

The complaint

Mr D complains that Marshmallow Insurance Limited (Marshmallow) proportionately settled a claim made under his car insurance policy.

What happened

Mr D has had car insurance with Marshmallow since 2018. In June 2023 Mr D's car was stolen so he made a claim to Marshmallow.

Marshmallow said Mr D hadn't declared the address he was living at, which was where the vehicle was registered to and stolen from. They noted he'd attempted to update his address to this address online in 2020, but he didn't complete the change. Marshmallow also noted the policy had renewed twice since then, but Mr D hadn't contacted them again to complete the change of address.

Marshmallow said that if Mr D had changed the address to the correct address, they would have charged a higher premium for the policy. So, they considered this to be a careless qualifying misrepresentation, which they said entitled them to proportionately settle Mr D's claim. As a result, Marshmallow reduced the total loss settlement paid to Mr D by 30.57%.

Mr D was unhappy with Marshmallow's decision and the claim settlement, so he approached this service.

One of our investigators looked into things and upheld the complaint. He agreed with Marshmallow that Mr D had failed to take reasonable care not to make a misrepresentation and he should have contacted Marshmallow to amend his address. He asked for evidence from Marshmallow to demonstrate they would have charged more if the correct address had been declared. However, despite asking for this, Marshmallow didn't provide anything to evidence this.

Therefore, whilst the investigator agreed there was a misrepresentation, he said that Marshmallow hadn't demonstrated it was a *qualifying* misrepresentation. So, he said it was unfair for Marshmallow to proportionately settle the claim and he recommended they should settle the claim for the remaining 30.57% of the market value of Mr D's vehicle. He also said Marshmallow should add 8% simple interest to the additional settlement due.

Marshmallow didn't agree and asked for a final decision from an ombudsman.

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 reached the same outcome as our investigator.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a

misrepresentation when taking out a consumer insurance contract (a policy). 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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Marshmallow says Mr D failed to take reasonable care not to make a misrepresentation as his address on his policy was incorrect. They say that Mr D attempted to change his address online in September 2020, but the change wasn't completed. His policy then renewed in 2021 and 2022 without him contacting Marshmallow to change the address as he intended to in 2020.

Mr D says he has lived at both of the addresses. But the car was registered to, and stolen from, the address which he attempted to change it to in 2020 (but didn't follow up to finalise the change), rather than that which was on his policy documents. And whilst Mr D may spend time at each address, Marshmallow considers the address the vehicle was registered to, and stolen from, a higher risk address. So, this is the address the policy would need to be based on.

The fact that Mr D attempted to change the address in September 2020 shows that he was aware this is something he needed to do and make Marshmallow aware of. But despite the change not being completed at that time, he didn't contact Marshmallow to complete the change after then. He then allowed the policy to renew in 2021 and 2022 knowing that he tried to change it from the address on his documents, but the change hadn't taken effect. So, I think this means Mr D failed to take reasonable care not to make a misrepresentation.

So, I'll now consider whether the misrepresentation Mr D made is a qualifying misrepresentation under CIDRA. To answer this question, I need to establish what Marshmallow would have done if Mr B hadn't made the misrepresentation.

Marshmallow has said that if they'd had the correct address on the policy, it would have been £333.41 more expensive. They say that Mr D has only paid 69.43% of the premiums he should have paid, so they've proportionately settled the claim by deducting 30.57% of the settlement amount.

Our investigator asked Marshmallow for evidence to demonstrate what the correct premium would have been, which would demonstrate Mr D had only paid 69.43% of the correct premium. However, despite several requests, Marshmallow hasn't provided anything to evidence this.

As explained to Marshmallow by our investigator, to conclude that it was a *qualifying* misrepresentation under CIDRA, Marshmallow needs to provide evidence to demonstrate they would have increased the premiums and how much by. It isn't sufficient to simply say what they would have done without any evidence to support this. Our investigator explained this to Marshmallow and gave examples of the types of evidence they could provide, such as underwriting criteria or quote screenshots showing the difference in premiums. But despite requesting this, and the additional information and guidance he gave, Marshmallow hasn't provided anything further and instead asked for a final decision from an ombudsman.

To conclude that Marshmallow is treating Mr D fairly and reasonably, and in line with CIDRA and the relevant remedy to proportionately settle the claim, I'd need to be satisfied Mr D has made a *qualifying* misrepresentation. And whilst I agree there was a misrepresentation, Marshmallow hasn't demonstrated this was *qualifying*. As such, there isn't any remedy Marshmallow is able to take under CIDRA, including proportionately settling the claim.

With this in mind, Marshmallow needs to settle the claim for the remaining 30.57% they have reduced it by. Marshmallow will also need to add 8% simple interest from the date the original settlement was paid to the date of payment of the remainder.

My final decision

It's my final decision that I uphold this complaint and direct Marshmallow Insurance Limited to:

- Settle the claim for the remaining 30.57% that they reduced it by
- Add 8% simple interest* from the date the original payment was made to the date of settlement

*If Marshmallow Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 February 2024.

Callum Milne
Ombudsman