

complaint

Mr T and his father Mr T senior have complained about MCE Insurance Company Limited's decision to decline Mr T's claim following the theft of his moped. Mr T has a motorcycle insurance policy with MCE.

background

Mr T had parked his moped in a campus car park. When he returned to his moped at the end of the day, he couldn't find his keys. He walked home and came back with his spare keys to drive his moped home. He said he asked at reception each day if any keys had been handed in. A week later he parked his moped in the campus bike park, locked it with the spare keys, activated the steering lock and took his spare keys with him.

A couple of hours later campus CCTV showed two people approach Mr T's moped and steal it. When the police located the moped, it recovered the original key.

The thief was charged and later convicted of the theft. Mr T's moped was damaged as a result of the theft. So MCE arranged for Mr T's moped to be inspected by an engineer. But it decided not to meet Mr T's claim. It said Mr T hadn't taken reasonable care to safeguard his moped after he knew the keys were missing, so its policy excluded cover in these circumstances.

Mr T and his father complained to MCE. But MCE didn't change its mind. So Mr T and Mr T senior brought their complaint to us. The adjudicator who investigated recommended their complaint should be upheld. For MCE to apply its exclusion, it needed to show that Mr T had been reckless. In other words, that he had been aware of the risk and had deliberately courted it.

She looked at a test case and our general approach on these types of cases. The adjudicator didn't think MCE had shown Mr T had been reckless. He'd asked at college reception each day if keys had been handed in. He believed the precautions he took were enough to secure his moped. So she didn't feel MCE had been fair in deciding Mr T had failed to take reasonable care. She recommended it pay Mr T's claim in full in line with the remaining terms and conditions of his policy.

Mr T and Mr T senior accepted the adjudicator's view. MCE doesn't agree that Mr T's actions were enough to secure the moped. So it wants an ombudsman 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. Having done so, I intend to uphold it. There's no dispute that the theft took place. The exclusion MCE relied on under Mr T's policy says:

"You shall at all times take all reasonable steps to safeguard your motorcycle from loss or damage (including the activation of your motorcycle steering lock when left unattended). You shall maintain your motorcycle in an efficient roadworthy condition and we shall have, at all times free access to examine such motorcycle and trailer."

MCE says Mr T failed to safeguard his moped as he made no attempt to change the locks and didn't notify it when the keys were lost.

Mr T senior has confirmed that after his son couldn't locate his keys for his moped, he rode his moped to college the following week. He'd asked daily if the keys had been handed in at reception. He carefully considered leaving his bike and felt it was safe to do so because it is a barrier operated private car park with CCTV and staff patrols. Mr T locked his moped, activated the steering lock, removed the (spare) keys and left his moped in the college bike shed.

Following the test laid down by the Court of Appeal in *Sofi v Prudential Assurance*, an insurer has, in effect, to prove the policyholder has been reckless, in order to apply an exclusion of 'reasonable care'. In this case, I don't think MCE has done so. I think Mr T took what he believed to be reasonable steps to secure his bike. Given the security in place on the campus car park (of which the CCTV recorded the theft taking place) I don't think Mr T deliberately acted recklessly. So I don't think MCE was fair to apply its 'reasonable care' exclusion.

This means I think MCE should settle Mr T's theft claim under the remaining terms and conditions of his policy.

my final decision

For the reasons I've given above, my final decision is that I uphold this complaint and I require MCE Insurance Company Limited to settle Mr T's theft claim under the remaining terms and conditions of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mr T senior to accept or reject my decision before 19 May 2017.

Geraldine Newbold
ombudsman