

## **The complaint**

Mr F is complaining about how Mulsanne Insurance Company Limited initially handled a claim he made on his motor insurance policy and then, later, avoided the policy (treated it like it never existed), refused to pay his claim and has kept the policy premium.

Mulsanne has used a managing agent to handle the claim and complaint on its behalf. But, for ease of reference, I shall refer to anything the agent did or did not do as being done by Mulsanne.

## **What happened**

Mr F took out a motor insurance policy with Mulsanne to start in June 2022. He took the policy out through a broker – who I shall refer to as S.

Mr F was involved in a car accident in September 2022, where his car suffered significant damage and he suffered injuries. So he contacted Mulsanne to claim for his losses against his car insurance policy. Mr F is unhappy with the way Mulsanne initially handled the claim. He said it didn't do anything on the claim, which meant the police disposed of his car, including the personal possessions that were within it.

Mr F brought his complaint to this Service. Whilst with this Service, Mulsanne agreed to settle Mr F's claim by paying him the car's market value (which it valued at £3,080) less the excess of £500. And it paid this to Mr F directly. It also agreed to pay him £500 following the recommendations of the Investigator as compensation for the poor claims handling which the Investigator explained had caused Mr F a significant amount of trouble and upset. The Investigator also recommended Mulsanne consider paying Mr F the value of the items left in his car, subject to Mr F providing proof of purchase, with a reasonable reduction being made for the age of each item.

Mr F provided a list of the items in his car, one of which was an insulated bag used for food deliveries. Although Mulsanne agreed to pay for this, it was concerned Mr F had been using his car for deliveries – something which isn't permitted by the policy he had. It discussed this with Mr F and he confirmed he'd been using his car for food deliveries.

As a result, Mulsanne avoided Mr F's motor insurance policy (treated it like it never existed), refused to pay his claim and kept the policy premium. This is because Mr F hadn't told Mulsanne he was also working as a food delivery driver when taking out the policy. If he'd done so, as it was a private car policy, Mulsanne said it wouldn't have offered Mr F cover. Mulsanne considered this to be a deliberate qualifying misrepresentation, which entitled it to avoid his policy, decline his claim because of this and keep the premium he'd already paid.

The Investigator considered these developments. He was satisfied there had been a reckless qualifying misrepresentation. As a result, he thought Mulsanne was entitled to avoid Mr F's policy, decline the claim and retain the premium he'd paid to it. But he still thought Mulsanne should pay Mr F £500 in compensation to resolve Mr F's complaint about the service issues he'd raised. He also still thought Mulsanne should consider paying for the possessions in the car when the police disposed of it. Finally, although Mulsanne was

entitled to decline the claim, as Mulsanne's actions allowed Mr F's car to be disposed of, he asked it to pay the salvage value to Mr F, which he calculated as a third of the car's market value immediately before the loss. Mulsanne accepted these recommendations.

Mr F accepted most of the recommendations but didn't agree with the voidance and asked for an Ombudsman's decision. Mr F says he recently phoned S and was told there is only one tab to store his primary job and, because his employed role was nominated as his primary job, this is all that was stored in his application. So, he feels the reason his policy was avoided is because S didn't pass on the correct information to Mulsanne. Mr F also said he thinks he's been treated unfairly, and this has impacted him in both a financial and mental wellbeing way. Finally, he said he had a separate policy of insurance in place at the time for his deliveries which further supports the policy not being avoided. And he says he won't be returning any money to Mulsanne.

As Mr F didn't agree with the Investigator, 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.

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.

Mulsanne says Mr F failed to take reasonable care not to make a misrepresentation when he didn't tell it he was a delivery driver. Mr F says he told S about his other jobs, and it didn't have the capacity to detail more than one role.

I should first make clear that I'm only considering Mulsanne's actions in this decision. As I said above, Mr F took the insurance policy out through S in its capacity as a broker. As Mr F's broker, S was required to obtain the information Mulsanne provided and provide this to Mulsanne on Mr F's behalf. If Mr F feels S didn't do this, or it didn't pass all the information he gave to Mulsanne, he'll need to raise this with S directly.

