

The complaint

Mr J is complaining on behalf of Y – a limited company – that West Bay Insurance Plc has avoided his motorcycle insurance policy and declined a claim he made for theft.

What happened

In November 2023 Mr J contacted West Bay to say his motorcycle had been stolen and said he wanted to claim for its loss against his motorcycle insurance policy. However, in February 2024, West Bay wrote to him to say it had discovered that the motorcycle was registered to Y. It said it wouldn't have provided the insurance had it known this. So it said it was avoiding the insurance policy and declined the claim.

Mr J complained as he didn't think West Bay was being fair. He said he is the owner and sole shareholder of Y so he considered himself to be the owner of the motorcycle. West Bay maintained it was entitled to avoid the insurance policy, so Mr J referred the complaint to this Service.

Our Investigator didn't uphold this complaint. She said West Bay had asked Mr J two questions in the statement of fact:

1. Are you the owner of the vehicle (s)?
2. Is/Are the vehicle(s) registered in your own name?

She said Mr J had said "yes" to both questions which wasn't correct as the motorcycle was registered to Y. She said West Bay had shown it wouldn't have provided the insurance had Mr J answered this correctly. So she didn't think West Bay had acted unfairly.

Mr J didn't agree with the Investigator and said the following:

- He maintained that he was in effect the owner of the motorcycle given he was the sole owner of Y;
- He didn't think the way the motorcycle was registered has any impact on the cover West Bay was providing;
- He still thought he'd answered the question in the best way he could;
- He didn't think he was asked the questions West Bay says he was asked. He set out he's a professional accountant and has a good eye for details. So he said he feels very strongly that he wasn't given the option that West Bay Insurance stated he was.

As Mr J didn't agree with the Investigator's opinion, the complaint's been passed to me to decide.

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.

I've decided to not uphold this complaint and I'll now explain why.

Firstly, I note West Bay disputes Y is eligible to bring a complaint to this service as it says Y is not the policyholder – Mr J is. And, so, it says it has no contractual arrangement with Y. While I recognise what West Bay has set out, the motorcycle is essentially owned by Y. Y is a separate entity in its own right. West Bay is insuring against any loss or damage that arises from the motorcycle. Given Y owns the motorcycle, it is the one who would suffer a financial loss in the event it was damaged or stolen.

Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules, known as the Dispute Resolution Rules (DISP), written by the FCA in accordance with the powers it derives from FSMA. These form part of the FCA Handbook.

DISP 2.7 sets out who can bring a complaint to this Service and says a complaint must be brought by “*an eligible complaint*”. DISP 2.7.6 (5) says a complainant is an eligible complaint if “*the complainant is a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through the respondent.*”

As Y ultimately is the entity who suffers a loss if the motorcycle is damaged or stolen, it has to be concluded that the policy was taken out for Y’s benefit – or at the very least was an intended beneficiary. So I’m satisfied that Y is an eligible complainant.

I’ve now thought about whether West Bay has acted fairly.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn’t made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. One of these is how clear and specific the insurer’s questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it’s entitled to avoid the consumer’s policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn’t for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn’t made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

I’ve thought about what happened in this case.

West Bay has avoided Mr J’s insurance policy because it says he provided incorrect information. In particular it’s referred to who the owner and registered keeper of the motorcycle is. West Bay has also said Mr J didn’t disclose he had a secondary occupation either. However, it has only focussed on the motorcycle’s ownership to avoid the policy, so I’ve only considered this too.

I should first set out that I'm conscious Mr J took out this policy through a broker. It was the broker's responsibility to gather all the information West Bay says it needs to know. It will then complete the policy application on Mr J's behalf. However, the broker is not a party to this complaint, so I'm unable to comment on anything it did or didn't do.

As I said above, the onus is upon West Bay to ensure it asked the broker – on Mr J's behalf – clear questions to glean the information it needed to know to assess the risk it was being asked to cover. It sets out the information it needed to know in its statement of fact. And this says:

*“Are you the owner of the vehicle (s)?
Is/Are the vehicle(s) registered in your own name?”*

The broker answered “yes” to both of these questions. I'm satisfied it was clear from this that West Bay advised it wanted to know whether the motorcycle was registered to Mr J or not. However, the V5C form clearly sets out that the motorcycle was registered to Y. While I do not dispute Mr J is the sole shareholder of Y, Y is a separate entity to Mr J. And the motorcycle wasn't registered to Mr J. Mr J has advised that he was aware of that. And I think he should have reasonably understood that meant the motorcycle was not registered to him.

So, while I recognise Mr J says he couldn't have answered this question in any other way, I don't agree. He's also said he wasn't specifically asked the questions in this way. But that's for him to take up with his broker. West Bay is not liable for anything the broker did or didn't do when the broker arranged the policy on Mr J's behalf.

Ultimately I'm satisfied Mr J didn't take reasonable care not to make a misrepresentation. West Bay has shown it wouldn't have insured Mr J had he done so. It follows, therefore, that I'm satisfied it was fair for West Bay to say there was a qualifying misrepresentation.

West Bay has treated the misrepresentation as careless. And I think that's fair. However, as I said above, CIDRA sets out that West Bay can avoid the policy if it can show it would not have offered the policy at all if it wasn't for the misrepresentation. West Bay has provided me with confidential, business sensitive information to explain how it assesses risk. And I'm satisfied from this it wouldn't have insured Mr J had he advised he wasn't the registered keeper of the motorcycle.

Mr J has said whoever a vehicle is registered doesn't affect the risk. But insurers are entitled to decide what risks they are willing to cover. And, as I've said, West Bay has shown it would have declined to provide the insurance policy had Mr J declined the true ownership of the motorcycle.

Ultimately, West Bay was entitled to avoid the insurance policy and I don't think that was unfair. In doing so, the policy is treated as null and void. As a result, West Bay isn't required to cover the theft of the motorcycle.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J – on behalf of Y – to accept or reject my decision before 14 November 2025.

Guy Mitchell
Ombudsman