DRN-5832763

The complaint

Mrs M complains that Marshmallow Insurance Limited voided her motor insurance policy, kept all her premium and didn't deal with her claim.

Reference to Marshmallow includes its agents.

What happened

Mrs M held a motor insurance policy with Marshmallow. After she was involved in an accident, she made a claim.

Initially, Marshmallow looked to settle Mrs M's claim, but while validating it, Marshmallow noticed Mrs M wasn't the registered keeper of the car.

Marshmallow thought this meant she'd answered the question it asked, when she took out the policy, about who was the registered keeper incorrectly. And it thought this was a deliberate or reckless qualifying misrepresentation. It said this meant it was able to void the policy and keep any premium Mrs M had paid for it. Because voiding the policy essentially meant it didn't exist, there was no policy for Mrs M to claim from for the damage to her car.

So, Marshmallow didn't deal with her claim.

Mrs M complained to Marshmallow about this. She didn't think it was fair. She said she thought she was the registered keeper of the car. She said she had the new owner slip when she purchased her car and thought the seller was the one who needed to register the sale.

She said she didn't realise she needed to do anything more. And she said when she realised, she applied to the DVLA who said the car couldn't now be registered to her because it had been written off (by Marshmallow).

Marshmallow didn't change its stance. It said Mrs M should have known something wasn't right after not receiving the V5C document within four weeks of the sale. It maintained Mrs M had made a deliberate or reckless qualifying misrepresentation.

Mrs M didn't agree and brought her complaint to us.

One of our Investigators recommended it be upheld. He didn't think Mrs M had made a qualifying misrepresentation. He said to put matters right, Marshmallow should consider Mrs M's claim, record the policy as cancelled by her, not it, and pay her £300 compensation.

Mrs M agreed with our Investigator's assessment.

Marshmallow didn't and asked for an Ombudsman's decision.

I issued a provisional decision explaining I was looking at upholding Ms M's complaint. It said:

"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.

Marshmallow thinks Mrs M failed to take reasonable care when she answered the question she was asked about the registered keeper of the car.

Mrs M was asked who the registered keeper of the car was, to which she answered "herself". Marshmallow has said this isn't true and answering this way constitutes a failure to take reasonable care. Marshmallow not only thinks this is a failure to take reasonable care, but thinks it was a deliberate or reckless qualifying misrepresentation.

I disagree.

Marshmallow says at the time of the claim Mrs M wasn't the registered keeper. And I'm satisfied technically, that is correct. I don't however, agree that means she made a qualifying misrepresentation when she took out the policy.

Mrs M said she thought she was the registered keeper. She paid for the vehicle in a private sale and got the new car slip. She said it was her understanding that the seller was the party that needed to register the sale of the car and put Mrs M as the new keeper. She's not wrong here, this is the process.

Mrs M didn't hear anything more and thought nothing of it. Marshmallow has said that guidance is clear in that if Mrs M didn't receive the V5C document within four weeks of the sale, she should have contacted the seller and/or the DVLA to ensure she received the documentation needed to show she was the registered keeper. Again, I'm satisfied this is correct too.

But the fact that Mrs M didn't do this in no way means that her representation at the time she took out the policy constitutes a failure to take reasonable care. Most, if not all car sales, new or old follow a similar process – in that you don't get the V5C document the moment you take possession of the car. As Marshmallow pointed out, that usually follows within four weeks of the purchase.

So, to say that Mrs M deliberately or recklessly made a qualifying misrepresentation, at the time she took out the policy, based on an action she didn't take, or know that she would ever need to take four weeks after making said representation, is quite frankly an illogical argument.

To be clear, I agree with Marshmallow's point that Mrs M should have done something after not receiving the V5C withing four weeks of the sale. But I think this is no more than an administrative error on her part or a lack of understanding of the process.

What I don't think this shows, is that she failed to take reasonable care when answering the question she was asked about the registered keeper when she took the policy out several

weeks before. I'm satisfied most people, if not all, would have answered that they were the registered keeper in the same circumstances, owing to the fact that the V5C comes after being sent off by the seller and processed by the DVLA, it is rarely, if ever, in the name, and hands of the new owner at the point the car is purchased and insurance is taken out.

It follows then that I don't find Marshmallow's actions here fair and reasonable.

To put things right it should remove any record of this policy being cancelled or voided and effectively reinstate it. It should assess Mrs M's claim in line with the remaining terms and conditions of the policy. Should the claim be paid, Marshmallow should pay Mrs M interest.*

Having a cancelled/voided policy will likely have affected which insurers wanted to insure Mrs M and influenced what price she was charged – this is in addition to the claim which she'll have had to declare earlier than she would have had she stayed with Marshmallow.

So, to put this right, upon receipt of evidence from Mrs M, Marshmallow should pay her the difference between what she's been charged by her new insurer following this claim and what she would have been paying Marshmallow for the same time period. Marshmallow should pay interest on top of this amount.*

Having a policy voided and your claim not being dealt with will have caused distress and inconvenience. For that, Marshmallow should pay Mrs M £300 compensation.

**Interest should be calculated at a rate of 8% simple, per annum. It should be calculated from the date Marshmallow voided Mrs M's policy until it makes the settlement as directed above. HM Revenue & Customs may require Marshmallow to take off tax from this interest. If asked, it must give Mrs M a certificate showing how much tax it's taken off."*

Marshmallow accepted my provisional decision.

Mrs M said she didn't take another policy out after hers was cancelled. She said she's just a named driver on another policy now.

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.

Having done so, I'm upholding it. The reasons for doing so are the same as those set out above in my provisional decision. No party has objected to that, so I see no reason to change it.

But because Mrs M has confirmed she didn't take out another policy, part of my proposed redress (the part about marshmallow potentially needing to pay the difference between what it would have charged her, and the price of her new policy) simply does not apply now in practical terms – there is no new policy she took out. Therefore, that isn't something I require Marshmallow to do.

However, the remaining redress, remains as set out in the provisional decision set out above. Again, no party has objected to this or given any reason why it's not fair. So I see no reason to change it.

Putting things right

Marshmallow Insurance Limited needs to:

- Remove any record of this policy being cancelled/voided from internal or external records
- Effectively reinstate the policy and assess Mrs M's claim in line with its terms and conditions. Should the claim be paid, it should include interest*
- Pay Mrs M £300 compensation

**Interest should be calculated at a rate of 8% simple, per annum. It should be calculated from the date Marshmallow voided Mrs M's policy until it makes the settlement as directed above. HM Revenue & Customs may require Marshmallow to take off tax from this interest. If asked, it must give Mrs M a certificate showing how much tax it's taken off*

My final decision

For the reasons set out above, my final decision is that I uphold this complaint. To put things right Marshmallow Insurance Limited needs to take the actions set out in the "Putting things right" section set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 20 October 2025.

Joe Thornley
Ombudsman