

## **The complaint**

Mr E complains Zenith Insurance plc has treated him unfairly by avoiding his motorbike insurance policy (that is, treating it as if it never existed) and turning down his claim.

## **What happened**

Mr E's motorbike was stolen in March 2020, so he claimed on his motorbike insurance policy.

At the time of the theft, Mr E's motorbike wasn't stored at his home address. Zenith said Mr E hadn't disclosed this, either when he first took the policy out, or when he renewed it in later years. Zenith said it wouldn't have offered Mr E cover if it had known this. So Zenith said it was avoiding Mr E's policy – that is, treating it as if it never existed – and turning down his claim.

Mr E said his motorbike was only stored away from his home in a locked garage for a few months over winter when he wasn't using it. He said when he took out the policy he was asked for a "yes" or "no" answer to a question about whether his motorbike was kept at his home address overnight. He said he answered "yes" because it was kept there most of the time.

When Mr E complained to Zenith about this, it didn't uphold his complaint about the avoidance of his policy. But Zenith did offer Mr E compensation of £100 for poor communication from its claims department. This was because Zenith didn't notify Mr E it had avoided his policy and turned down his claim (which it did shortly after he'd made it) until some months later. And Mr E only found this out when, having bought a new motorbike and insured it with Zenith through the same broker, Zenith told him it was cancelling the new policy because he hadn't disclosed the theft claim or the first policy avoidance.

So Mr E brought his complaint about the avoidance of his first policy to us. The investigator who looked at it upheld it. He didn't think Zenith should've avoided Mr E's policy. In brief, he said Zenith should:

- Reinstatement Mr E's policy and consider his claim for the theft of his motorbike in line with its terms and conditions.
- Remove any record of the policy being avoided from its own and any external records.
- Pay Mr E £350 in total for the impact the avoidance of his policy had on him and for the poor customer service he'd had.

Zenith accepted our investigator's findings. And Mr E also accepted them in relation to the avoidance of his policy. But Mr E didn't think the compensation our investigator awarded him was adequate. That's why Mr E's complaint came to me to decide.

In my provisional decision of 25 January 2022 I explained why I intended, like our investigator, to uphold Mr E's complaint but also intended to award him compensation that

differed from our investigator's. Both Mr E and Zenith have given me comments on my decision, which has now come to me for a final 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've decided to uphold Mr E's complaint. As well as compensation for distress and inconvenience, I am also awarding Mr E compensation for the loss of use of his motorbike. I gave my reasons for this in my provisional decision, in which I said:

*"As I've already noted, both Zenith and Mr E have already accepted our investigator's view on the avoidance of the policy. The law in this area is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It says that if there is a "qualifying misrepresentation", and an insurer wouldn't have entered into a contract if it had been given the correct information, it can treat the policy as if it never existed and turn down all claims.*

*In this case, our investigator didn't think Mr E had made a qualifying misrepresentation. He didn't think the question Zenith asked Mr E about storage of his motorbike when he took the policy out was specific enough. Our investigator said if Zenith had wanted to know all the places the motorbike would be kept, it should've asked Mr E this – or at least given him more options than just "yes" or "no" to a question about whether his motorbike was stored at his home address overnight. And since Mr E says his motorbike was stored at his home overnight most of the time, our investigator thought he'd taken reasonable care in answering Zenith's question.*

*Like Zenith and Mr E, I agree that our investigator's findings on the avoidance of the policy are fair and reasonable. So, like him, I think Zenith should look at Mr E's claim in line with the terms and conditions of his policy and remove all records of the policy avoidance from internal and external databases. And I know Zenith has agreed to do this.*

*So the outstanding issue for me to look at in this decision is compensation. Our investigator thought £350 was fair and reasonable compensation for the impact Zenith's failings had had on Mr E. Mr E says until we look at settlements in the realm of thousands of pounds, rather than hundreds, Zenith will continue what he describes as "unacceptable business practice". More recently, he's suggested we should set compensation on a daily basis rather than as a fixed sum because "this is an accurate reflection of the true impact of the case and, if nothing else, will act as a deterrent from any further unwarranted delay" from Zenith.*

*Our investigator has explained to Mr E that our role isn't to punish a business for its mistakes. That's a role of the regulator, the Financial Conduct Authority. And from what Mr E has said, I think he understands this. But, for the avoidance of doubt, I should say we don't fine a business or award punitive damages where we find it's made a mistake.*

*Instead, when we look at whether it's fair and reasonable to compensate a consumer for distress and inconvenience following a mistake by a business, our role is to assess the impact that mistake has had on that customer. To make an award, we need to see that the impact is more than someone would expect to experience in everyday life. Our approach is to look at all the circumstances and decide a total figure that attempts to put right – as far as is possible – what went wrong. We don't usually make a specific award for someone's time, or calculate it using a set amount. But we do factor in the inconvenience someone may have had spending time dealing with a matter.*

*Looking at what Mr E has told us about his experiences with Zenith after he found out his*

