

## The complaint

Mr K is unhappy Marshmallow Insurance Limited (Marshmallow) avoided his motor insurance policy and refused to pay his claim.

## What happened

Mr K took out a motor insurance policy with Marshmallow in December 2022. Unfortunately in August 2023 Mr K was involved in an accident and submitted a claim to Marshmallow.

During their investigation into Mr K's claim, Marshmallow found that Mr K's grandmother was the owner and registered keeper of the car. Marshmallow said during the application process Mr K had been asked if he was the owner and registered keeper of the car and he said he was.

Marshmallow explained it considered this to be a deliberate qualifying misrepresentation. It said this entitled it to avoid the policy, decline the claim and retain the policy premium. It also said it would be seeking to recover any payments it's obliged to make by law in relation to any third party claims from Mr K.

Mr K was unhappy with this and so referred the complaint to this Service. Our investigator didn't uphold Mr K's complaint. She said Marshmallow had fairly applied the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) and were entitled to avoid Mr K's policy as there had been a qualifying misrepresentation. She also said it was reasonable for Marshmallow to consider the misrepresentation to be a deliberate one and so it was entitled to retain the policy premium.

Mr K disagreed with the investigator's opinion. He didn't think he had answered the question asked incorrectly and if there had been a misrepresentation it should be considered careless rather than deliberate

I issued a provisional decision upholding this complaint and I said the following:

*'I want to acknowledge that I've summarised Mr K's complaint in less detail than he has presented it. I've not commented on every point he has raised, instead I have focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy by this, it simply reflects the informal nature of this service. I assure Mr K and Marshmallow that I've read and considered everything that's been provided.'*

*I intend to uphold this complaint and I'll explain why.*

*The relevant law in this case is 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 that 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 think Mr K failed to take reasonable care not to make a misrepresentation when he answered a question about the registered keeper and legal owner of the vehicle he was looking to insure.*

*I've looked at the question Mr K was asked when he completed the application. Mr K was asked:*

*'Are you (or will you be) the registered keeper and legal owner?'*

*There was also an option for Mr K to click a question mark for what this meant. Had he done so it stated:*

*'The registered keeper is named on the V5 certificate and will hold this document. If your vehicle is financed or leased, please check the agreement to confirm the legal owner and registered keeper. If you bought the Car or if ownership was transferred to you, as a gift, you will also be the legal owner.'*

*Marshmallow have provided evidence the V5 document is in Mr K's grandmother's name, and so is the finance agreement, meaning at the time of taking out the policy Mr K wasn't the legal owner and registered keeper of the vehicle he was looking to insure. However the question also asked whether Mr K 'will be' the registered keeper and legal owner.*

*Therefore in order for Marshmallow to say Mr K has made a misrepresentation it would need to show Mr K will not be the registered keeper and legal owner of the vehicle he was looking to insure at any point in the future.*

*Mr K has provided evidence he reimburses his grandmother the finance payments each month, and given Mr K is the main user of the vehicle, I think it's more than likely Mr K will become the legal owner of the vehicle in the future. It isn't possible for me to say with any certainty whether Mr K would have become the registered keeper or not. However ultimately the onus is on Marshmallow to demonstrate Mr K has made a qualifying misrepresentation, and I don't think it has been able to do so.*

*As Marshmallow has been unable to show Mr K made a misrepresentation, CIDRA doesn't entitle it to avoid Mr K's policy. As Marshmallow incorrectly avoided Mr K's policy, it should re-consider Mr K's claim. It should also remove any record of the avoidance of Mr K's policy.*

*I've also considered the impact that has been caused to Mr K due to Marshmallow incorrectly avoiding his policy. Mr K has explained he has been caused stress and inconvenience as a result of Marshmallow avoiding his policy. The avoidance of the policy has meant there has been a delay in Mr K receiving a potential settlement. He has also been caused distress due to Marshmallow informing him it would be seeking to recover any payments it made towards a third party claim. Having taken into consideration the distress and inconvenience that has been caused as a result of Marshmallow's error, it should pay Mr K £250 compensation'*

*Mr K didn't have anything further to add to my provisional decision and Marshmallow didn't respond to it.*

### **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.

As neither party has given me anything further to think about, I see no reason to reach a different conclusion to the one I reached before. So I uphold this complaint for the reasons I set out in my provisional decision.

### **My final decision**

For the reasons I've set out above, it's my final decision that I uphold Mr K's complaint about Marshmallow Insurance Limited. Marshmallow Insurance Limited should re-consider Mr K's claim, remove any record of the avoidance of Mr K's policy and pay Mr K £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 December 2024.

Andrew Clarke  
**Ombudsman**