Theft Protest":

*"Good evening all, I need some advice please, my bike was stolen last Sunday. I left it outside the property to prep it for a ride at 6am, and it was stolen at 6.30am, I was between changing insurers at the time and I told them it would be kept in garage, unfortunately I didn't get round to sort the garage with building manager due to work commitments at the other part of the country. The insurance has a clause E434- EXCLUDING THEFT WHEN NOT IN A PRIVATE GARAGE AT HOME OR DECLARED GARAGING ADDRESS. I have started the claim process and provided them crime ref number, keys and service book and original invoice. I'm insured with [] and the broker is Markerstudy. The bike is worth £21k and while all this, I have sent the original invoice or the agreed value. They have asked for garage pics, I didn't keep it in the garage due to circumstances above. I assumed I was going to get it sorted before work change and before the theft happened. Do I send the garage pics they wanted although I haven't had time sort it and get the permit and do I stand a chance with a pay-out or have I lost my bike and also not get pay-out?"*

Mr A has accepted the message related to his situation, although he doesn't accept he posted it or that the account was his. He also said that the message has been taken out of context by Markerstudy. Markerstudy have interpreted the message as Mr A admitting that he didn't keep his motorbike in the garage as he hadn't been able to get permission to park

there; and that when taking out the policy he told Markerstudy his motorbike would be kept in the garage while at the time he hadn't yet arranged that. I can understand why Markerstudy interpreted the message in that way.

While Mr A distances himself from that Facebook account, given the detailed and accurate information contained in the message (even the text written in capital letters is identical to the wording used in the policy schedule, which is also in capitals letters) I don't think the friend he mentioned would have been able to include those details without Mr A's input. I can't say for certain who wrote the message but, like the earlier one, it was written in the first person: "*I need...*", "*my bike was stolen...*", "*I told them...*" Had it been a friend writing the message I would have expected words to the effect of "my friend's bike has been stolen" and "he said...". I also note that as far as I'm aware, Mr A didn't offer the details of that friend to Markerstudy to verify his account. So on the balance of probabilities I think it was written or dictated by Mr A.

Mr A accepted that he was first alerted by Markerstudy that there was an issue with his claim on 8 November 2017, he said "*I was not aware of any issues with this claim when sending these emails until the 8th of November 2017*". But given the Facebook message appealing for "*advice*" was only a few days after the motorbike was stolen on 22 October 2017, Mr A was clearly concerned that his claim might not get paid, even before he was alerted by Markerstudy. That message also shows that Mr A was aware the motorbike had to be kept in a garage.

During the second call Mr A had with Markerstudy when taking out the policy, after the call handler told him he had to keep the motorbike in a locked garage, he asked for a new premium quote on the basis of him keeping his motorbike parked outside on the road. He was told by the call handler that he wouldn't be insured unless he kept the motorbike inside a garage. He then asked what would happen if it was stolen while it was parked outside his house to which the call handler replied saying the claim wouldn't be paid. The call handler then again clarified that the motorbike would have to be inside the garage when within 500 metres from his home address. Mr A in response then asked the following question:

*"out of interest, how would they check, would they actually send someone down to look at the garage and how it happened and what happened and what not?"*

In other words, he was asking how Markerstudy would investigate in the event of his motorbike being stolen while not in the garage. The call handler responded by saying she didn't really know as she didn't work in the claims department. If Mr A had access to a locked garage and he intended to keep his motorbike parked inside it, I find his request for a quote to park the motorbike outside and his query as to how the insurer would investigate a theft of the bike outside the garage unusual, unless Mr A intended to leave the bike outside his house.

I have seen correspondence Mr A provided showing his efforts with the estate management in order to get a designated parking spot inside the underground garage. I can see that his efforts to get a parking spot started well before he took out the policy with Markerstudy and continued well after the theft and the voidance. But those show that at the time he took out his policy in September 2017, he didn't yet have a designated parking spot in the garage. And while he told Markerstudy he was keeping the motorbike in an unused corner of the garage, I haven't seen any confirmation from the estate management that he was allowed to do that. And had that been the case, I don't think the Facebook message would have said "*unfortunately I didn't get round to sort the garage with building manager*" and "*I didn't keep it in the garage*" if he was all along parking in the garage, albeit in a corner.

So I think Mr A's answer that he kept the motorbike in a locked garage was incorrect, and that at the time he made that representation he knew it was incorrect. I therefore think it was a qualifying misrepresentation, so Markerstudy's decision to void the policy and not pay the claim was reasonable.

**my final decision**

For the reasons set out above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 4 April 2019.

Mehmet Osman  
**ombudsman**