

The complaint

Mr and Mrs S complained that Marshmallow Insurance Limited (MIL) declined a claim on their car insurance policy.

Mr and Mrs S have a representative helping them. For ease, any information or comments provided by the representative will be also referenced using Mr and Mrs S.

What happened

Mrs S' car insurance policy with MIL renewed in November 2022. Mr S was a named driver. In January 2023, Mr S was involved in an accident. A claim was raised with MIL. There were some delays in assessing the claim but in early April Mrs S was informed by MIL's agent that the car would be a total loss and was given a market value. MIL then requested the V5 before they could accept the claim. The V5 was in Mr S' name and as a result, MIL declined the claim and avoided the policy. MIL said this was because Mrs S made a misrepresentation when she took out the policy.

Mrs S asked for MIL to return the car. MIL advised that Mrs S would need to pay a release fee, the recovery cost and any storage charges. Mrs S went to inspect the car and noticed that some parts had been removed.

Mrs S has raised several complaints with MIL at different times. I'll be addressing all complaints raised. These are as follows:

- Claim delays
- Contradicting/incorrect information being given during the claim process
- Claim being declined
- Fees and expenses during the claim, including:
 - Car hire costs
 - Car release, recovery and storage costs
- Parts being removed from the car

Our investigator upheld the complaint in part. Their first finding was as follows:

- There were delays as well as incorrect/contradicting information given and MIL should increase the compensation by £200, to a total of £400
- MIL didn't unfairly decline the claim
- MIL didn't need to cover any hire car costs

- MIL needed to return the car in the condition it was in after the accident or compensate Mrs S

MIL accepted the investigator's outcome. Mrs S asked about the car release, recovery and storage costs as they hadn't been addressed and provided some more information on the condition of the car.

Our investigator informed Mrs S that she didn't think MIL needed to pay anything relating to the car release, recovery and storage costs. Our investigator then issued a second view clarifying her opinion on the condition of the car. She said that MIL should return the car and pay the value of the parts removed or MIL retain the car and pay Mrs S the salvage value.

Mrs S accepted this as an outcome. MIL disagreed and said that only damaged parts beyond repair had been removed to fully inspect the damage. As a result, the case has passed to me to decide.

What I've provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Based on what I've seen so far, I intend to still uphold the complaint but with a different outcome. I'll address all the complaint points separately below.

At the outset I acknowledge that I've summarised their complaint in far less detail than Mr and Mrs S have, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether MIL acted in line with these requirements when it declined to settle Mrs S' claim.

Claim delays and incorrect/contradicting information given

MIL has accepted there were delays in assessing the claim and that there was some incorrect/contradicting information given. They offered £200 compensation for the trouble and upset caused. Our investigator increased this to £400 in their initial view, which MIL accepted.

As these issues aren't in dispute, I'm not going to go into the details of them here. It has caused Mr and Mrs S trouble and upset because of the delays and the incorrect/contradicting information they were given. Based on what I've seen, I don't think £400 is unreasonable and so I think this is fair compensation for this issue.

Claim being declined

As the claim has been declined due to a misrepresentation, 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 the 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 must 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.

MIL thinks Mrs S failed to take reasonable care not to make a misrepresentation when she told it that she was the registered keeper of the car and gave the incorrect date of birth for Mr S.

As this was a renewal, Mrs S didn't complete an application, the renewal documents with the information Mrs S had previously supplied were sent to Mrs S to review. I've looked at the renewal documents Mrs S was sent to review. When Mrs S' policy renewed, MIL sent out a new policy schedule and statement of fact alongside her other policy documents. The statement of facts specifies:

'Please read this information carefully and check that it is correct and accurate. If any information is incorrect, or missing, please contact us at [email address].'

