

## **The complaint**

Mr C complains that MCE Insurance Company Limited (MCE) avoided his insurance policy and refused to settle his claim.

## **What happened**

In April 2020, Mr C called MCE to report the theft of his motorcycle. MCE investigated the claim and found that the motorcycle didn't have an immobiliser as Mr C had said it did when he took the policy.

MCE said Mr C had made a qualifying mis-representation under the Consumer (Disclosure and Representations) Insurance Act 2012 (CIDRA). It deemed the misrepresentation to be deliberate or reckless. So, it avoided the policy and retained his premiums.

Mr C complained about this. He said he'd been provided with a quick reference card when he purchased the motorcycle which made reference to disarming an immobiliser and he'd assumed it had one. He accepted he'd made a mistake but didn't think MCE were treating him fairly. MCE didn't uphold Mr C's complaint. So, he referred it to us where one of our investigators looked into it.

Our investigator agreed Mr C had made a qualifying misrepresentation under CIDRA. But he didn't agree it was deliberate or reckless. Instead he thought it should be considered careless under CIDRA. He said that MCE had provided evidence that it would've charged a higher premium had it known there was no immobiliser. So, a fair resolution would be to pay the claim on a proportional basis.

MCE didn't agree. It said that Mr C had had multiple opportunities to correct the mistake but hadn't done so. It also said that the quick reference guide Mr C had referred to didn't confirm what security features the motorcycle had and referred him to the manual for full features. So, the complaint was passed to me to review and issue a final decision.

I reviewed the file and explained to MCE that I agreed with our investigator that the misrepresentation was careless rather than deliberate or reckless. I explained I also thought that MCE needed to remove any reference of the avoided policy from its own records and any external databases. And I thought it should pay Mr C £300 for the distress and inconvenience of not having use of his motorcycle for so long.

MCE maintained that the misrepresentation was reckless. As we haven't been able to reach an agreement, I've decided to issue a final decision on this complaint.

## **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.

It's not disputed that Mr C was wrong when he told MCE there was an immobiliser on his motorcycle. And I agree this is a qualifying misrepresentation under CIDRA. What I need to decide is whether the misrepresentation was reckless or careless.

We consider the bar for a mis-representation being deliberate or reckless is a high one. And it's for the insurer to prove that it was deliberate rather than careless. On balance, considering everything I've been provided, I don't think MCE has proven it was deliberate or reckless. I'll explain why.

Mr C has provided us with a card which came with the motorcycle which our investigator has provided. This is a quick reference guide for the security systems of the motorcycle. The second point on one side of this card says

*"immobilise only - ignition OFF for more than 45 seconds"*

Whilst I agree this doesn't confirm that an immobiliser is fitted as standard, I can understand why this may have led Mr C to believe there was one. I'm not persuaded there is anything obvious that would've alerted Mr C to knowing there wasn't an immobiliser. MCE has said a red light would flash if the immobiliser was activated. But if Mr C wasn't aware of this, he wouldn't know this meant that there was no immobiliser.

Mr C has been consistent with his testimony to us. He's also provided us with evidence that he spent a significant amount of money on additional security features such as a chain and a fitted tracker for which he pays an annual premium. It seems unlikely that someone who would do this would deliberately mislead an insurer to save money on an insurance policy knowing this could invalidate it. On balance, I think Mr C genuinely believed his motorcycle had an immobiliser.

I've thought about what MCE has said about Mr C not correcting these details when he renewed the policy. But if he was still under the mistaken belief that there was an immobiliser, then he wouldn't have known he needed to and would've assumed he was confirming correct information.

I accept Mr C could've taken more care to check whether there was in fact an immobiliser fitted. But, for the reasons above, I do think it was carelessness, rather than a deliberate or reckless misrepresentation.

Because of this, I think Mr C's complaint should be upheld.

### **Putting things right**

To put things right, I require MCE to:

- Reinststate Mr C's policy and settle Mr C's claim under the remaining terms of the policy on a proportional basis, based on the premiums it would've charged had it known there was no immobiliser.
- Remove any reference of the policy avoidance from its internal records and any external database it may have reported this to.
- Pay Mr C £300 for the distress and inconvenience this matter has caused.

### **My final decision**

I uphold this complaint and direct MCE Insurance Company limited to settle it as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 June 2021.

Rob Deadman  
**Ombudsman**