

The complaint

Mr P complains that MCE Insurance Company Limited wrongly avoided his motorbike insurance policy and retained the premium for it.

What happened

Mr P took a policy out with MCE on 15 March 2020, having completed the application on a comparison website. Mr P says that when he completed the form, he said he had a full driving licence for a bike, as that was what he was hoping to get when he passed his upcoming test. Mr P said he also ticked a box on the same page to declare that he *didn't* yet have a full licence. He says he only wanted insurance to cover the bike against loss by fire and theft whilst it was stored in his garage until he was able to ride it.

The details that transferred to MCE from the website were that Mr P had a full licence which started on the day he applied for insurance. MCE sent Mr P the policy documents, but he didn't check them until around two months later. When he noted that the policy said he had a full licence, Mr P called MCE to point out that was wrong. MCE told him that that it would be avoiding the policy and retaining his premium. It said wouldn't have offered Mr P cover had it known the facts and that he'd misrepresented the situation deliberately or recklessly.

One of our investigators reviewed Mr P's complaint. He said the data he'd seen from the comparison website showed that Mr P had said he held a full licence. The investigator thought the question Mr P was asked about his licence online was clear, and so in his view Mr P didn't take reasonable care in answering it.

The investigator said Mr P could have corrected the errors in the policy documents when they were sent to him. And he thought MCE had shown that it wouldn't have offered cover to Mr P had it known the true facts. He said Mr P had made a 'qualifying' misrepresentation under the relevant law. That meant MCE could retain his premium if it could show he'd acted deliberately or recklessly. But he didn't think MCE had done that. He said he thought Mr P had only acted carelessly, otherwise he wouldn't have told MCE about the error.

MCE said it had sent an email to Mr P a week after the policy started about garaging, and that the email also pointed out that the policy wouldn't cover any claims if someone named on the policy didn't have a valid licence. MCE was able to show that Mr P had opened the email on that date. The investigator still thought Mr P didn't realise he'd misrepresented the facts. He said MCE should return Mr P's premiums back to the date of the avoidance. As there was no agreement, the complaint was passed to me for review.

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.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations Act) 2012 (CIDRA). It says a consumer must take reasonable care not to make a

misrepresentation when taking out an insurance policy. The standard of care is that of a reasonable consumer.

If a consumer doesn't do this, CIDRA says the insurer can take certain action, as long as the misrepresentation is what CIDRA describes as a *qualifying* one. It will be a qualifying misrepresentation if the insurer can show that it would only have offered the policy to the consumer on different terms – or not at all - if the consumer hadn't made the misrepresentation.

CIDRA sets out several considerations for deciding whether a 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 just careless. If it was deliberate or reckless - and the insurer can show that it would at least only have offered the policy on different terms – it's entitled to avoid the policy and not deal with any claims under it. But if the qualifying misrepresentation was only careless, then to avoid the policy the insurer must show that it wouldn't have offered the policy at all but for the misrepresentation.

In this case, Mr P was asked what type of motorcycle licence he had, and he said it was a full licence, although that wasn't correct at the time. I think that was a clear question. An option further down the page was to answer the question "Licence not obtained yet?". Although Mr P told us he answered "No" to this question, it seems that because he'd already said he had a full licence, that was the information that transferred to MCE. We've checked, and if the answer given to 'licence not obtained yet?' is no, then the rest of the boxes on the page can't be completed. That didn't happen to Mr P, as he'd already said he had a full licence.

I don't think Mr P took reasonable care in answering the clear question about the type of licence he held. I don't think most consumers would share his view that it was correct to say he had a full licence on the basis that he intended to have one at a future date, once he'd passed his test. And I think the second question should have alerted Mr P to the fact that there was a problem. He'd already said he had a full licence – but responding correctly to the *second* question was actually the right option for him. If Mr P was confused, I think he could have called MCE for guidance. Instead he assumed his two contradictory answers would somehow convey his situation to MCE.

MCE has shown that Mr P could still have corrected the situation, as he could have checked the policy details when he was re-directed to MCE's website. And it sent him the policy documents shortly afterwards. It also sent him the garaging email, which highlighted important policy details, on 22 March 2020. Under the heading 'Licencing' it said consumers must check that they have the correct licence, as the policy doesn't cover anyone who doesn't have a valid one. MCE can show that Mr P opened the email that day at 3.58 pm but took no further action.

Unfortunately, Mr P didn't look at the policy documents until the policy had been in place for two months. There's always a risk that details on a policy may have been recorded incorrectly, either because a consumer gave the wrong information or because the insurer made an error. So we think it's fair to expect consumers to take reasonable care to ensure the policy details are correct. In this case, had Mr P done that within the 14-day 'cooling-off' period, the policy could simply have been cancelled.

MCE has provided a statement from an underwriter which confirms that MCE wouldn't have offered cover to Mr P on any terms had it known he didn't have a full licence, given the size of the bike's engine. So I think it has shown that the type of licence he held was important to it, which means that Mr P made a qualifying misrepresentation. Whether it was fair for MCE

to void the policy (and keep the premium) depends on whether it can show that Mr P acted deliberately or recklessly – knowing or not caring whether the information he gave it was true and knowing or not caring whether it was relevant or not to MCE.

When Mr P called MCE on 24 May 2020 after finally checking the policy and noting that it showed him as holding a full licence, I think he genuinely believed that MCE already knew he didn't yet have a full licence. Mr P has shown us a copy of a quote he got from the comparison website that shows he said that he didn't have a full licence yet. It isn't clear why that information wasn't passed to MCE. But I can't say it was MCE's fault, as the comparison website told MCE that Mr P had said he had a full licence. And it's also the case that he could have corrected the record well before he contacted MCE.

I don't think MCE has shown that Mr P deliberately or recklessly misrepresented the facts to it. If that were the case, and Mr P was trying to get a financial advantage from MCE, I don't think he would have brought the error to its attention, and it would have remained unaware of it. So I think Mr P only made a careless misrepresentation.

In this situation, I think it was reasonable for MCE to avoid the policy, but in my opinion, it would be fair for it to return the full premium to him (plus interest from the date he paid it) as it would never have covered any claim he made on the policy. We told MCE recently of this proposed change to the remedy set out by the investigator. MCE didn't raise any objection.

My final decision

My final decision is that I uphold this complaint in part. I require MCE Insurance Company Limited to do the following:

- refund Mr P's full premium
- add interest to the sum due, at the simple yearly rate of 8%, from the date of the payment to the date of the settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 April 2021.

Susan Ewins
Ombudsman