*policy had been avoided, it's clear he believes his health has suffered. Mr E says he fell ill around two months after the problems with his policy came to light and he puts this down to "the intense pressure I was subjected to in two months leading up to my diagnosis". He says not being able to go out on his motorbike has affected his mental well-being. He describes a "constant cloud of uncertainty and doubt". And he says: "The complaint process is not without strain. Researching options, seeking opinion and advice, generating this large quantity of paperwork is mentally exhausting." It must also have been shocking for Mr E to find out, months after he'd made his claim, that not only had Zenith turned it down but also his policy had been avoided.*

*What I've just described only highlights some of the ways in which Mr E says Zenith's failings have impacted him. From this – and also from everything else Mr E has described – it's clear Zenith's actions have caused Mr E considerable distress, upset and worry, as well as significant inconvenience and disruption that has taken a lot of extra effort to sort out. In these circumstances, I think the award our investigator made of £350 in total (that is, including the £100 Zenith has already offered Mr E) is fair and reasonable and in line with what I'd expect a business to pay as compensation in the circumstances Mr E has described.*

*Mr E has also told us the loss of use of his motorbike has had a severe impact on him. And since this loss has flowed from Zenith avoiding Mr E's policy and turning down his claim, I need to consider whether it's fair and reasonable to award Mr E additional compensation for this.*

*Mr E says the only alternative transport he had personally before he got his new motorbike was a bicycle, which necessarily limited him to a local range. Mr E says he's been a keen motorcyclist for many years and his motorbike represents "freedom, adventure, challenge". He says, without access to his motorbike, his contact with friends and family has been minimal because he's had to rely on public transport. He says his day-to-day activities "have been reduced in scope, range and frequency".*

*Based on what Mr E has said, I think it's fair and reasonable to award him compensation for the loss of use of his motorbike and that's what I intend to do. On 23 March 2020, England went into its first national lockdown due to Covid-19. Between then and 12 May 2020, people were ordered to stay at home except for essential purposes such as shopping and to get medical help. So I don't think it would be fair and reasonable to award Mr E compensation for the loss of use of his motorbike in this period. But from 13 May 2020, people were permitted to leave home for outdoor recreation (beyond exercise). So from 13 May 2020 until 30 August 2020, when I believe Mr E insured his new motorbike, I intend to award him £10 a day for the loss of use of his motorbike. By my calculation, this amounts to £1,090."*

*Mr E has accepted my provisional decision but has made a number of comments on some of my findings. One of them is that, if I took 30 August 2020 as the "start of the process" and "the end date was deemed to be Zenith's final acceptance and reversal of their actions on 19th October 2021, the number of days would be a significantly higher number, 415 days".*

*I appreciate it was only at the end of August 2020, when Mr E's policy on his new motorbike was cancelled, that Zenith told him it had treated his old policy on his stolen motorbike as if it never existed. But it is in the period from when Zenith *should've* told Mr E it was treating his policy as if it never existed and when it *actually* did so that I must look at his loss of use – because that's the period in which things went wrong with that policy. The difficulties Mr E says he had after 30 August 2020 flow from the cancellation of the new policy and not from the avoidance of the old one – and it is the latter that Mr E has complained about here.*

Zenith doesn't agree with my provisional findings. It says Mr E didn't use his motorbike for parts of the year (December to March). It says it would only normally pay for loss of use if it couldn't provide a courtesy vehicle (which it says in Mr E's case his policy didn't entitle him to because his motorbike had been stolen). And finally Zenith says Mr E's annual mileage was between 2000 to 3000 miles so it doesn't think Mr E used the motorbike frequently enough to warrant £10 a day for loss of use.

Zenith's comments don't change my provisional findings on this complaint, which now form part of this final decision. It was in the winter months that Mr E says his motorbike was in storage whereas the period for which I'm awarding him compensation for loss of use is in the late spring and summer. It's our approach to consider loss of use whenever we're satisfied an insurer's actions have resulted in a consumer not being able to use his or her vehicle. In Mr E's case, I'm satisfied Zenith's actions deprived him of the use of his motorbike, for the reasons I've given. And I see no reason to depart from an award of £10 a day. Mr E's low mileage might suggest he didn't ride his motorbike every day, but Zenith's actions meant he didn't have the freedom to ride it when he wished to.

### **My final decision**

For the reasons I've given, I uphold Mr E's complaint and direct Zenith Insurance plc to:

- Reinststate Mr E's policy and consider his claim for the theft of his motorbike in line with its terms and conditions.
- Remove any record of the policy being avoided from its own and any external records.
- Pay Mr E £350 in total in compensation for the impact the avoidance of his policy had on him and for the poor customer service he'd had.
- Pay Mr E £10 per day in compensation for the loss of use of his motorbike from 13 May 2020 to 30 August 2020.

Zenith Insurance plc must pay the compensation I've set out above within 28 days of the date on which we tell it Mr E accepts 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 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 March 2022.

Jane Gallacher  
**Ombudsman**