

The complaint

Mr P complains that MCE Insurance Company Limited proportionately settled a claim he made on his motorcycle insurance policy following the theft of his bike. Reference to MCE includes its agents.

What happened

Mr P took out a motorcycle insurance policy with MCE online. After his bike was stolen, he made a claim to MCE.

MCE said Mr P had answered the question he was asked about his no claims bonus (NCB) incorrectly. And it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid his policy, not deal with his claim and keep the premium he'd paid.

Mr P wasn't happy with this and complained to MCE. He didn't think he'd answered anything incorrectly, and he certainly didn't think he'd answered anything incorrectly deliberately or recklessly.

MCE looked into Mr P's complaint. It said it still thought Mr P had answered the question he was asked about his NCB incorrectly, and it said this was a qualifying misrepresentation. But it said it no longer thought the misrepresentation was deliberate or reckless, instead, it thought the misrepresentation was careless. It said this meant it wouldn't avoid his policy and it would deal with his claim. But it said it was only proportionately settling his claim.

Mr P remained unhappy and brought his complaint to us. He maintained he'd not answered anything incorrectly and thought MCE should deal with his claim in full. He said he wasn't able to travel without his bike and wants compensating for this. He also said he has incurred legal fees in trying to defend himself and wants MCE to reimburse him for these too. And he is worried about the potential impact on his future policies of having to declare he's had a policy avoided.

One of our investigators looked into Mr P's complaint and didn't recommend it be upheld. She understood that Mr P didn't think he'd answered anything incorrectly when he took the policy out. But she thought the evidence provided by MCE was more persuasive and thought it more likely than not he had answered the question incorrectly. She thought MCE had shown us this answer was a qualifying misrepresentation and she thought it was fair it treated it as careless. She thought MCE was entitled to settle Mr P's claim proportionately and didn't recommend it do anything more.

Mr P disagreed and asked for an ombudsman's decision.

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 so, I'm not upholding this complaint. I understand Mr P feels strongly about this case and won't be happy with this answer. I'll explain my reasoning.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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 Mr P failed to take reasonable care not to make a misrepresentation when he answered the question he was asked about his NCB. MCE said when Mr P took the policy out, he said he had five years' NCB, but after he made the claim it found this NCB was for a car not a bike. MCE said Mr P was asked how many years 'bike NCB' he had. And it said on application there was a pop up which clearly explained this NCB needed to be earned on a motorcycle policy and that any NCB earned on a car policy wouldn't be accepted.

Mr P disputes this. He said he was asked about his NCB only. He's said there was no mention of 'bike NCB' or any explanation that NCB earned on a car policy wouldn't be accepted.

There's no dispute surrounding Mr P's answer. Both he and MCE agree he answered the question with "5 years". What is in dispute is what question he was asked.

Both MCE and Mr P have submitted evidence to support their position. Mr P is adamant he never answered anything incorrectly, and that's evidence in itself. But he's also provided screenshots which support his position. In the screenshots he's asked, "*Do you have any No claims Bonus to be used on this policy*". And next to that there's a drop-down box allowing him to choose the number of years he wants to let MCE know about. There's no mention of the NCB needed to be used on a bike policy previously.

But MCE has also provided screenshots of the questions it says Mr P was asked when he took out this policy. These screenshots as Mr P's asked to provide "*Number of years Bike NCB*". There's a question mark next to this question indicating further information to help. And MCE has provided a screenshot of the advice which pops up when this is hovered over. It says: "*Please enter the number of current years UK bike no claims bonus you hold. Your No Claims can only be used on one bike at a time and must have been used on a bike policy within the last three years.*"

So here we have two different questions, and evidence to support both questions being asked. But Mr P took out this policy in May 2020 and MCE has said it updated its website in November 2020. And the 'wayback' machine supports this – although it doesn't show the full journey, it does indicate the website has been updated. The screenshots Mr P has provided were created in December 2020, after the website updated.

I understand Mr P will disagree with me on this point, and I can understand why. I appreciate he says he remembers what he answered, and I don't disbelieve what he remembers. But I'm conscious that what someone remembers isn't always exactly what happened. I think it's

more likely than not that he was asked the questions MCE has provided us with. I'm more persuaded that's the case based on the evidence provided.

And based on the questions MCE has provided, I think MCE are acting fairly and reasonably when saying he failed to take reasonable care. This question clearly says the NCB must have been used on a bike policy, and Mr P's wasn't, it was used on a car.

MCE has provided evidence from its underwriting criteria to show that Mr P was given a discount for saying he had five years' NCB that he wouldn't have been given had he said he's had zero years' NCB.

This means I'm satisfied MCE has shown Mr P failed to take reasonable care not to make a misrepresentation when he answered the question about his NCB. And I'm satisfied it's shown us it would have acted differently had that misrepresentation not been made. This means I'm satisfied Mr P's misrepresentation was a qualifying one.

MCE has treated Mr P's misrepresentation as careless. As that's the most favourable outcome for Mr P, I'm not going to interfere with that decision.

As I'm satisfied Mr P's misrepresentation should be treated as careless, I've looked at the actions MCE can take in accordance with CIDRA.

MCE has shown it would have entered into a contract with Mr P had he not misrepresented the number of years' NCB he had. As it's treated his misrepresentation as careless it must still deal with his claim in line with the policy terms and conditions. But it may settle this claim proportionately. And that's what it's done in this case, so I'm satisfied that's fair and reasonable.

Mr P is worried he has to let other insurers know he's had a policy avoided. But to be clear, this policy ultimately wasn't avoided. It was initially, but MCE agreed this decision was incorrect.

I've considered whether any compensation is due to Mr P for MCE's initial error – of avoiding the policy and refusing his claim. But in this case, I'm not recommending any be given. This is because while I understand Mr P has said he's been without a bike, this is still the case after MCE proportionately settled his claim as he's said the proportionate settlement isn't enough for him to purchase a new one. Had it proportionately settled his claim in the first instance, he'd be in the same position of not being able to afford a replacement bike.

I've also considered whether any compensation is due for the distress and inconvenience caused by first avoiding Mr P's policy before settling his claim proportionately. But again here, in this case I'm not recommending MCE pay any. As set out above I'm satisfied MCE's decision to proportionately settle his claim is fair and reasonable. So, I need to consider whether any distress and inconvenience was caused by avoiding his policy and declining his claim that wouldn't have been caused had MCE said it was proportionately settling his claim in the first instance. I appreciate he wouldn't have had the worry of declaring his policy being avoided, but I don't think this in itself warrants compensation in this particular case. Mr P remains extremely unhappy with MCE's final position, so had it reached that decision first, I think it's more likely than not he'd still have remained unhappy.

And I don't require MCE to reimburse Mr P for any legal fees he's had to pay. We are a free to use service and it's not required to have legal representation to bring a complaint to us. Ultimately, it was Mr P's decision to seek legal representation.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 October 2021.

Joe Thornley
Ombudsman