

The complaint

Miss A and Mr I complain that Marshmallow Insurance Limited (MIL) unfairly declined a claim under a motor insurance policy following an accident.

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows;

The circumstances of this complaint are well known to both parties, but in summary, Miss A and Mr I have had motor insurance, underwritten by MIL, for several years.

In December 2024, the insured vehicle was involved in an accident. Miss A and Mr I therefore made a claim under their motor policy for the damage to the vehicle. MIL initially indicated that it would settle the claim and put forward its settlement offer to Miss A and Mr I. MIL later decided it wouldn't accept the claim as it considered Miss A and Mr I to have made a deliberate or reckless qualifying misrepresentation about who the registered keeper of the vehicle was. So, it declined the claim, avoided the policy from renewal, and retained the premium they had paid.

Unhappy with this, Miss A and Mr I complained. MIL didn't uphold the complaint and said it had acted in line with the terms and conditions of the policy. So Miss A and Mr I referred their complaint to this Service.

Our Investigator didn't uphold the complaint. They said they agreed there had been a qualifying misrepresentation and agreed it was deliberate or reckless and that MIL was entitled to avoid the policy and retain the premium paid.

Miss A and Mr I disagreed, and in summary said MIL had made an offer to settle the claim and so should honour this, MIL's decision to avoid the policy and decline the claim has caused significant distress, and they said MIL automatically renewed the policy without their consent.

So, the case has been passed to me to decide.

What I've provisionally 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 acknowledge that my summary of Miss A and Mr I's case is somewhat brief. But I'd like to assure them that I have reviewed all their submissions alongside the information provided by MIL. I won't be commenting on each point raised but will instead comment on the issues I consider to be key to the case. This isn't intended as a discourtesy but reflects the informal nature of this Service – and the rules this Service are bound to follow enable me to do this.

Having reviewed all available evidence, I intend to uphold the complaint in part, I'll explain why.

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 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.

MIL thinks Miss A and Mr I failed to take reasonable care not to make a misrepresentation when they renewed their policy in July 2024. It says this was due to it asking who the registered keeper of the vehicle was when the policy renewed, which Miss A and Mr I declared as being Mr I – who is the policyholder.

So, I have carefully considered the policy renewal invitation that was sent to Miss A and Mr I. This document confirmed the following –

*“Your policy will automatically renew so you don't need to do anything. Please read **this** [my emphasis] document carefully — check your details and your new price. If you don't want to renew or need to make a change, please do so in your account or contact us.”*

The document confirms that the policy would renew for a premium of around £2,500 and Mr I was the policyholder. It provided Mr I's occupation and industry, address details, and confirmed Miss A was a named driver under the policy. It also confirmed the vehicle make, model and registration. However, it didn't provide details of the registered keeper.

I asked MIL to provide details of the renewal documentation sent to Miss A and Mr I to see if any other information was put to them at that point. MIL provided its system notes to demonstrate the information it had recorded – but this doesn't show that a question was put to Miss A and Mr I specifically surrounding the keeper of the vehicle.

For Miss A and Mr I to have not taken reasonable care, MIL must have put a clear and specific question to them. And I haven't seen that the renewal document asked them to confirm who the registered keeper of the policy was. I therefore don't think MIL has demonstrated that Miss A and Mr I failed to take reasonable care at the point of renewal – and so, I don't think CIDRA, or the remedies set out within it apply to Miss A and Mr I's complaint.

That being said, I think Miss A and Mr I failed to make MIL aware of a material change to the policy at the point they changed the registered keeper from Mr I to Miss A.

Mid-term change

When the policy was renewed in July 2023, Miss A and Mr I had correctly confirmed that Mr I was the registered keeper of the vehicle. However, they've explained that in April 2024, they arranged for the V5C document to be transferred into Miss A's name. They said this was due to Mr I having difficulty receiving correspondence relating to the vehicle.

Under the terms of Miss A and Mr I's policy, MIL requires its policyholder to notify it of any changes during the term of cover. Specifically, it states –

"If any of your details change, your insurance will not be valid until we have agreed to the changes and have issued a new policy schedule and either a cover note or certificate of motor insurance. Please note there may be a maximum number of changes allowed on your policy, this is at our discretion."

I'm satisfied this clearly sets out that Miss A and Mr I had an obligation to let MIL know if any of their details change. I find it reasonable for MIL to expect a policyholder to know this would include details of the registered keeper of the vehicle. This would be a fundamental change of risk as it could indicate, for example, who the main user of the vehicle is. And so, when Miss A and Mr I made the decision to change the registered keeper from Mr I to Miss A, I think they should've let MIL know about this.

MIL has provided its confidential underwriting guidance to show what impact this change would've had on the policy. This shows that it will only agree cover based on a select range of relationships between a legal owner and registered keeper of a vehicle.

Miss A is Mr I's sister-in-law. And this isn't one of the relationships between a registered keeper and legal owner of a vehicle MIL was prepared to accept. So had it known that Miss A became the registered keeper of the vehicle, MIL wouldn't have been prepared to continue cover.

It isn't for this Service to say what risks an insurer should accept – as this is a decision each insurer is entitled to make within its commercial discretion. But I'm satisfied that had Miss A and Mr I let MIL know about the change to the registered keeper, MIL wouldn't have continued cover.

So, it follows that MIL wouldn't have invited Miss A and Mr I to renew in July 2024, and so Miss A and Mr I would've needed to obtain alternative cover elsewhere.

As Miss A and Mr I would never have been invited to renew the policy in July 2024, I think it would be fair and reasonable for MIL to refund the full premium they paid following the renewal in July 2024 as I'm not satisfied the remedies under CIDRA apply, and Miss A and Mr I wouldn't have been able to renew the cover – and so shouldn't have paid the renewal premiums to MIL.

However, as no cover would've ever been in place, I agree it is fair for MIL to decline Miss A and Mr I's claim – however they may have additional obligations as an insurer under the Road Traffic Act 1988. So if MIL pay for a third party's uninsured losses, it wouldn't be unfair for it to recover these losses from the policyholder.

Replies

Both Miss A and Mr I and MIL responded to my provisional decision to confirm they agreed with the position set out. They provided no further comments or arguments for consideration.

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 both parties have agreed with my position, and didn't make any further comments, I don't propose to revisit the events or arguments previously set out or provide any further

commentary.

I have decided to issue a final decision for the sake of completeness. But I see no reason to depart from the position set out in my provisional decision.

My final decision

So, for the reasons I have explained above, I uphold this complaint in part and direct Marshmallow Insurance Limited to –

- Refund the premiums paid by Miss A and Mr I following the policy renewal in July 2024 and treat the renewal as if it never existed.
- Pay 8% simple interest per year on each premium payment from the date it was paid to the date of settlement. If Marshmallow Insurance Limited thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss A and Mr I how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax if appropriate.

However, I don't find that Marshmallow Insurance Limited has acted unfairly by declining Miss A and Mr I's claim, and so I don't require it to do anything further with respect to this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A and Mr I to accept or reject my decision before 30 January 2026.

Oliver Collins
Ombudsman