The statement of fact then set out the information that had previously been given by Mrs S. This included the following information:

'Additional driver 2; Name – Mr S; Date of Birth – day month 1994'

The policy schedule also set out information that had previously been given by Mrs S. This included the following information:

'Vehicle details; Registered keeper – Spouse'

I don't think Mrs S took reasonable care in reviewing the above documents. Mrs S said that Mr S was born in 1994 but he was actually born in 2003. Mrs S also said that her spouse was the registered keeper of the car but the V5 confirms it's her son. I think the questions are clear and unambiguous. I appreciate that Mrs S has said that she has a health condition which can contribute to difficulty in extracting and retaining written information. However, Mrs S could have asked someone for help with reviewing her renewal documents as she was aware of the impact that the condition can have on her.

MIL has said that had they been provided with the correct information, they wouldn't have offered Mrs S a policy. MIL has provided a copy of their underwriting criteria as well as comments from an underwriter. This shows that had the correct information been provided, they wouldn't have offered Mrs S a policy.

This means I'm satisfied Mrs S' misrepresentation was a qualifying one.

MIL has said they think the misrepresentation was deliberate or reckless. This is because she provided an incorrect date of birth for her son and said her spouse was the registered keeper of the car. The term deliberate or reckless is defined by CIDRA as:

'the consumer:

- (a) Knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and
- (b) Knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

I agree that the misrepresentation is deliberate or reckless. This is because I would expect a reasonable consumer to be able to provide this information correctly. Whether this be directly themselves, or by getting help to confirm information if needed.

As I'm satisfied Mrs S' misrepresentation should be treated as deliberate or reckless, I've looked at the actions MIL can take in accordance with CIDRA.

Under CIDRA, where there is a deliberate or reckless qualifying misrepresentation, the insurer is allowed to decline any claims, avoid the policy and retain any premiums. As this is what MIL has done, I don't think they've acted unfairly or unreasonably with declining the claim, avoiding the policy and retaining the premiums.

An insurer is also allowed to recover any costs paid to a third party as a result of any claims. Whilst I appreciate this claim was initially being looked into as non-fault, if MIL does end up having to pay out any claim costs to a third party, they'll be allowed to recover these from Mrs S.

Fees and expenses during the claim

Mrs S has said that she's out of pocket and has additional costs to pay due to how the claim has been dealt with. These costs were for:

- Car hire costs
- Car release, recovery and storage costs

Mrs S has said that due to delays in assessing her claim, she had to hire a car at her own expense for four days. She also paid extra to upgrade the hire car when she was given one.

The policy terms and conditions specify when a courtesy vehicle will be provided. They say:

'If a valid claim is made under this policy, and the insured vehicle is to be repaired by one of **our approved repairers**, the repairer will provide **you** with a **courtesy vehicle** (subject to availability) for the duration of the repairs...

Our aim is to keep you mobile rather than the courtesy vehicle being a replacement for the insured vehicle in terms of status or performance. The courtesy vehicle will normally be a small hatchback of less than 1200cc.'

Mrs S only had the basic cover for a courtesy vehicle on her policy and so was only covered for a vehicle if her car was repaired. She wasn't covered for a courtesy vehicle in the event of a theft or total loss. As Mrs S' car was a total loss, she wasn't entitled to a courtesy vehicle under the policy. Had the claim been dealt with quicker, Mrs S still wouldn't have

been entitled to a vehicle so would have always had to arrange and pay for a vehicle if she needed one. In any event, due to the misrepresentation, the policy is treated as never existing and so there isn't a policy to be able to claim under.

In regard to paying extra to upgrade the courtesy vehicle after MIL supplied one, as per the above terms, she wasn't entitled to an upgraded car and so I don't intend to award Mrs S any of these costs.

After Mrs S' claim was declined due to the misrepresentation, MIL has informed Mrs S that she would need to arrange to recover her car from their salvage agent at her own cost. When Mrs S contacted the salvage agent, they told her that there would be a release fee. MIL has also informed Mrs S that as a result of the misrepresentation, she'd have to pay the storage fees.

Since then, MIL has told us that they were going to speak to their claims department regarding contacting Mrs S to arrange recovery to a location of her choice, at no cost.