The statement of facts that were issued set out what information Mulsanne requires. And this asks what Mr F's occupation was and S said he was a supervisor in the retail sector. It also asks if he had a part time occupation and S said he didn't. So I'm satisfied Mulsanne made it clear to S that it needed to know whether Mr F had a secondary occupation, but it didn't do so.

I note Mr F told this Service he worked in the retail role one day a week and the rest of his jobs are self-employed. So, I'm not satisfied it has been shown this was the occupation where Mr F spent the most hours and wasn't therefore his main occupation in any event.

Mulsanne used the answers given, along with the responses to its other questions, to evaluate the risk of the policy.

As I said, I'm satisfied Mulsanne clearly asked S whether Mr F had a secondary occupation and it didn't disclose any. I acknowledge Mr F is adamant he disclosed this to S, but, as I said above, he'll need to raise this with S directly. But, regardless of this, I also can't ignore that the policy documentation sent to Mr F sets out the information S provided and this was clear what Mulsanne needed to know. It was ultimately Mr F's responsibility to ensure the details set out in it were accurate and only the retail role was specified. So I think it was fair for Mulsanne to say Mr F failed to take reasonable care to not misrepresent.

Mulsanne sent this service evidence to show it wouldn't have offered Mr F insurance if it had known Mr F worked as a delivery driver. Having reviewed this evidence, I'm satisfied Mulsanne wouldn't have provided Mr F the insurance policy if Mulsanne had been given the correct information about Mr F's occupation and use of the car. Given the evidence I've seen, I'm also satisfied this would've been the case even if Mr F had an additional policy of insurance to cover the time he was using it for deliveries. It follows Mr F's misrepresentation was a qualifying one.

Given Mr F has told this Service he had a number of secondary occupations and he was clearly asked whether he had any part-time occupations, I can't say it was unreasonable that Mulsanne considered this misrepresentation to be deliberate or reckless. As I set out above, CIDRA allows Mulsanne to avoid the insurance policy in these circumstances. And I think that's fair too. As this means – in effect – his policy never existed, Mulsanne does not have to deal with his claim following the accident in September 2022. It is also permitted to retain the premium Mr F paid. And I don't think that's unfair in this case.

That said, I do think there were significant delays at the start of the claim and Mulsanne has accepted its actions meant the police disposed of Mr F's car. So Mr F has lost out specifically because of this. However, I'm conscious, before it became aware of the above issues and avoided the policy, Mulsanne paid Mr F the full market value of his car (less his excess). Given Mulsanne avoided Mr F's insurance policy, Mr F didn't have any entitlement to receive this under the terms of the policy. And, as the Investigator set out, the most I would have required Mulsanne to pay here is the car's salvage value. So, given Mulsanne has already paid more than this and has confirmed to me it won't be requiring Mr F to pay this back, I don't think Mulsanne needs to pay anything more for the car's value.

However, I'm satisfied Mr F did have a number of possessions within the car which he lost as a result of the police disposing of the car. Mulsanne has agreed to consider paying Mr F the value of these possessions and I think that's fair. It's entitled to ask Mr F to provide proof of purchase of these items and adjust the value to take into account any depreciation.

I note the £500 compensatory payment recommended by the Investigator, accepted by Mulsanne and Mr F, hasn't yet been paid to Mr F. I consider it's a fair and reasonable award

to resolve the parts of Mr F's complaint which relate to the times Mulsanne's service fell below the standard he was entitled to expect. So Mulsanne should pay this to Mr F directly.

### **My final decision**

For the reasons I've set out above, I partially uphold this complaint and I require Mulsanne Insurance Company Limited to:

1. Pay Mr F the value of the possessions that were in his car when it was disposed of. It's entitled to ask Mr F to provide proof of ownership of these items and adjust the value to take into account any depreciation; and
2. Pay Mr F £500 in compensation for the distress and inconvenience caused by its initial delays in the handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 24 July 2024.

Guy Mitchell

**Ombudsman**