

The complaint

Miss Z has complained that Marshmallow Insurance Limited avoided (treated it as if it never existed) her motor insurance policy and refused to pay her claim.

What happened

Miss Z took out a motor insurance policy with Marshmallow through an online price comparison site. When her car was damaged in an incident, she tried to claim on her policy.

Marshmallow declined her claim, avoided her policy and kept the premiums she'd already paid. When Miss Z complained, it said she'd answered the question she'd been asked about the car's registered keeper and owner incorrectly. And that it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid her policy and refuse her claim.

Miss Z brought her complaint to us, and our Investigator thought it should be upheld. She didn't agree there had been a qualifying misrepresentation. She thought Miss Z reasonably thought she was the car's owner and keeper. She saw that the DVLA had provided Miss Z with a backdated V5 registration form showing that she was the car's registered keeper when she took out the policy. And so she thought Miss Z hadn't made a misrepresentation and the error was purely administrative.

She said Marshmallow should consider Miss Z's claim, remove any markers recorded due to misrepresentation and pay Miss Z £100 compensation for her trouble and upset.

Marshmallow doesn't agree with the Investigator and has asked for an Ombudsman's decision. It said Miss Z wasn't the car's registered keeper when she took out the policy and she had no insurable interest in the car. Marshmallow also said it hadn't avoided the policy as it had expired. It said it was prepared to change the misrepresentation to careless rather than reckless.

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 can understand that Miss Z feels frustrated that her claim for the total loss of her car has been declined. Marshmallow was concerned that Miss Z brought her complaint to us too late for us to consider it under the rules that govern us. But I can confirm that Miss Z brought her complaint to us within six months of Marshmallow's response to her complaint. So it is one we can consider.

Marshmallow said it hadn't avoided Miss Z's policy as it expired naturally. I can see that in its letters to her and its response to her complaint Marshmallow states that the policy has been declared void and her claim declined. But the policy had already expired by this time.

I'm satisfied 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 (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. 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 is 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.

Marshmallow thinks Miss Z failed to take reasonable care not to make a misrepresentation when she stated in her application via a comparison site that she was the car's registered keeper and owner.

And I've looked at the question she was asked when she completed the application, and I don't agree she failed to take reasonable care. This is because she was asked:

"Are you (or will you be) the car's registered keeper and legal owner?"

Marshmallow said this meant that Miss Z would be the registered keeper and owner when her policy started. But the question doesn't ask that, just that Miss Z is or would be in the future. A pop up explains that the registered keeper is named on the V5 certificate and will hold this document.

Miss Z said yes. She explained that the car had been gifted to her by a relative and she thought he had completed the change in V5. She said she paid for the insurance, MOT and the road tax. And so Miss Z said she thought she was the car's registered keeper and owner. And I think Miss Z answered Marshmallow's question as a reasonable person would as she intended to be the car's registered keeper and owner.

But after Miss Z made a claim to Marshmallow it found that the V5 was still in her relative's name. Marshmallow said it wouldn't have offered cover if it had known this hadn't been changed. And so Miss Z's relative then sent the V5 to the DVLA and it backdated the date of the change in ownership to when Miss Z acquired the car and before she took out her policy.

Miss Z provided evidence from her relative that he had gifted her the car three days before Miss Z took out her policy with Marshmallow. Miss Z provided evidence that she acted as the owner by taxing, insuring and maintaining the car. So I'm satisfied that Miss Z was the car's owner. And so I'm not persuaded that Miss Z didn't have any insurable interest in it.

I think it was for Miss Z's relative to send the change of ownership form to the DVLA. Miss Z thought this had been done. It wasn't to her advantage to provide incorrect information about the car's keeper to Marshmallow. And so I'm still persuaded that Miss Z took reasonable care to answer the question correctly.

Miss Z made her claim nine months later and the V5 was still in her relative's name. I agree with Marshmallow that it was careless of Miss Z not to follow up the change of V5 and ensure that this had been completed.

Miss Z corrected the error by having the DVLA backdate the change of ownership on her new V5. But I don't think this is relevant as it doesn't change what happened when Miss Z took out her policy.

And so I think Miss Z took reasonable care to answer to the best of her ability the question she was asked about the registered keeper and owner when she took out her policy. And so I don't agree that she made a misrepresentation. I think the mistake was administrative. And I think it was unfair and unreasonable, and not in keeping with CIDRA, for Marshmallow to avoid her policy and decline her claim.

When a business makes a mistake, as I think Marshmallow has done here, we expect it to restore the consumer's position, as far as it's able to do so. And we also consider the impact the error had on the consumer.

By the time Marshmallow had decided to avoid Miss Z's policy and decline her claim the policy had already expired. But if the avoidance or misrepresentation has been recorded anywhere, then Marshmallow should remove these markers.

Marshmallow should now consider Miss Z's claim for the total loss of her car in keeping with the policy's terms and conditions. If it makes a payment, then it should add interest to this as Miss Z has been without her money for some time.

The unfair and unreasonable repudiation of her claim has caused Miss Z trouble and upset for many months. But I think Miss Z could have avoided this if she had noted earlier that she hadn't received the new V5 from the DVLA. Our Investigator recommended that Marshmallow should pay Miss Z £100 compensation for her trouble and upset. I think that's fair and reasonable in the circumstances.

Putting things right

I require Marshmallow Insurance Limited to do the following:

1. Remove any markers of the avoidance and misrepresentation from Miss Z's record.
2. Consider Miss Z's claim for the total loss of her car in line with the policy's terms and conditions.
3. If a payment is made, then interest should be added to this amount at the rate of 8% simple per annum from the date the claim was declined to the date of payment†.
4. Pay Miss Z £100 compensation for the distress and inconvenience caused by its unfair decision to void her policy and decline her claim.

†If Marshmallow considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss Z how much it's taken off. It should also give Miss Z a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Marshmallow Insurance Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Z to accept or reject my decision before 28 May 2025.

Phillip Berechree
Ombudsman