

## **The complaint**

Ms F complains that MCE Insurance Company Limited said she'd need to pay a lot more for her policy when she made a claim for damage under her motorcycle insurance policy. She also complains about MCE's valuation of her motorcycle.

## **What happened**

Ms F took out a motorcycle insurance policy with MCE in 2019 through a price comparison website. Ms F was involved in a traffic accident, her motorcycle was damaged and she claimed to MCE. She told MCE that the accident wasn't her fault and it dealt with the claim as a non-fault claim.

MCE said that when Ms F took out the policy she answered the question asked about previous losses incorrectly and didn't declare the theft of a previous motorcycle in 2017. And MCE considered this to be a deliberate/reckless or careless qualifying misrepresentation, which entitled it to charge her an additional premium. MCE deducted the additional premium that it said would have been payable by Ms F for 2019 from the settlement of her claim.

MCE told Ms F that her motorcycle was beyond economic repair and valued it according to two trade guides at £4,332.50. MCE said it calculated the additional premium payable by Ms F for misrepresenting her information at £2,471.55.

Ms F said MCE's valuation was too low and said she hadn't given incorrect information when taking out her policy, but had answered the questions that were put to her through the online application. Ms F brought her complaint to our service.

Our investigator said it should be upheld. She said Ms F was asked about previous claims or accidents, but this question didn't mention previous thefts or losses unless the customer hovers over the question mark. She said that based on the question about claims or accidents Ms F wouldn't have had reason to seek further information as she didn't claim when her motorcycle was stolen in 2017. The investigator thought Ms F took reasonable care not to make a misrepresentation.

The investigator reviewed the valuation amount offered to Ms F by MCE. She said based on the average of three motor trade guides MCE should offer £4,414 for Ms F's motorcycle and should pay this in full.

MCE didn't agree with the investigator and requested an ombudsman's decision. MCE said it understood that Ms F didn't claim for her loss in 2017, but the question put to her still meant the loss should have been mentioned and the law allowed it to apply a higher premium for the policy.

## **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.

### Was there a misrepresentation?

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

MCE thinks Ms F failed to take reasonable care not to make a misrepresentation when she answered the question on the price comparison website about accidents and claims by saying she had not had any claims. It's only when a customer hovers over the associated question mark that further information appears concerning previous thefts or losses and requests this information. Had this been included within the body of the question I would have thought it clearly applicable to Ms F's previous loss. As it wasn't included, I think it quite likely she remained unaware that she was required to disclose her previous loss.

In short, Ms F was able to answer the question without recourse to further information. And consequently, I don't think it was obvious to Ms F that she had to disclose her previous loss. I think Ms F took reasonable care to answer the question that was put to her correctly. This means I do not consider there was a qualifying misrepresentation that would allow MCE a remedy under CIDRA to take any action, such as its proposal to charge Ms F an additional premium for the cover that she has had.

### Valuation of Ms F's motorcycle

Ms F's contract of insurance says the most MCE will pay is the vehicle's market value. MCE describes this as the cost of replacing the vehicle with one of the same make, model, age, mileage and condition by reference to industry publications. This isn't an unusual description and is in keeping with motor insurance industry practice. The fact that Ms F estimates her motorcycle at more than MCE's valuation doesn't mean that's the correct value. Her policy is a market value policy and it's the market value MCE is contractually obliged to pay.

MCE assessed the market value of Ms F's motorcycle by using two motor trade guides, whereas we have been able to obtain three trade guide valuations. We consider these to be accurate for the time of Ms F's loss and I think offer a more accurate average valuation to be applied, albeit that this is only a marginal increase. The guides give an average valuation of £4,414.

Ms F said her motorcycle was fitted with a costly tracking system. However, this is non-transferable and so it was fair for MCE not to return this to Ms F.

CIDRA reflects our long-established approach to misrepresentation cases. Taking everything into account I do not think Ms F misrepresented her information to MCE when

she started the policy and I am satisfied that £4,414 represents a fair market value. In light of all this I don't think MCE acted fairly in treating Ms F's application for her policy as a misrepresentation. Consequently, I think the fair and reasonable outcome to the complaint is for MCE to settle Ms F's claim according to the value of £4,414, without reducing this by applying an additional premium.

### **My final decision**

For the reasons set out above, I've decided to uphold Ms F's complaint. I have not found that Ms F made a misrepresentation and so I require MCE Insurance Company Limited to pay Ms F's claim according to the market value of her motorcycle of £4,414 and not to apply a reduction for an additional premium.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 2 February 2021.

Andrew Fraser  
**Ombudsman**