

## **complaint**

Mr E is unhappy that MCE Insurance Company Limited (MCE) has declined his claim and voided his insurance policy following the theft of his motorcycle.

## **background**

In February 2019 Mr E's motorcycle was unfortunately stolen, so he made a claim to MCE. During investigation into the claim, MCE discovered Mr E's motorcycle was normally garaged away from his home address. But when taking out the policy, Mr E had told MCE that it was usually garaged at home.

MCE said Mr E had deliberately or recklessly misrepresented where the motorcycle was kept. So they voided the policy, kept the premiums and declined the claim.

Mr E complained to MCE who said the claim and voidance decision was correct. As Mr E was unhappy with the answer from MCE, he approached this service to investigate.

Our investigator didn't uphold the complaint. He said that Mr E hadn't told MCE where the motorcycle would be kept, so he agreed with the approach they had taken.

Mr E disagreed with our investigator and asked for a final decision from an ombudsman.

Because I disagreed with our investigator's view of the complaint, I decided to issue a provisional decision before I make my final decision. This allowed both parties to comment on my thinking before I make my final decision – which is the Financial Ombudsman's Service's last word on the case.

## **my provisional decision**

In my provisional decision, I said:

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

When a consumer takes out an insurance policy they are asked a number of questions by the insurer. If the answers later turn out to be incorrect when the consumer tries to make a claim, the insurer has a number of remedies that it can apply depending on the circumstances.

This is in line with the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

If the misrepresentation is deliberate or reckless, the insurer is able to void the policy (treat it as if it never existed), refuse any claims, and retain the premium paid for the policy.

If the misrepresentation is careless the insurer can do the following:

- If they wouldn't have provided the insurance on any terms, they can void the policy and refuse all claims, but they need to return the premium.

- If they would have provided the insurance but on different terms, they can retrospectively apply those terms.
- If the insurer would have provided a policy, but charged a higher premium, they may reduce the claim proportionately

MCE has said Mr E has deliberately or recklessly misrepresented where the motorcycle was kept, so they have voided the policy and retained the premium.

Whilst this is the correct remedy under CIDRA for deliberate or reckless misrepresentation, I don't think the approach MCE has taken here is fair and I'll explain why.

MCE has based their decision that Mr E has acted deliberately or recklessly on the fact that the postcode where the motorcycle was kept was different to Mr E's home address. In my view this isn't enough to show it's deliberate or reckless or that this is the right remedy under CIDRA.

Mr E has said when running the quote initially, he put that the bike was kept on the road at his home address. The quote was higher than he expected. As he already had a garage he could use to keep the bike in, belonging to a friend who lived elsewhere, he amended the quote to reflect the bike being kept in a garage.

I've run the online sales journey on the aggregator website myself. On page one when entering the address, it asks if the vehicle is kept at that address overnight. It isn't until page three that it asks where the bike is kept, for example on the road or in a garage. But page three makes no reference to the address.

Whilst Mr E amended page three and the storage type, he should also have gone back to page one, as this is where it gives the option to note a different postcode.

I don't think this would be considered reckless. It's very unlikely Mr E reached page 3 and entered the details there, thought they might not tally with the details already entered but recklessly went ahead without checking.

So I need to consider if it's deliberate, or careless. If it's careless, the remedy available under CIDRA is different to the approach MCE has taken as outlined above.

Mr E has explained why the bike was outside his home at the time it was stolen. This is because he had a leg injury at the time, and as he had an early start, the bike was kept outside his home on the night of the theft. He says it would normally be kept in the garage.

Mr E has provided confirmation from the owner of the garage in question that he had use of this, and a photo of the bike in the garage, which must have been taken before the theft occurred. So I think on balance Mr E always intended to keep the bike in the garage.

It's not in dispute Mr E should have gone back to page one of the quote in order to change the postcode for where the bike was kept. But I don't think MCE has shown Mr E deliberately misrepresented the risk by choosing not to go back to amend the address. I think this was careless. So, I don't think MCE can rely on the remedy for deliberate misrepresentation under CIDRA by voiding the policy or keeping the premium.

As MCE allows a different postcode in which to keep the motorcycle, under the CIDRA remedies it is likely they would have provided a policy. But it isn't clear at this stage whether there would be a difference in premium for this.

If MCE wouldn't have charged any extra (or the premium would have been lower), then they should deal with the claim in full – subject to the remaining terms and conditions.

But if MCE can show that it would have charged more had the storage address been correct, then it is entitled to proportionately settle the claim. With either settlement 8% interest should also be added from the date of loss in line with our standard approach.

However, MCE also need to take into account that Mr E has been maintaining his finance payments for the bike throughout. So this needs to be taken into account with the settlement. As the claim should have been settled much sooner, MCE should also refund the additional finance payments Mr E has made since this point, with 8% interest added from date of payment.

I have based the above on what I think the likely remedy is under the careless misrepresentation route of CIDRA. But if MCE dispute this and they believe something else would have happened if Mr E had provided the correct details then they need to demonstrate this in response to this provisional decision.

