

## **complaint**

Mr W complains that Zenith Insurance plc wrongly voided his motorcycle insurance policy after he made a claim following the bike's theft.

## **background**

Mr W took the policy out through a comparison website in September 2016. He answered "No" to the question he was asked about whether the bike had any modifications. When Zenith was investigating the theft claim, it says Mr W said he'd had a traction control unit fitted to the bike by the garage he bought it from in 2015.

Zenith said it wouldn't have provided cover to Mr W had it known about the modification initially. It thought he'd been careless in not giving it accurate information. So it voided the policy and returned his premiums.

Mr W said he *thought* the unit wasn't fitted to the bike when he took out the policy. He provided a letter from a motor engineer who said he recalled removing it. Zenith didn't accept the letter from the engineer as an official statement from a garage. And it pointed out that Mr W hadn't said the unit had been removed during the investigation.

Our investigator didn't uphold Mr W's complaint. He said Zenith wouldn't have insured Mr W had he told it the bike had been modified when he bought the policy. Mr W said if the unit was removed in 2015, the bike *wasn't* modified when he took out the policy.

## **my findings**

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

Zenith's file notes show that it asked Mr W about modifications. The file note looks as though one of Zenith's advisors recorded Mr W's reply. He said he'd had a traction control unit fitted to the bike as he travelled a lot. He said he'd declared the unit when he took out the policy. And he said it was fitted by the garage he'd bought the bike from in September 2015.

According to the note, Mr W didn't say anything about having had the unit removed. We asked Zenith to provide a copy of the call. Zenith said the note is Mr W's written reply to a question from it about modifications, so there's no call recording. Either way, I think it's reasonable to rely on what was added to the notes at the time. It was Mr W's comments that led to Zenith believing he may have misrepresented the facts in the first place.

Mr W told us that he thought the unit may not have been fitted to the bike whilst it was insured by Zenith from September 2016. I can see why Zenith had concerns about the letter from the garage, as it doesn't look like a business document. But putting that aside, I don't think the letter's clear about the date the unit was removed.

The bike was bought in September 2015. Mr W said he had the unit fitted around that time. The engineer says he recalls replacing *several* sets of tyres for Mr W in 2015. I think it's more likely that some of that work was done in 2016 rather than within three months. He hasn't actually said when the unit was removed. As the work was a gesture of goodwill, it seems there's no record of it. So Mr W can't be sure when the unit was removed, and I don't think the engineer's letter has assisted him with that.

Looking at all the available information, it's clear the bike was modified. In my opinion there's nothing to show it wasn't still modified when insured by Zenith. If the unit wasn't present at that point, it's inexplicable that Mr W didn't say so when Zenith asked him about it later.

When buying the insurance, Mr W had a duty to take reasonable care when answering clear questions. The comparison website asked if the vehicle was modified, which is clear enough. A note at the side of the question explained that a bike's considered modified if it has been *changed in any way since supplied by the manufacturer*. Mr W said it hadn't.

Based on Mr W's answer, the *Statement of Fact* sent to Mr W by the broker included a declaration that the bike had no modifications. Mr W was asked to review the details set out. He was advised that if any details in the document were wrong, it could lead to the policy being declared null and void. So if the wrong details had been recorded, Mr W could have queried it. As he didn't, Zenith relied on his assurance that the bike wasn't modified.

Zenith's been able to show that its underwriting criteria wouldn't have allowed it to insure a modified bike. As it would never have offered Mr W a policy had it known all the facts, I think Zenith was entitled to treat the policy as though it never existed. Zenith thought Mr W had acted carelessly, rather than deliberately, in giving it the wrong information. So it returned his premiums, which I think was fair.

Taking everything into account, I don't think Zenith acted unreasonably. It made its decision based on the information Mr W had provided. That means I can't uphold Mr W's complaint.

### **my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 October 2018.

Susan Ewins  
**ombudsman**