

## The complaint

Mr S complains about Marshmallow Insurance Limited's (Marshmallow) decision to avoid his car insurance policy following a claim he made.

## What happened

In December 2023, Mr S bought car insurance underwritten by Marshmallow. In February 2024, following an accident, he called Marshmallow to make a claim. Marshmallow says that during its consideration of the claim, it became apparent Mr S had made a misrepresentation when he bought the policy. Marshmallow says Mr S failed to disclose a second occupation as a fast-food delivery driver.

Marshmallow says Mr S was required to declare all his occupations when taking out the policy. But he only declared one of his jobs as an IT consultant. Marshmallow says, Mr S was also required to inform it of any change in circumstances after the policy started, including any change in occupation. It says he breached the terms of the policy by failing to do so. And had it known about Mr S's second occupation, it wouldn't have offered cover for Mr S's car. So, it cancelled Mr S's policy and retained his annual premium.

Mr S was unhappy with this and made a complaint to Marshmallow. Mr S said he wasn't working as a delivery driver at the point he applied for the policy. So, he didn't make a misrepresentation. He also says he wasn't aware he needed to inform Marshmallow of any changes in his circumstances and he had separate cover whilst working as a delivery driver.

Mr S brought his complaint to this Service. Our Investigator looked into it and didn't think Marshmallow had acted unreasonably towards Mr S.

Mr S disagreed and asked for an Ombudsman to review the complaint.

I issued a provisional decision on Mr S's complaint. This is what I said about what I'd 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'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that has happened or been argued is set out above, I've read and considered everything that has been provided.*

### 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 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 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, reckless, or careless.*

*Marshmallow thinks Mr S failed to take reasonable care not to make a misrepresentation when he failed to inform it that he was also a fast-food delivery driver. But I've looked at Mr S's contract with the fast-food delivery chain and I can see his employment with them started after the policy went ahead. So, he wasn't employed or working as a fast-food delivery driver at the time he applied for cover. So this wasn't something he needed to disclose at the point of inception.*

*Mr S told Marshmallow he worked as an IT consultant at the time he applied for the policy. But his job didn't start until March 2024, a number of months after the policy started. Mr S has told this Service that after the job interview (before the policy started) he was told verbally that he was successful in getting the role. So, although he wasn't technically employed or working as an IT consultant at the time he applied for cover, he considered himself to be.*

*I need to consider what a reasonable person in the same set of circumstances would do. It's not unusual for an employer to inform a candidate on or around the time of their interview whether they were successful in obtaining the role. And as I've seen evidence showing the interview date was before he took out cover and the fact he's since started working as an IT consultant, I'm satisfied, on balance, he was informed verbally he'd been successful. And I'm not persuaded a reasonable person in the same set of circumstances would have acted differently to what Mr S did. So, I think he took reasonable care when answering the questions around his employment status. As I don't think Mr S failed to take reasonable care when applying for the policy, I can't say there's been a qualifying misrepresentation as per CIDRA.*

#### Mid-term changes

*Marshmallow says Mr S should have told it he'd taken on other employment. Because he didn't it says he breached the terms of the policy by using the car for commercial purposes. And had he told Marshmallow about his second occupation when he started work in late December 2023, it says it would have cancelled the policy due to the change in risk. And, therefore, Mr S wouldn't have had cover through Marshmallow when his car was damaged.*

*Part two of the policy booklet "Your obligations" explains Mr S needed to inform Marshmallow if any of **your** information is incorrect or if anything changes..." the policy then lists examples of the types of changes Mr S needed to inform Marshmallow about, including changes to full or part time employment.*

*The policy then explains if the changes are unacceptable to Marshmallow and it is no longer able to provide cover, either it or Mr S can cancel the policy which is what Marshmallow did once it became aware of Mr S's second occupation. And has said Mr S's needs to pay the annual premium on the basis he made a claim, which It says it can do under the policy terms.*

*However, I think this is a significant ongoing duty towards Mr S and, if Marshmallow wishes to rely on such a term, I would expect it to have highlighted this outside of the terms of the policy. Insurers will generally do this in a policy summary or an "insured product information document". But I can't see that Marshmallow has brought this requirement to Mr S's*

*attention. And as the policy wording regarding a customers need to inform it of any changes are on page 45 of a 60-page document, I don't think Marshmallow has done enough to ensure Mr S was aware he needed to inform Marshmallow of his second occupation as a fast-food delivery driver. Had it done so, I think it's more likely than not Mr S would have told Marshmallow about it. So I don't think it's fair for Marshmallow to rely on this term.*

*Marshmallow has said that Mr S breached the policy terms when he used his car for commercial purposes. It says the extent of his cover related to social, domestic and pleasure as well as commuting to and from his place of work. And because of this breach in the terms, it said it fairly cancelled the policy.*

*Mr S has been using his car for commercial purposes, which is outside of the scope of cover Marshmallow agreed to when it offered him the policy. So, I don't think its decision to cancel the policy is unreasonable from the point it became aware of this (at the point Mr S submitted his claim). But I don't think it's fair or reasonable for it to pursue Mr S for the remainder of the annual premium. That's because I don't think the policy terms made it clear that he had an on-going duty to disclose any change in his circumstances. Marshmallow has shown through its underwriting it wouldn't have continued to offer cover had it been aware of the changes, so it seems likely, had it sufficiently informed Mr S's he needed to notify Marshmallow of the changes in his employment, the policy would have been cancelled then, by him. And on that basis, he would have only paid for his time on cover, plus any additional cancellation and administrative charges. So, I'm minded to say that's how Marshmallow should treat Mr S's policy cancellation.*

*Marshmallow has said that as Mr S has made a claim, its entitled to retain the annual premium. But Mr S has explained the costs in repairing his car are around £350 whereas the policy excess is around £850. So, it doesn't seem Mr S will make a claim for damages under his car insurance. As such, I don't think it's fair for Marshmallow to pursue Mr S for the annual premium on that basis.*

*Based on what I've set out above, I'm not persuaded Mr S failed to take reasonable care when he applied for the policy. So, I can't agree there's been a qualifying misrepresentation per CIDRA. I also can't agree the requirement for Mr S to disclose his change in occupation mid-term was made clear to him. So, although I'm minded to say it's fair for Marshmallow to cancel the policy once it became aware of how Mr S used his car, I'm minded to say it should only charge him for his time on cover inclusive of any cancellation charges that would have applied.*

### **My provisional decision**

*For the reasons I've set out above, subject to either party providing more information, I am minded to require Marshmallow Insurance Limited to settle Mr S's complaint as follows:*

- 1. Remove all record of the policy avoidance/cancellation from internal and external insurance databases, and;*
- 2. Waive any outstanding premium it says Mr S needs to pay over and above what it would have charged him for his time on cover, and any cancellation fee he would have been subject to pay. And it should refund any overpayment Mr S has made towards the policy.*

### **The responses to my provisional decision**

*I invited both Mr S and Marshmallow to respond to my provisional decision. Mr S accepted my provisional decision. Marshmallow made no further comment.*

### **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 made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously. So, for the reasons set out above, I uphold this complaint.

### **My final decision**

My final decision is I uphold this complaint. I direct Marshmallow Insurance Limited to:

1. Remove all record of the policy avoidance/cancellation from internal and external insurance databases, and;
2. Waive any outstanding premium it says Mr S needs to pay over and above what it would have charged him for his time on cover, and any cancellation fee he would have been subject to pay. And it should refund any overpayment Mr S has made towards the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 February 2025.

Adam Travers  
**Ombudsman**