

## **The complaint**

Mrs B complains that MCE Insurance Company Limited avoided (treated it as if it never existed) her motorbike insurance policy and refused to pay her claim.

## **What happened**

I issued my provisional decision on this complaint in June 2020. Here's what I said.

*"Mrs B took out a motorbike insurance policy with MCE through an online price comparison site. When her motorbike was stolen, she tried to claim on her policy.*

*MCE declined her claim and avoided her policy. MCE said this was because Mrs B had given incorrect information when she bought the policy, about how many years No Claims Bonus (NCB) she had. MCE considered this to be a deliberate or reckless qualifying misrepresentation, which entitled them to avoid her policy and refuse her claim.*

*One of our investigators looked into Mrs B's complaint. He agreed that there had been a qualifying misrepresentation. But he didn't think this was deliberate or reckless – rather, it was careless. So, he thought MCE should consider Mrs B's claim. And if it decided to settle it, they should do so proportionately.*

*MCE didn't agree with our investigator's findings. As no agreement was reached, the complaint has been passed to me to decide.*

## **My provisional findings**

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

*The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumer 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.*

*If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is a qualifying misrepresentation – as described by CIDRA. For it to be a qualifying misrepresentation the insurer has to show it would've 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.*

*If the misrepresentation was reckless or deliberate, and the insurer can show it would've at least offered the policy on different terms, it's entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it wouldn't have offered the policy at all if it wasn't for the misrepresentation.*

*If the insurer is entitled to avoid the policy, it means it won't have to deal with any claims under it. If the qualifying misrepresentation was careless, and the insurer would've charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.*

*MCE has shown that the question Mrs B was asked at the time of sale was "How many years motorcycle NCB?". Next to this there was a question mark, and when hovering the cursor over the question mark the following text appeared: "No claims discount[.] Every year you hold a policy in your own name without making a claim, you build up a no claims discount which saves you money. This proof should be a renewal notice from your previous Insurance Company, or a letter on headed paper from the Insurance Company." And Mrs B needed to select the number of years she had from a dropdown menu.*

*MCE has shown that Mrs B selected "1" here, but Mrs B had never had another motorbike policy before, so she didn't have any NCB. When MCE told Mrs B she gave incorrect information, she said she didn't know what it meant, and that she must've done it by accident. On another call she said she didn't know what it meant, but thought it was something to do with the motorbike. She's also explained that she has difficulty reading as she's dyslexic.*

*I think the question MCE asked was clear. If Mrs B didn't know what NCB meant, she was able to hover the cursor over the question mark to see the definition of it. I accept that Mrs B has difficulty reading. But she could've phoned MCE about anything she didn't understand before going ahead with the application – I think this would've been reasonable in her circumstances. So, I think she failed to take reasonable care not to make a misrepresentation, when she said she had one year NCB.*

*MCE has given evidence which shows that if Mrs B hadn't made this misrepresentation, it would've at least charged her a higher premium. This means I'm satisfied Mrs B's misrepresentation was a qualifying one.*

*But I don't think MCE has shown that the misrepresentation was reckless or deliberate. MCE has said that it was Mrs B's responsibility to make sure the information she gave was correct. And if she didn't understand the questions asked, she could've phoned MCE. MCE also said Mrs B didn't care whether the information provided was correct as she continued to purchase the policy without knowing what she was entering into.*

*For Mrs B to have made a reckless or deliberate misrepresentation, MCE needs to show that Mrs B knew (or didn't care) that the information she gave was untrue or misleading, and that Mrs B knew (or didn't care) that the information was relevant to MCE. I don't think MCE has shown that.*

*MCE's argument that Mrs B failed to take reasonable care is relevant to whether or not there was a qualifying misrepresentation. And I agree that there was. So, the only argument MCE has made about the misrepresentation having been reckless or deliberate is that Mrs B didn't care whether the information provided was correct as she continued to purchase the policy without knowing what she was entering into. But I don't think this means that Mrs B knew (or didn't care) the information was untrue or misleading, or that she knew (or didn't care) that the information was relevant to MCE.*

*Mrs B said she didn't understand the question about NCB. And I accept she has difficulty reading so I don't doubt what she's said about this. While I think this means she didn't take reasonable care not to make a misrepresentation when she didn't ask for help, I don't think this means the misrepresentation was reckless or deliberate.*

*As Mrs B didn't understand the question, I don't think she knew the information she was giving was untrue or misleading. I also don't think Mrs B didn't care whether the information was untrue or misleading as she thought it was something to do with the motorbike. So, I think the misrepresentation was careless.*