In addition to the above, MCE should also compensate Mr E £200 for the distress and inconvenience caused.

Mr E has said that his policy says:

“If a theft or attempted theft of your motorcycle happens within the proximity of your home address or garaging address when your motorcycle is not locked in a locked garage or locked building, we will double the theft excess. There will also be an Additional Premium of £110.”

And he thinks this should be the approach taken. I don't think this applies here. This is because Mr E intended to insure the bike at a garage away from his home. And if this had been correctly listed, the bike was taken from outside his home, which isn't in close proximity to the garage. Therefore, this wouldn't apply.

On a final note, in their final response, MCE have referred to a final decision issued by this service which they say agrees with their approach. However as MCE should be aware, each case brought to this service is considered on its own merits. Each case has a specific background to it, and the case MCE is referring to isn't against them so they won't actually be aware of the specifics.

I can see from the decision referred to that this is a completely different scenario and has no relevance here or in the circumstances of Mr E's claim. So this doesn't support MCE's decision in relation to the voidance."

On that basis, I was minded to uphold Mr E's complaint and direct MCE to consider the CIDRA remedies for careless misrepresentation and pay Mr E compensation.

### **the responses to my provisional decision**

MCE responded to my provisional decision and said they still thought the misrepresentation by Mr E was deliberate, in order for him to obtain a cheaper premium.

They also referred to the online sales process and questioned the sequence of events I noted in my provisional decision. MCE said different questions were asked at different points.

MCE also said that if they had been aware the bike was kept at an alternate address, they wouldn't have offered cover.

Mr E initially responded saying there wasn't anything he wanted to add in response to the provisional decision. But when MCE provided their response, our investigator made Mr E aware that they wouldn't have offered cover.

Mr E later responded saying he feels the garage and location made his bike more secure, so he questioned why MCE wouldn't offer this cover. He also asked why it would give the option to input an alternate address if they don't offer that cover.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I've thought again about the conclusions I came to in my provisional decision.

Having done so, I haven't changed my mind that the misrepresentation was careless. But I now know the relevant remedy for this in line with CIDRA. I have also reconsidered my view on compensation.

When I visited the price comparison website Mr E used when writing my provisional decision, the events and sales process were that outlined previously. On page one when entering the address, it asked if the bike was kept at that address overnight, and page three made no reference to the address when asking about the type of storage.

It's disappointing that MCE is now questioning this. I say it's disappointing because the online sales journey I followed is the same that MCE followed when sending its final response letter, which included screenshots of page one as I've mentioned above. The screenshots in their initial submissions to this service also mirror this. Both of which differ to those MCE are now referring to in response to the provisional decision.

The online sales journey MCE is now referring to is the current sales journey. This has changed since I issued my provisional decision, and before that, when MCE issued its final response and submissions to this service. Therefore, the current journey isn't relevant.

Therefore, my view of the sales journey, and that the misrepresentation was careless, remains as outlined in my provisional decision and for the same reasons.

So I now need to consider what the appropriate remedy for careless misrepresentation is under CIDRA. I said in my provisional decision that if MCE would have offered cover, but at a higher premium, then it should settle the claim proportionately.

But MCE has since evidenced that it wouldn't have offered cover, had it been aware the garaging address was away from Mr E's home.

So, the remedy for this under CIDRA is that MCE can void the policy and refuse all claims, but it must return the premium to Mr E. At the moment MCE has kept the premium, but that isn't a remedy for careless misrepresentation.

I understand that Mr E is unhappy with this, as his bike has been stolen and his claim isn't being paid. But I must follow the remedies under CIDRA, and this is clear what should happen if MCE wouldn't have offered a policy.

I said in my provisional decision that I was minded to recommend MCE also pay £200 compensation. But this was on the basis that it had incorrectly declined the claim, so should have paid this earlier. But the position has now changed as MCE would never have offered cover, so even if it had correctly followed the careless rather the deliberate remedy, it hasn't resulted in Mr E being in a different position in relation to the claim. So I can't say £200 compensation is reasonable in the circumstances.

Instead, MCE should have followed the careless remedies process earlier and refunded the premium. So, 8% interest should be added to the refund in line with our usual approach.

I also note Mr E's comments that he feels that the location and security of the garage was more than adequate and in a lower crime risk area. Whilst this may be the case, it is up to MCE what risk they choose to cover, and unfortunately this isn't one of them.

Mr E has also questioned why MCE offer the option to specify a different location if they don't offer that cover. But the price comparison website will be used by a number of insurers and whilst MCE doesn't offer that cover, other insurers may do.

Whilst I sympathise with Mr E's position, I still need to take into account the remedies under CIDRA for careless misrepresentation. And as MCE wouldn't have offered a policy, the remedy is that it should refund the premium to Mr E.

**my final decision**

For the reasons outlined in my provisional decision and above, I uphold Mr E's complaint in part.

MCE Insurance Company Limited can void the policy and refuse the claim but they must return Mr E's premium with 8% interest added.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 29 November 2019.

Neil Marshall  
**ombudsman**