

The complaint

Mr L has complained that Marshmallow Insurance Limited unfairly and unreasonably cancelled his motor policy as if it never existed. It retained the premium payment for misrepresentation following a claim made after an accident, where the car was deemed a total loss.

What happened

Mr L bought a policy for his car online on 20 April 2022 to start on 21 April 2022. Mr L was using this car which was bought by hire purchase by his brother-in-law who lived abroad. When he went online and bought this policy, Mr L said the questions didn't quite match his circumstances, but he said he made sure it was known that the car was ultimately owned by a finance company.

Mr L was involved in a single vehicle accident on 21 October 2022, and he made his claim to Marshmallow. Ultimately Marshmallow decided the information given on the policy application form was very different to what Mr L said after the accident, as it said this was the first it knew that Mr L's brother-in-law was the registered owner and indeed had the contract with the finance company.

Marshmallow's underwriting guide didn't permit it to insure cars under the type of arrangement Mr L had with his brother-in-law. So, it voided the policy, as in cancelled it as if it never existed. This meant it wouldn't pay his claim for the total loss of his car following the accident. It also decided Mr L had deliberately and carelessly misrepresented the facts of the matter which meant under the relevant law – the Consumer Insurance (Disclosures and Representations) Act (CIDRA) it was permitted to also retain the premium.

Mr L complained but Marshmallow wouldn't change its stance, so he brought his complaint to us. The investigator was of the view Marshmallow's stance was correct, so he didn't think it had done anything wrong. Mr L didn't agree, so his complaint was passed to me to decide. I issued a provisional decision on 16 October, and I said the following:

'Having done so, I'm upholding this complaint but only for careless misrepresentation, which doesn't actually change things that much for Mr L. I'll now explain why.

I consider Mr L was sincere in trying to insure this car properly. However, when the options for this policy didn't quite match his situation, he was of the view that using the nearest best option was enough. Sadly, that isn't the case, and I don't consider Marshmallow was wrong to say it wouldn't insure this car, given how it was owned and who was the registered keeper. Whilst Mr L says someone can be insured as a named driver on someone else's car is correct, however the registered keeper also needs to be the policyholder and the person who arranges the policy, not the named driver. What Mr L did here was try to insure himself as the policyholder and therefore the registered keeper of the car.

However, I don't think Mr L set out to lie his way through the policy application process. Saying someone behaved in a deliberate manner or was so careless so as to be reckless as to the truth is quite a high bar to attain evidentially. It's clear to me that Mr L wasn't behaving in this way. He explained this was his first policy. He sincerely believed when he couldn't find the right option to describe his situation that the nearest one was sufficient. One of the issues with how people buy policies online is that it's not understood that if an option isn't provided for your circumstances that effectively means that that insurer doesn't want to take on the risk you're presenting. I don't consider this was made sufficiently clear in Mr L's online journey here. Also, what Mr L ought to have done when his circumstances didn't quite fit the options available was to phone the insurer to discuss his situation. This also isn't made clear in Mr L's online journey.

Therefore, I consider Mr L was simply careless as detailed under CIDRA. Unfortunately for Mr L that means Marshmallow are still entitled to void his policy, as in cancel it as if it never existed. This is because it's clear from its underwriting guide that Marshmallow doesn't insure cars owned in the manner Mr L's car was. So, if Mr L had phoned Marshmallow to discuss his situation, Marshmallow would have told him, it couldn't insure him and this car. Therefore, it remains that Marshmallow is entitled not to deal with his claim given the provisions of CIDRA. Every insurer is entitled under the regulations to decide which risks it wishes to insure and which it doesn't. And I have no ability to demand insurers insure any situation, which they clearly don't want to do.

However, because I don't consider this was deliberate misrepresentation as required under CIDRA, that means Marshmallow wasn't entitled to retain Mr L's premium payment. And therefore, I consider this should be refunded to Mr L with interest.'

Mr L agreed with my provisional decision. Marshmallow didn't respond.

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 again, I remain of the view this complaint should be upheld as I detailed in my provisional decision. This is because Mr L agreed with my provisional decision and Marshmallow didn't respond.

My final decision

So, for these reasons I now uphold this complaint on the basis Mr L was merely careless in his misrepresentation of the facts of the matter.

I now require Marshmallow Insurance Limited to do the following:

- Refund Mr L any premium he had paid, adding interest of 8% simple per year from the date of its decision to hold Mr L responsible for deliberate or reckless misrepresentation to the date it refunds him. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr L for HMRC purposes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 December 2023.

Rona Doyle
Ombudsman