

complaint

Ms S had complained that MCE Insurance Company Limited didn't pay her motorcycle insurance claim and voided her policy.

Reference to MCE includes its agents.

background

Ms S' motorbike was stolen. MCE turned down her claim for the theft and cancelled her policy as if it had never existed, known as voidance.

Ms S didn't think that was fair and brought her complaint to us. Our adjudicator didn't think MCE had dealt with Ms S fairly, so she said it should:

- Provide Ms S with a letter to say that the voidance was its mistake; so that she could pass this to her motor insurers in order that they could recalculate any premium(s) affected by the voidance. If the motor insurers involved refused to recalculate a premium, on receipt of appropriate evidence, he said MCE should refund Ms S any additional premium she'd paid as a result, together with 8% simple interest.
- Remove the voidance from internal and external databases and write to her to confirm it had done so.
- Settle the claim for the theft of her bike and add simple interest to that settlement.
- Pay Ms S £250 to address her distress and inconvenience.

MCE didn't agree so the complaint's been passed to me to decide.

my findings

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 going to uphold it.

It might help if I explain at the outset that when buying an insurance policy, the consumer is required to take reasonable care to answer an insurer's question to the best of their knowledge. If the consumer doesn't do so that is known in the insurance industry as a misrepresentation. And there's some helpful legislation: the Consumer Insurance (Disclosure and Misrepresentations) Act 2012 (CIDRA) that sets out what insurers may consider to be a misrepresentation and what they may do when a policyholder has made one.

CIDRA says that where a consumer has deliberately or recklessly made a misrepresentation then the insurer may void the policy and keep the premiums paid. So I need to decide if Ms S did make a misrepresentation. In order to do so I've thought about whether or not MCE asked clear and specific questions; and if Ms S took reasonable care to answer those.

Ms S initially looked for a quote for her policy online. But she didn't complete the process online and rang MCE in order to buy it. During that call MCE asked her where she kept her bike overnight. Ms S replied:

“private garage - private lock up”

MCE then asked Ms S what materials the garage was constructed of and completed the sale of the policy recording that her bike was kept in a garage. After it learned of the theft MCE looked into where Ms S kept her bike overnight, which was a lockable parking area underneath the building she lived in. It said that this wasn't a garage. It added that the policy defines a garage as:

“a lockable brick and concrete, concrete, steel, stone or wooden building with a roof constructed of slate, tile, steel or wood in which to park or keep a motor vehicle, for your sole purpose.”

It said that Ms S kept her bike in a residential parking area and as such it wasn't for her “sole purpose”. And in saying she kept her bike in a garage Ms S had made a misrepresentation. It added that, prior to completing the policy purchase over the phone Ms S had looked for quotes online. It said that while doing so, she asked for two quotes with different information: one saying that she kept the bike in a garage; and another saying it was in a “locked compound”. MCE said that the quote for the locked compound was significantly higher than the quote saying the bike was garaged. So it thought Ms S had deliberately misrepresented her position in order to get a cheaper premium. On that basis it refused to pay her claim and voided her policy. But I don't think that was fair.

It's notable that Ms S didn't buy the policy online. Instead she phoned and spoke with MCE the following day. I've listened to that call. At its outset MCE told Ms S that it would be easier for her to complete the purchase online as she wouldn't have to run through all the details again. But Ms S said it was fine to run through those again. And some of the detail Ms S provided during that call was different to the information provided when she looked for online quotes. For example she said she wanted cover for carrying pillion passengers, which she hadn't included in the online quote. And Ms S commented that she'd been tired while looking for a quote online. So I don't think it was fair for MCE to rely on information Ms S had provided while looking for an online quote, as that wasn't the information with which she bought the policy. And MCE had the opportunity to ask Ms S any clear and specific question it wanted to while she was on the phone in order to find out the appropriate level of cover.

As I've said above Ms S didn't give a straightforward answer when asked where she kept her bike in that she said she kept it in a “*private garage – private lock up*”. But MCE didn't ask her which one it was or what she meant by that. MCE later learned that Ms S kept her bike overnight in a fairly secure underground garage. It seems that a number of other residents of her building will have access to this garage. So I don't think that area meets the policy definition of being for Ms S' “*sole purpose*”. But MCE didn't ask Ms S if the bike was kept somewhere being used for her *sole purpose*. It simply asked her where she kept it. And, apart from the postcode and the materials it was built from, MCE didn't ask her any further questions about the storage area when it had the opportunity to do so.

