

complaint

Mr A's complained that MCE Insurance Company Limited avoided (cancelled from the start as though it had never existed) his motorcycle insurance policy and refused to pay his claim after his motorcycle was stolen from outside his work.

background

Mr A phoned MCE on 8 September to buy a new policy after his previous one had lapsed. MCE asked him where his motorcycle would be kept at his property. Mr A said it would be kept in a garage.

A few months later on 12 April MCE emailed Mr A to let him know that it didn't consider a communal parking area under flats to be a garage. It asked Mr A to get in touch if this meant the details he'd given weren't accurate. Mr A said he didn't remember reading this email.

In July Mr A claimed on his policy after his motorcycle was stolen. MCE said Mr A didn't have a garage at his property and so had deliberately provided the wrong information when renewing his policy. MCE also said Mr A had since moved from the address where he lived when he bought his policy. It avoided his policy, kept his premium and refused to pay his claim.

While I was looking into things MCE accepted Mr A had an underground parking area at his property. It provided quotes to show what it would have charged Mr A if he'd said he didn't have a garage, and if he'd updated his address when he moved.

I issued a provisional decision on this complaint on 27 August 2019 where I explained what I intended to tell MCE to do to put things right. In that decision I said:

Under the Consumer Insurance (Disclosure & Representations) Act 2012 (CIDRA) Mr A has a duty not to make a misrepresentation when buying or renewing his policy. And for MCE to take any action at all it needs to show that he's made what's known as a qualifying misrepresentation.

One of the considerations when deciding if Mr A took reasonable care not to make a misrepresentation when taking out his policy is the question he was asked. I've listened to the call between MCE and Mr A. MCE asked where he keeps the motorcycle and he says in a garage.

Many dictionaries define a garage as a building where a car is kept. I appreciate the policy has a definition of garage but when considering the everyday meaning of a garage I can understand why Mr A thought this was the right answer. He told MCE the motorcycle was in a garage and MCE didn't ask any further questions to establish whether it was a private or shared space.

I understand MCE thinks that this was deliberate or reckless because the previous year he'd answered differently however I don't agree. The previous year Mr A bought his policy online so I expect he would have had a number of options to choose from. And with those options in front of him he chose what he thought was the most appropriate option. I wouldn't necessarily expect him to remember what he'd put the previous year and having listened to the call he didn't seem to have the previous year's policy in front of him when calling.

So I'm satisfied Mr A took reasonable care when he phoned to buy his policy in September. That means MCE can't take any action from that point.

However MCE sent Mr A an email in April asking him to amend the information he'd given when he bought his policy if the place he kept his motorcycle didn't comply with its definition of a garage.

CIDRA says a failure by the consumer to confirm or amend particulars previously given is capable of being a misrepresentation. Given the importance and implications of confirming the details, I'd expect MCE to make it clear that this is an email that might require action from Mr A – such as through a subject line or bold heading that told him action was required.

I've looked at the subject heading and while I don't think that was particularly clear, I've now seen a full copy of the email and can see the header said "MCE INSURANCE POLICY NOTIFICATION" in large, capital letters. The email itself is then fairly short and says Mr A needs to call in if his motorcycle isn't kept in a private garage. It also said if he didn't do so it could affect his ability to make a valid claim.

Having reviewed this email in its entirety I now think it's sufficiently clear that it was an important email that Mr A needed to act on. By sending this I'm satisfied MCE did enough to let Mr A know he needed to amend the information he'd previously given. I've seen MCE's records that show Mr A opened this email in April, so although I appreciate he doesn't remember reading it I think it's most likely he opened it.

In order for MCE to take any action at this point it needs to show it would have done something differently if Mr A had got in touch. As MCE isn't able to retrospectively show what additional amount it would have charged Mr A if he'd provided the information he should have done it's provided me with quotes produced later. As these quotes vary depending on the date they were produced I've based my decision on what I think's most accurate and also what produces a fair and reasonable outcome.

