

The complaint

Mr A complains that Marshmallow Insurance Limited avoided his car insurance policy (treated it like it never existed) and refused to pay his claim.

What happened

Mr A took out a car insurance policy with Marshmallow through a comparison site online in October 2022.

In April 2023 he changed his car under the policy from car 'A' to car 'B'.

In June 2023 he reported an incident involving car 'B'.

Later in June 2023 he changed the car under the policy from car 'B' to car 'C'.

In October 2023 he tried to change the car under the policy online from car 'C' back to car 'B'. Unable to do this, he contacted Marshmallow via its online chat facility.

When asked, Mr A said his cousin, a named driver under the policy, was the registered keeper and owner of car 'B'. Marshmallow said that in his circumstances, Mr A had to be both the registered keeper and registered owner of the car in order to provide cover.

Mr A then said his cousin was his civil partner, as in these circumstances Marshmallow would allow cover. But Marshmallow said as the keeper and owner was Mr A's cousin, Mr A didn't have an insurable interest in the car.

Mr A didn't agree and said he'd previously insured the same car (from April 2023 to June 2023) under the policy and nothing had changed.

Marshmallow referred matters to its underwriters. It said Mr A had answered questions Marshmallow asked about the keeper and owner incorrectly when he added car 'B' to the policy. And it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid Mr A's policy and refuse his claim. It said if it received a claim from a third party for the June 2023 incident, it would look to recover any claims costs from Mr A directly.

Marshmallow has provided a copy of the V5 log book which shows the named driver for car 'B' was the registered keeper from March 2023.

Mr A brought his complaint to us. He said it was difficult to obtain insurance elsewhere due to the avoidance and he was using alternative means of transport.

One of our Investigators thought Mr A's complaint should be upheld. He said Marshmallow didn't provide evidence it had asked Mr A clear questions about the keeper and owner of car 'B' when he changed the car in April 2023. So he didn't think a misrepresentation had occurred. The Investigator made the following recommendations to Marshmallow:

- Remove the cancellation or avoidance marker against Mr A and treat the

cancellation as a lapsing of the policy which was due to be renewed on 29 October 2023. The Investigator said no changes were agreed to Mr A's policy on 18 October 2023 when he enquired about changing the vehicle, so he thought this was a fairer outcome.

- If the policy allows, Marshmallow should award a further year of no claims discount to Mr A and provide proof if they award a further year of no claims discount.
- Provide a letter to Mr A confirming the cancellation doesn't need to be disclosed on any future insurance applications.
- Return any claim costs if Mr A has paid anything to Marshmallow. The Investigator could see the claim was deemed not to be Mr A's fault from the claim notes provided, but if any costs have been sought from Mr A by Marshmallow, any payments made should be returned to him.
- Pay Mr A £400 in compensation for the distress and inconvenience caused by the incorrect avoidance of his policy, meaning he's had difficulty in obtaining insurance elsewhere which shouldn't have happened, and for having to use alternative transport.

Mr A accepted the Investigator's view.

Marshmallow doesn't agree with the Investigator and has asked for an ombudsman's decision. It provided a recent screenshot of the questions it says Mr A was asked in April 2023. It says it can't provide any further evidence to show these were the questions it asked Mr A then. It also provided a copy of the motor certificate and motor schedule of insurance from April 2023. The schedule shows the policyholder – Mr A – as both the registered keeper and owner of car 'B'.

I issued a provisional decision on 7 February 2025. I made an additional recommendation to take into account the option for Mr A for Marshmallow to indemnify Mr A for loss or damage to his car under the claim if appropriate.

I didn't receive a response from either party. So the case has been passed back to me for a final decision.

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 wrote the following in my provisional findings;

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.

CIDRA applies during the contract if it is varied – so when Mr A changed his car to car 'B' in April 2023. This means I've considered CIDRA for the mid-term adjustment (MTA) when reaching my decision.

Marshmallow thinks Mr A failed to take reasonable care not to make a misrepresentation when he changed the car under the policy in April 2023.

Our Investigator asked Marshmallow to provide evidence of the key questions it asked Mr A when he carried out the change. Marshmallow has provided a recent screenshot of what it says Mr A would have been asked in April 2023. This isn't enough to show these are the questions Marshmallow asked Mr A at the time of the change, or his answers. This shows what questions Marshmallow would ask at the time the screenshot was taken.

So I cannot safely conclude that Mr A failed to take reasonable care, nor can I decide that in line with CIDRA, Mr A made a qualifying misrepresentation. This effectively means I cannot say Mr A misrepresented information when he changed the car under the policy in April 2023.

I don't think the Investigator's recommendations put Mr A back in the position he was in before the avoidance, which we think is fair. Marshmallow's notes up to the point where it avoided the policy show that Marshmallow had offered Mr A a cash settlement for repairs to settle his claim.

The notes show that Mr A declined the cash settlement offer as he said his car had been declared a total loss. It's not clear if Mr A has already received a settlement from a claims management company for his car. Mr A attempted to add car 'B' to the policy in October 2023. So car 'B' should have been roadworthy at this time in order for Mr A to look to insure it.

If Mr A wishes to continue with his claim for repairs to his car, Marshmallow will need to proceed with this under the remaining terms and conditions of the policy.

If Marshmallow settles a claim by Mr A, it will need to pay interest on any claim settlement it makes from one month from the date of loss, so 25 July 2023, to the date of payment at a rate of 8% simple interest a year.

Mr A will need to provide reasonable evidence to Marshmallow if he wants to continue with his claim under the policy. To manage Mr A's expectations, usually where a claim has been made against a policy this will impact on a customer's NCB.

My final decision

For the reasons set out above, my final decision is that I uphold Mr A's complaint. I require Marshmallow Insurance Limited to do the following:

- Remove the cancellation or avoidance marker against Mr A and treat the cancellation as a lapsing of the policy which was due to be renewed on 29 October 2023.
- If the policy allows, Marshmallow should award a further year of no claims discount to Mr A and provide proof if they award a further year of no claims discount.

- Provide a letter to Mr A confirming the cancellation by Marshmallow was in error.
- If any claim costs have been sought from Mr A by Marshmallow, payments made should be returned to him with interest.
- Consider Mr A's claim for incident related damage to his car, if Mr A wishes to continue with a claim.
- Pay Mr A £400 in compensation for the distress and inconvenience caused by the incorrect avoidance of his policy, difficulty in obtaining insurance elsewhere and having to use alternative transport.
- Marshmallow Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr A accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.
- If Marshmallow Insurance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A 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 A to accept or reject my decision before 26 March 2025.

Geraldine Newbold
Ombudsman