Also I note that the comparison site Ms S used when looking for quotes online didn't define garage or locked compound. So I don't think it would have been clear to Ms S exactly what the comparison site meant by garage or locked compound. Similarly, while her garage wasn't for Ms S' sole use, it was lockable and protected by security cameras. And it didn't have public access; so I think it was reasonable that she described it as private. And I don't think Ms S would have known what MCE's definition of a garage was at the time it asked her where she kept her bike overnight.

In contrast MCE's said that when looking for quotes online Ms S would have had to tick a box to say that she'd read the policy's key facts which include the definition of garage above. But as I've already said Ms S didn't complete the sale online - she did so over the phone. So I'm not persuaded she read the key facts while looking for online quotes. And I don't think it's fair for MCE to rely on information from the online sales journey, which Ms S didn't complete, to assume that Ms S knew that the garage needed to be for her sole purpose. Also the telephone call was MCE's opportunity to put any relevant, clear and specific questions it wished to Ms S to ensure it was offering the right level of cover. But it didn't ask her questions that would have found out whether or not the storage area was for her sole purpose or met its definition of garage. It follows that I don't think it asked her clear and specific questions.

MCE's added that around ten months after Ms S bought her policy it sent her an email which provided further clarification of its definition of a garage. That email is clear that Ms S' parking area didn't meet the policy definition of a garage. The email suggested that if Ms S was unsure whether her parking area met the definition she should contact it. It said that as she didn't contact it "*this shows deliberate misrepresentation*". But I don't agree. It seems this was a generic email it sent to a number of its customers. And it wasn't sent in connection with the sale or renewal of a policy. So I don't think MCE can reasonably rely on an email - sent months after it sold a policy - as evidence Ms S deliberately misrepresented her position ten months earlier.

Having weighed all the evidence very carefully I think Ms S did take reasonable care to answer MCE's questions at the time she took out her policy. So I don't think she made a misrepresentation as defined in CIDRA. It follows that I don't think it was fair for MCE to refuse to pay her claim and void her policy.

So in order to put things right I think that MCE should:

Provide Ms S with a letter to say that the voidance was its mistake so that she may pass it to her subsequent motor insurers in order that they could recalculate any premium(s) affected by the voidance. If the motor insurers involved refuse to recalculate a premium, on receipt of appropriate evidence, MCE should refund Ms S any additional premium she'd paid as a result of the voidance, together with 8% simple interest from the date she was charged the premium to the date it refunds her.

Remove the voidance from internal and external databases and write to her to confirm it had done so. This can be incorporated with the letter above.

Settle Ms S' claim for the theft of her bike and add simple interest at a rate of 8% a year to that settlement from the date of Ms S' claim to the date it makes payment.

Pay Ms S £250 to address her distress and inconvenience that has been caused by the unfair voidance of her policy.

my final decision

For the reasons I've given above, I uphold this complaint in part. I require MCE Insurance Company Limited:

- Provide Ms S with a letter to say that the voidance was its mistake so that she may pass it to her subsequent motor insurers in order that they could recalculate any

premium(s) affected by the voidance. If the motor insurers involved refuse to recalculate a premium, on receipt of appropriate evidence, MCE should refund Ms S any additional premium she'd paid as a result of the voidance, together with 8% simple interest per year from the date she was charged the premium to the date it refunds her¹.

- Remove the voidance from internal and external databases and write to her to confirm it had done so. This can be incorporated with the letter above.
- Settle Ms S' claim for the theft of her bike and add 8% simple interest per year to that settlement from the date of Ms S' claim to the date it makes payment.
- Pay Ms S £250 to address her distress and inconvenience that has been caused by the unfair voidance of her policy.

It should pay the compensation within 28 days of us telling it that Ms S has accepted my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a rate of 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 7 June 2019.

Joe Scott
ombudsman

¹ If MCE considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms S how much it's taken off. It should also give Ms S a certificate showing this if she asks for one, so she can reclaim the tax from HMRC if appropriate.