Release, recovery and storage costs are all costs that are part and parcel of being an insurance provider. Whilst on occasion I might deem it fair for the insurer to pass on these costs, in the majority of occasions, MIL should be covering these costs. In this case, I don't think it's fair for MIL to pass on these costs. Whilst I appreciate that MIL asked Mrs S to pick up the car, Mrs S disputed the condition of the car. MIL didn't respond to this query quickly and weren't clear in their communication with Mrs S. I think it would be unfair for Mrs S to have to cover these costs as a result.

As such, I intend to tell MIL to pay for the car to be released and recovered to a location of Mrs S' choice and cover the cost of any storage costs.

Parts being removed from the car

We have been provided with extensive photos of the car after the accident and what it currently looks like in the storage facility. MIL has told us the following:

'We have spoken to our in-house engineer who has reviewed the images you provided us of Mrs S' vehicle and has confirmed that we did not return the customer's vehicle in a worse condition.

This is because, when Mrs S' vehicle was sent to a repairer, due to the damage to the front of the vehicle, particularly the heavily broken and unusable headlights and front bumper, this needed to be removed for the repairer to conduct an inspection of the damages. Therefore, the headlights and front bumper were removed by the repairer at the time of initial estimating, to ensure the estimator was able to identify all the damage hidden behind these components.

This is standard industry practice and is a necessary procedure... The repairer has placed the left headlight inside the boot area of the vehicle. The right headlight appears to have been left at the accident scene. The remains of the front bumper would have been discarded for two reasons. Firstly it could not be reattached due to its highly damaged state, it would be a safety risk transporting it and due to its size could not be placed inside the vehicle.'

Mr and Mrs S have said that they think the vehicle is now worthless due to the parts being removed.

I don't think MIL has acted unreasonably. Repairers will often remove damaged parts to ensure they can provide an accurate estimate. I can see that the vehicle did sustain heavy

damage to the front of the car and it doesn't seem unreasonable that the front bumper and right headlight were unusable following the accident.

Whilst I appreciate Mr and Mrs S believe that the parts being removed has reduced the value of the car, they've not provided any evidence to substantiate this. If the parts are heavily damaged and unusable, they would always have needed to have been removed to be replaced.

Based on the above, I don't intend to ask MIL to pay anything further in regards to the condition of the car."

I set out what I intended to direct MIL to do to put things right. And gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses to my provisional decision

MIL accepted my provisional decision.

Mr and Mrs S confirmed they didn't agree with my provisional decision. They only provided comments on parts being removed from the car. They said the following:

- The garage confirmed they didn't send the car to the salvage agent in a stripped condition.
- The decision to write the car off was made prior to it going to the salvage agent, so no further stripping was relevant. The car had been sold to the salvage agent and not sent to them to complete a further fact finding exercise.
- There were no parts left in the vehicle.

As Mr and Mrs S haven't commented on any of the other points, I've assumed they accept these. As there is no dispute from either party on these points, my final decision remains the same on them for the same reasons. I will be providing further comments on the disputed point below.

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 also thought carefully about the response to my provisional decision. Having done so, while I appreciate it will come as a disappointment to Mr & Mrs S, my conclusions remain the same. I'll explain why.

I'm not entirely sure exactly when the car was stripped of the damaged parts. However, I don't think this matters. MIL's engineer has said that the stripped parts were unusable. These parts would always have had to be removed from the car. I've not been provided with any evidence to show that the damaged parts being stripped has negatively impacted the value of the car. As such, I find no reason to depart from the outcome I reached on this point in my provisional decision.

Putting things right

MIL should do the following:

- Pay £400 compensation for the distress and inconvenience.
- Cover the costs of any release, recovery and storage charges.
- Arrange for the car to be returned to Mr and Mrs S.

My final decision

For the reasons I've explained above, I uphold this complaint and direct Marshmallow Insurance Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 21 June 2024.

Anthony Mullins
Ombudsman