

## The complaint

Mr J's complained that MCE Insurance Company Limited ("MCE") declined a claim he made under his motorcycle insurance policy, on the basis that Mr J hadn't given them accurate information about previous claims. And because MCE thought he'd deliberately or recklessly misrepresented the position, they'd voided Mr J's policy.

## What happened

In 2019, Mr J used a comparison website to find motorcycle insurance. Through this, he found the policy with MCE. He was then transferred to MCE's website to buy it. Mr J then had an accident. He contacted MCE to make a claim under his motorcycle insurance policy.

MCE investigated the claim. After about seven weeks, they contacted Mr J to say that they wouldn't be covering the claim. And they'd be voiding his policy, because Mr J had told them when he bought it that he'd not been involved in any accidents claims or losses in the previous five years. In fact, Mr J had made a claim for theft in 2014. And he'd been involved in an accident in 2016.

Mr J complained to MCE about their decision. And he raised two other issues; firstly, that MCE's engineer had decided his bike was a write off and, secondly, that MCE had collected a premium instalment after they'd voided the policy.

MCE considered Mr J's complaint. They said they'd voided the policy because he'd not declared either the theft or the previous accident. And they said that their engineer had inspected the bike and classified it as "*Category B Total Loss*" – meaning it could not be repaired, but parts could be salvaged. MCE said vehicles in this category shouldn't be put back on the road.

But MCE did say that they could've voided the policy sooner – and before Mr J paid a premium instalment. They refunded the instalment and paid Mr J £100 for the inconvenience this had caused him.

Mr J wasn't satisfied with MCE's response. So he brought his complaint about voiding the policy to us. He didn't ask us to consider the other matters he'd raised with MCE.

He told us that he'd not declared his previous claims because they'd related to cars, not a motorbike. And MCE's website had only asked him for his "*riding record*" – and he'd not made any claims relating to his bike. He also said he'd never accepted liability for the accident he'd been involved in and was waiting for the case to go to court. It was only when MCE declined this claim that he found out that case had been settled.

Our investigator considered the matter. He came to the view that Mr J had misrepresented his history to MCE. But he'd done that carelessly, rather than recklessly or deliberately. So he said MCE shouldn't have voided the policy – but they were entitled to only pay out a proportion of what they would have paid in respect of Mr J's claim, because Mr J's declaration had reduced the premium to about a third of what MCE would have charged him.

I didn't agree with the investigator's view. So I made a provisional decision. I thought it was reasonable for MCE to decide Mr J's misrepresentation about the accident had been reckless or deliberate – so they'd been entitled to void his policy.

I said this because the accident had happened in 2016 – well within the five years MCE had asked questions about. And Mr J had explained that he'd thought about whether he should disclose the accident – which satisfied me that he'd considered how to answer the questions and hadn't answered them carelessly.

MCE acknowledged my provisional decision and said they had nothing to add. Mr J asked how MCE could void his policy, but still decide that his bike should be written off. And he was unhappy that MCE had voided his policy, because he said that he'd found out that they'd have insured him if he'd declared the accident – but they'd have charged him a higher premium.

### **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.

Having done that, I'm not upholding Mr J's complaint. I'll explain why.

Mr J's asked how MCE could write off his bike. He raised this with MCE, but not with our service. MCE told him that the categorisation of his bike meant it shouldn't be put back on the road. As I've said above, they have a duty to stop vehicles they believe to be unsafe from being used on the road.

Mr J's said that the bike was written off on an economic basis, rather than because it was unsafe. And he's said that a different inspection has said it shouldn't have been categorised as it was.

Mr J's not sent us any report from the second inspection. Nor has he said he's sent anything to MCE. He'll need to do that if he wants to challenge MCE's categorisation of his bike – so MCE can consider if they've made a mistake. Our service can't look at this unless Mr J does that first – and follows MCE's complaints process if he's not satisfied with how they deal with it. So I'm not going to look at that here.

I explained in my provisional decision why I thought it was reasonable for MCE to have decided Mr J's misrepresentation was reckless/deliberate. Neither MCE nor Mr J have challenged that part of my decision.

But Mr J has questioned why MCE voided his policy. He says that, if he'd declared the accident, MCE would have sold him a policy – but at a higher premium.

I've thought about this. Mr J has based what he's said on the fact he got a later quote, in which he included the accident. The quote sent in by Mr J is more than double the premium he paid. And MCE have sent us evidence which shows that, if they'd known about the accident and the theft, Mr J's premium would've been almost three times as much.

The impact of misrepresentation on insurance contracts is set out in the Consumer Insurance (Disclosure and Representations) Act 2012 – commonly known as CIDRA.

CIDRA 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 must show it would have offered the policy on different terms if the consumer hadn't made the misrepresentation, or not at all.

I'm satisfied in this case it was reasonable for MCE to have decided a qualifying misrepresentation was made. They've shown that they'd only have offered Mr J a policy on different terms – the payment of a much higher premium. And – as I've said above – it was also reasonable for MCE to decide Mr J's misrepresentation was reckless/deliberate.

CIDRA says:

*“If a qualifying misrepresentation was deliberate or reckless, the insurer—*

*(a) may avoid the contract and refuse all claims, and*

*(b) need not return any of the premiums paid, except to the extent (if any) that it would be unfair to the consumer to retain them.”*

There's no requirement that an insurer should offer the policy on the terms they would've done had the misrepresentation hadn't been made. MCE have done what CIDRA allows them to. So I don't think they need to do anything differently.

### **My final decision**

For the reasons I've given, I'm not upholding Mr J's complaint about MCE Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 December 2020.

Helen Stacey  
**Ombudsman**