Due to variance in the quotes showing the premium Mr A paid when he said his motorcycle was kept in a garage, I've based my calculations on the amount Mr A actually paid. The quotes showing what Mr A should have paid if he'd called after receiving the email are broadly in line with each other. So I've used the later one as this enables me to compare this to the quote showing the premium adjustment that would have been made if he'd given his new address.

MCE said Mr A paid a base premium of £336.92 when he bought his policy. I understand the broker added an administration fee but I'm not going to consider that as it would have been added to any quote. If Mr A had contacted MCE when he received the email it would have charged him £489.89 for 12 months. I've worked this out to mean it would have charged him an additional £101.98 for the remaining eight months of the policy. So I'm satisfied MCE would have done something differently and that means Mr A made a qualifying misrepresentation.

Under CIDRA a qualifying misrepresentation is either deliberate or reckless or careless. Mr A said he didn't remember reading the email so I think it's most likely he made a careless mistake as he didn't deliberately or recklessly ignore the email.

As MCE would still have provided Mr A with a policy it's not entitled to avoid the policy. So it should remove records of the avoidance from any internal or external databases and treat

the policy as though it was in force at the time of Mr A's claim. MCE should also provide Mr A with a letter to say he hasn't had a policy avoided.

Where an insurer would have charged an additional premium if the policyholder (in this case Mr A) had given the right information CIDRA allows it to settle any claim proportionately. So I've considered what percentage of the premium Mr A ultimately paid.

Mr A told us he moved address prior to the theft. The policy says he needed to let MCE know about any change of address and this would have included confirming where the motorcycle was now kept at the new property. It seems Mr A hadn't yet got around to letting MCE know about his change of address. And I think he should have done.

MCE has shown Mr A's premium would have reduced to £308.48 for a 12 month policy if he phoned to let it know his new address. It's unclear under CIDRA whether this becomes a qualifying misrepresentation as MCE wouldn't have charged him extra. However my role is also to consider what's fair and reasonable in all the circumstances of the individual complaint. And here I think it's fair and reasonable to base the proportionate settlement on the amount Mr A paid for his premium compared to what he should have paid if he'd amended his policy details as he should have done.

Mr A hasn't been able to tell us exactly when he moved but said it was shortly before the theft. On that basis I think it's fair to conclude it was within about four weeks of the theft so Mr A should have contacted MCE in July to say he'd moved. If he'd done that it would have reduced his total premium by £51.30 for the remainder of the year.

In total Mr A paid £336.92 for his premium when he should have paid £387.60. This means he paid 87% of what he should have paid if he'd taken reasonable care not to make a misrepresentation. And so to put things right MCE should pay 87% of his claim in line with the remaining terms and conditions of the policy. Due to the time he's been without the money it should add interest at a rate of 8% simple per year from the date of the theft to the date it makes payment.

I accept this has caused Mr A distress and inconvenience. He's had the worry of thinking his claim wasn't going to be paid at all and had the inconvenience of having to change his car insurance. He also said he wasn't able to get the level of cover he wanted with his new car insurer. To compensate him for this I think MCE should pay Mr A an additional £250 for the unnecessary distress and inconvenience it caused him.

Mr A accepted my provisional decision and MCE had no further comments.

my findings

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

As neither Mr A nor MCE had any further comments I see no reason to depart from my provisional findings. So I'll require MCE to resolve this complaint in the way I've set out above.

my final decision

My final decision is that I uphold this complaint and require MCE Insurance Company Limited to:

- Treat the policy as though it was in force at the time of the theft and pay 87% of Mr A's claim in line with the remaining terms and conditions of the policy;
- Add interest to that amount at a rate of 8% simple per year from the date of the theft to the date it makes payment¹;
- Remove any record of the avoidance from any internal or external databases and provide Mr A with a letter to say he hasn't had a policy avoided; and
- Pay him £250 compensation for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 October 2019.

MCE should do this within 28 days of us telling it Mr A's accepted my decision. If it pays later than this it should add interest to the compensation at a rate of 8% simple per year from the date of my decision to the date it makes payment.

Sarann Taylor
ombudsman

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