

complaint

Mr G complains that MCE Insurance Company Limited declined his claim on his motor insurance policy following the theft of his motor bike. He wants it to pay his claim.

background

Mr G's bike was stolen by a potential buyer who tricked him. MCE declined the claim because it said this wasn't covered by the policy and Mr G hadn't done enough to safeguard his bike. Mr G then told the police that the thief had threatened him, which he hadn't mentioned before. He said this changed the crime classification from a theft to robbery. But MCE didn't believe that Mr G had been threatened and so it still declined the claim.

Our adjudicator didn't recommend that the complaint should be upheld. He thought Mr G's change in story meant that one version of events was incorrect. So he thought this put into question Mr G's credibility and he couldn't rely on his testimony. And so he didn't think MCE should accept his claim.

Mr G replied that he didn't think it was necessary to tell the police and MCE at the time he first notified the theft that he had been threatened. He said his priority was to have the police chase the thief. He asked for his complaint to be reviewed by an ombudsman, so it's come to me for a final decision.

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 can see that Mr G wanted to speak to me when I reviewed his complaint. But I think I've enough information from him and MCE to make my decision so I don't think a phone call is needed. In any case, it's so long after the event of the theft that I'd prefer to rely on accounts given at the time as they are closer to the actual event.

Our approach in cases like this is to consider whether the insurer's acted fairly and reasonably and in line with the terms and conditions of the policy.

I can see that MCE first declined Mr G's claim because of an exclusion in the policy that it won't cover theft resulting from fraud, trickery or deception. It also said Mr G was required by the policy to take reasonable care to safeguard his bike from loss.

I think these terms are clearly set out in the policy booklet and I don't think they are unusual. But when an insurer relies on theft by deception to decline a claim, we think it should establish that the consumer wasn't in a position to prevent the theft and whether they voluntarily handed over control of their vehicle. And for MCE to rely on the reasonable care condition, we think it should establish that the consumer realised that there was a risk of theft to his bike and didn't take reasonable steps to safeguard it.

Mr G described the circumstances of the theft to MCE a day after the event. I've listened to the recording of this call and later validation calls. He said he'd transported his bike to an agreed location for the potential buyer to view it.

MCE said this was a three hour journey to an unknown place where Mr G was unaccompanied. But I can't see that it's shown how this is relevant to the theft. From the call, there were other people around at the time. The area was lit. I don't think the fact that Mr G transported the bike some distance is important.

Mr G said he checked the potential buyer's stated address online and was satisfied that it was legitimate. He described the location of the meeting, a lighted end of a street at the address. Mr G described the potential buyer and said he had misgivings at the time. But he still went ahead with the meeting.

Mr G showed the potential buyer how the bike started and rode the bike. He then turned his back and retrieved the V5 registration document from his van. When he returned, the potential buyer asked if he could sit on the bike to test the suspension. The bike didn't need a key to start but the engine was still ticking over. Mr G agreed but told the buyer he couldn't ride the bike as he didn't have a licence for it. However, the buyer put the bike in gear and rode off. Mr G then called the police.

I think Mr G was tricked into handing over control of his bike. But, as I've said above, in order for MCE to rely on theft by deception to decline a claim, it should establish that Mr G wasn't in a position to prevent the theft and whether he voluntarily handed over control of his bike.

From what I can understand, Mr G was close to the bike at the time. This is because he had been talking to the potential buyer and had shown him the V5. He said in the validation call that he was standing next to the bike by the front tyre. So I think he was arguably in a position to deter the theft.

I think it was reasonable for Mr G to let the potential buyer sit on his bike to see if it suited him. But the engine was ticking over. I think, as Mr G later told MCE, he should have flicked the kill switch. And so I think Mr G voluntarily handed over control of his bike. And so I think MCE could reasonably rely on the trickery exclusion to decline the claim

MCE also said that Mr G hadn't taken reasonable care to safeguard his bike. I can see that Mr G was aware of the risk of theft as he checked the location for the meeting. From the phone calls, Mr G had some concerns at the time about the potential buyer. And so I think Mr G could have done more to check the buyer's identity. He could have asked for his driving licence, for example. Or he could have checked with the other people at the scene that they knew the thief.

Mr G allowed someone whose identity he hadn't established to sit on his bike with the engine running. And so I think Mr G didn't take reasonable care of his bike and I think MCE can also reasonably rely on this condition to decline the claim.

After MCE declined his claim, Mr G said he'd been threatened by the potential buyer. He'd previously said the buyer had his hands down his trousers at the time they met. But he now said that he thought he may have been concealing a weapon and he also said the buyer made a verbal threat against him.

I think the change in story throws into doubt Mr G's credibility. This is because he'd described the thief and commented on his appearance but didn't mention being threatened in his first calls to MCE. Being threatened is a significant event. And I think it's most likely that Mr G would have told MCE at the time if this had happened.

So I think it's fair and reasonable for MCE to consider that Mr G changed his story to make his claim succeed. And so I think Mr G's embellishment of his version of events in order to get something he wouldn't have got is sufficient reason to stop the claim being paid.

So I think MCE has fairly and reasonably declined Mr G's claim for the loss of his bike. I don't think it should now deal with his claim.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 January 2020.

Phillip Berechree
ombudsman