

The complaint

Mr R complains that West Bay Insurance Plc avoided his motorbike insurance policy after he made a claim following a theft.

What happened

Mr R had an insurance policy for his motorbike. In November 2021 the bike was stolen and he made a claim.

After considering the claim West Bay informed Mr R that it was declining it and avoiding his policy (cancelling it as if it never existed). It said that the motorbike was stolen from a different address than that registered on the policy. And if it had known that Mr R had multiple addresses or that he wasn't storing it in a garage overnight it wouldn't have offered a policy in the first place. It therefore said it was avoiding the policy.

Mr R didn't think this was fair, he said he usually kept the bike at the address he had declared on the policy (address 1) but he had been temporarily living at a caravan at a different address (address 2) while he built a property on that land. He said he had only temporarily stored the bike at address 2 while there were issues with fuel shortages, however as it wasn't his main vehicle he usually stored it at address 1 at all times. He made a complaint to West Bay but it didn't change its position. So Mr R brought it to this service.

Our investigator considered the issues and recommended the complaint be upheld. She said in order for West Bay to fairly avoid the policy, under the relevant law it would have to show that, amongst other things, Mr R was asked a clear question when he took out the policy. And that Mr R failed to answer that question correctly. She said that on considering the screen shot from the website where Mr R purchased the policy, she didn't think what he had been asked was clear. Therefore she wasn't satisfied Mr R had made a misrepresentation and West Bay hadn't acted fairly by avoiding the policy. She therefore thought West Bay should remove any record of the policy avoidance and consider any claims during the policy period. She also thought it should pay £150 compensation to make up for the distress caused.

Mr R accepted our investigator's outcome. However West Bay didn't. It said it would have declined to offer cover if it had known Mr R had two addresses or if it had known the bike wouldn't be stored in a garage overnight. It also pointed to an endorsement in the policy that stated that where a bike isn't stored overnight in a garage close to the policyholder's residence then claims wouldn't be covered. It asked for the complaint to be reviewed by an ombudsman

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

West Bay has said that it considers Mr R to have made a misrepresentation when he took out the policy with it. And that it wouldn't have offered the policy if he had provided correct information.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

West Bay thinks Mr R made a misrepresentation when he provided the address the vehicle was kept at and his own home address. I've looked at the questions Mr R was asked when he took out the policy. First he was asked the following questions:

'Where is the bike kept overnight' to which he selected the answer 'Garage'. He was then asked 'Address bike is kept overnight', to which he provided address 1.

Later in the application there is a section titled 'personal details'. Under this section he is asked for his name and date of birth. Under this it says 'selected address' and the address provided for where the bike is kept automatically pulls through into this space. There is no further detail provided about what is required here. As Mr R entered address 1 in the previous question, this automatically pulled through and he didn't opt to change it.

Based on this, I don't think the application made it clear that the address provided in response to 'selected address' should be the address that the consumer resides at. It doesn't specify that this should be either a personal or correspondence address or that it needs to reflect where the customer resides if it isn't the same place as the vehicle. Instead 'selected address' could reasonably be considered to apply to the address you had selected for the vehicle previously in the application, especially as this is the address that automatically populates. And I don't think it was made clear enough that this address should be different if he is going to reside at an alternative address, even just for a short period of time. Especially considering the importance of this information due to the fact the provision of two different addresses entered in answer to these questions would lead to the application being declined.

Further Mr R has said that residing at address 2 was only a temporary arrangement and he was staying in a caravan while work was completed on a new home that was being built on that land. So even if I had considered the question to have been clear, I understand why he may not have considered the temporary address the appropriate one to provide.

Based on this, as I don't think there was a clear question asked, I don't think it's fair to say that Mr R made a misrepresentation when he took out the policy. And where there hasn't been a misrepresentation under CIDRA West Bay isn't able to take any remedial action. So I don't agree it acted fairly by avoiding Mr R's policy.

I note West Bay has referenced the endorsement in the policy that relates directly to storing the vehicle in a separate place to where you reside. And that this was drawn to Mr R's attention. However this endorsement only relates to policy cover and states that claims will not be covered where this is found to be the case. And it makes no reference to the cancellation of the policy. So I don't agree it's fair for West Bay to rely on this endorsement to avoid Mr R's policy.

For these reasons I don't think West Bay acted fairly and reasonably by avoiding Mr R's policy. I therefore agree with our investigator that it should remove any markers – both external and internal that show a cancellation or avoidance of the policy. And it should

consider any claims that arose in the relevant policy period. I also agree that the avoidance of Mr R's policy will have caused him some distress and West Bay should pay £150 compensation to apologise for this.

It isn't clear whether Mr R had to purchase insurance at a higher premium due to West Bay's avoidance, but if he has West Bay should pay the difference between what he would have paid with it and the new premium to make up for this financial loss.

My final decision

For the reasons I've given, I uphold Mr R's complaint. I require West Bay Insurance Plc to:

- Remove all markers from both external and internal databases that show a policy cancellation or avoidance.
- Consider any claims that arose during the policy period in line with the policy terms and conditions.
- Pay Mr R £150 compensation.
- Pay any difference in premiums Mr R has had to pay due to the avoidance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 February 2023.

Sophie Goodyear
Ombudsman