

The complaint

Mr A has complained that Marshmallow Insurance Limited avoided (treated it as if it never existed) his motor insurance policy and refused to pay his claim. He's also unhappy with delays in the claim, communication, use of non-manufacturer's parts and not being provided with a courtesy car.

What happened

Mr A took out a motor insurance policy with Marshmallow through an online price comparison site. When his car was damaged in a collision, he made a claim on his policy. Marshmallow initially accepted the claim, but it then found that the car had a non-standard bumper which it thought was an after-market modification.

So Marshmallow declined Mr A's claim, avoided his policy and kept the premiums he'd already paid. When Mr A complained, it said he'd answered the question he'd been asked about modifications to his car incorrectly. And that it considered this to be a deliberate qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim.

Marshmallow agreed there had been delays in the claim and it paid Mr A £150 in total compensation for this. But Mr A was unhappy that Marshmallow's repairer had intended to use second-hand parts to repair his car and that he hadn't been provided with a courtesy car whilst waiting for his car to be repaired. Mr A later paid for his car to be repaired.

Mr A brought his complaint to us and our Investigator thought it should be upheld. She didn't agree there had been a qualifying misrepresentation as she thought Mr A wasn't aware of the modification to his car when he took out his policy. So she thought Marshmallow had unfairly declined the claim and avoided the policy. She said Marshmallow should reimburse the cost of Mr A's repairs, with interest, and remove records of the avoidance.

She thought Mr A was entitled to a courtesy car as he had a policy add-on that provided this. But she thought Marshmallow was entitled by the policy's terms and conditions to use non-manufacturer's parts in the repair. And she thought Marshmallow should increase its compensation payment to £500 to recognise the impact of the unfair avoidance, and the trouble caused to Mr A.

Marshmallow doesn't agree with the Investigator and has asked for an Ombudsman's decision. It said the front bumper was clearly non-standard and it thought Mr A had made a deliberate misrepresentation by not declaring this when he took out the policy. It said that even if this had been a careless misrepresentation, it would still be entitled to avoid the policy as this modification was unacceptable to its underwriters.

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 Mr A felt frustrated with how his claim was handled. He said there were initial delays in Marshmallow locating a repairer, poor communication about the claim,

he wasn't provided with a courtesy car and then his policy was avoided and his claim declined.

I'm satisfied that 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 Mr A failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that his car didn't have any modifications. And so I've looked at the question he was asked when he completed the application. He was asked whether the car had any modifications from the manufacturer's standard. And I think this was a clear question asked by Marshmallow through the comparison site Mr A used.

Mr A answered "No" and he's explained that this was because he bought the car second-hand and wasn't made aware that the bumper had been changed from the original one. Marshmallow thought Mr A had admitted in an online chat that he knew the bumper wasn't original. But I'm not persuaded that he did state this. I think he simply confirmed that he would check with the dealer when the bumper was added after this was brought to his attention.

Marshmallow also thought the bumper was clearly different as it was matt whilst the rest of the car was glossy. But this wasn't picked up by Marshmallow when it initially validated the claim and had photographs of the car. This only came to light when the car was taken to its garage for inspection and the engineer reported the change.

So I think it wasn't unreasonable for Mr A, who isn't an engineer, to not have noticed that the bumper had been modified from the original.

Marshmallow said that if Mr A had made a careless misrepresentation, then the policy would still have been avoided as a body kit was an unacceptable modification. But I can't see evidence that the car had a body kit modification, just a changed bumper. And, from the underwriting criteria that Marshmallow has provided, this would still have been acceptable for cover.

But this isn't now relevant as I'm not satisfied that Mr A failed to take reasonable care not to make a misrepresentation when he said the car had no modifications. I think he took reasonable care to answer the question correctly. And so I think he didn't make a qualifying

misrepresentation under CIDRA. And so I think it was unfair for Marshmallow to avoid his policy and decline his claim.

And I think Marshmallow should now remove records of the avoidance, and refund Mr A's repairs costs, with interest as he's been without his money for some time. As the policy will have been used, I think it's reasonable for Marshmallow to retain the premiums.

And – as CIDRA reflects our long-established approach to misrepresentation cases, I think not allowing Marshmallow to rely on it to avoid Mr A's policy produces the fair and reasonable outcome in this complaint.

Mr A was unhappy that Marshmallow's repairer intended to use non-manufacturer's parts in the repair. But, as the Investigator has explained, it is entitled to do this under the policy's terms and conditions. So I can't say it made an error in this.

Mr A was also unhappy that he didn't receive a courtesy car when his car was deemed undriveable. Marshmallow said the policy provided a courtesy car, depending upon availability, when the car was taken for repairs. But Mr A had paid for a guaranteed courtesy car to be provided before his car was taken for repairs.

Marshmallow said Mr A hadn't contacted its supplier to request this. But I can't see that Mr A was made aware of this in the online chats where he complained about the lack of a courtesy car. So Mr A didn't receive the replacement car he was entitled to for up to 28 days.

Marshmallow agreed that its level of service had at times been wanting. It delayed recovering Mr A's car and it provided him with incorrect information, and it offered Mr A £150 compensation for this. But I think it also didn't provide Mr A with the guaranteed courtesy car he was entitled to. And it unfairly avoided his policy and declined his claim. Mr A had to arrange his own repairs, and he was caused avoidable frustration by the avoidance.

The investigator recommended that Marshmallow should increase its payment of compensation for this trouble and upset to £500. I think that's fair and reasonable as it's in keeping with our published guidance for the impact of repeated errors over several months.

Putting things right

I require Marshmallow Insurance Limited to do the following:

1. Remove records of the avoidance of Mr A's policy from any internal or external databases where it's been recorded.
2. Reimburse Mr A for the cost of the repairs he made to his car, adding interest to this amount at the rate of 8% simple per annum from the date he paid for these to the date of settlement†.
3. Pay Mr A £350 further (£500 in total) compensation for the distress and inconvenience caused by its handling of his claim.

†If Marshmallow considers that it's required by HM Revenue & Customs to deduct 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.

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 Mr A to accept or reject my decision before 1 July 2025.

Phillip Berechree
Ombudsman