*Taking everything into account, I don't think MCE was entitled to avoid Mrs B's policy based on the misrepresentation about NCB. MCE has shown that it would've applied a higher premium if Mrs B wouldn't have made a misrepresentation about NCB. So, as I think the misrepresentation was careless, CIDRA doesn't allow MCE to simply avoid the policy in this situation. Instead, MCE will need to consider Mrs B's claim. And if it decided to settle it, it should do so proportionately.*

*Based on the information provided by MCE, Mrs B received a 27% discount by declaring she had one year NCB. So, it looks like Mrs B paid 73% of the premium she should've paid. That means that if MCE accepts her claim, MCE should pay 73% of the claim value. MCE should also pay 8% simple interest on any settlement from the date of loss until the date of settlement, as Mrs B has been out of pocket as a result of MCE's actions.*

*MCE also needs to remove any record of the avoidance from any internal and external databases. It should also confirm this to Mrs B in writing. She can provide this letter to her current insurer to ask it to confirm if this had an impact on her premium. If she would've been charged a lower premium, it's for her current insurer to refund this, not MCE. But this will cause Mrs B some inconvenience, so I think MCE should pay her compensation for this. I think £150 is fair in the circumstances.*

*If MCE accepts Mrs B's claim, it should also compensate her for the loss of use of her motorbike for wrongly declining her claim. Mrs B has shown us she bought another motorbike a month after the previous one was stolen. She's said that before this, she'd either get rides from family or friends, or she'd use a taxi. For example, she'd go shopping once or twice a week. Mrs B's policy didn't cover commuting, so I don't think MCE needs to pay for the loss of use of her travelling to and from work.*

*Based on everything Mrs B has said, I don't think it'd be fair or reasonable for MCE to compensate Mrs B for loss of use based on a daily rate. Overall, I think £100 is fair compensation for loss of use in the circumstances of this complaint."*

Mrs B received my provisional decision but didn't have anything further to add. MCE responded in more detail. In summary, it said that I hadn't considered its comments fully. MCE referred to an earlier email sent to us where it said – amongst other things – that Mrs B acted recklessly by continuing to purchase a policy after providing information that she was unsure was correct.

MCE also referred to our findings on another complaint at our service which it thought similar to this one, and where MCE had considered the misrepresentation to be reckless. MCE said Mrs B was aware she would likely experience difficulty in reading and understanding the questions asked. So, she acted recklessly by choosing to purchase the policy online, and choosing not to contact the insurer for advice. And by continuing to purchase the policy without regard for the information provided, she didn't care whether she was providing incorrect information. So, MCE still thinks Mrs B made a misrepresentation that was reckless.

MCE also said it sent Mrs B the policy documents on the day of the purchase, and she had a duty to view them within the 14 day cooling off period and contact MCE if any of the details were incorrect.

## **What I've decided – and why**

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

I've thought about everything MCE has said in response to my provisional decision. But these don't change my findings. We consider complaints based on their individual circumstances, and that's what I've done here.

I think most of MCE's arguments are relevant to the question about whether or not Mrs B took reasonable care when answering MCE's questions when she bought the policy – not whether or not she acted recklessly. And I don't think Mrs B took reasonable care when she answered MCE's questions at the point of sale, for the reasons I explained in my provisional decision. So, I think Mrs B made a qualifying misrepresentation.

But I still don't think MCE has shown that the misrepresentation was deliberate or reckless. To do that, MCE needs to show that Mrs B knew (or didn't care) that the information she gave was untrue or misleading, and that Mrs B knew (or didn't care) that the information was relevant to MCE.

MCE says that Mrs B continued to purchase the policy without regard for the information provided, she didn't care whether she was providing incorrect information. But I don't think MCE has given us persuasive evidence to show that. Overall, I still don't think MCE has shown that the misrepresentation was deliberate or reckless, for the reasons I explained in my provisional decision.

I've also thought about what MCE has said about the policy documents it sent to Mrs B after she bought the policy. But I think the key material evidence here is what questions Mrs B was asked at the point of sale, and how she answered those questions. So, this doesn't change my findings either.

## **My final decision**

For the reasons I've explained above and in my provisional decision, I uphold Mrs B's complaint. To put things right MCE Insurance Company Limited should take the following action.

- Consider Mrs B's claim in line with the remaining terms and conditions of the policy. If MCE decides to settle the claim, it should do so proportionately based on the premium Mrs B would've been charged had the misrepresentation not happened. It should also pay 8% simple interest\* from the date of loss until the date of settlement.
- If MCE decides to settle the claim, it should also pay Mrs B £100 in compensation for her loss of use.
- MCE should also remove any record of the avoidance from all internal and external databases. It should confirm this to Mrs B in writing. MCE should also pay Mrs B £150 in compensation for the distress and inconvenience caused for this.

\*If MCE considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mrs B, it should tell her how much it's taken off. It should also give Mrs B a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 4 August 2020.

Renja Anderson  
**Ombudsman**