

The complaint

Mr M has complained Marshmallow Insurance Limited voided his motor insurance policy.

What happened

Mr M took out a motor insurance policy with Marshmallow which began in December 2024. In July 2024 he was involved in a motor incident and reported this to Marshmallow.

When administering the claim, Marshmallow found that Mr M's car was also insured by a different insurer. Marshmallow asked Mr M about this, and he confirmed to them that he had a separate insurance policy for being a delivery driver. Marshmallow declined the claim and voided the policy because they felt he made a deliberate qualifying misrepresentation when taking out the policy as he failed to tell them he was using his vehicle while being a delivery driver. Mr M complained to Marshmallow and in response, they maintained Mr M made a deliberate misrepresentation.

After Mr M referred his complaint to this Service, Marshmallow considered their position. They conceded that although they still felt Mr M made a misrepresentation, they said it was careless rather than deliberate. They thought Mr M appeared to misunderstand the need to disclose his delivery work to them, having assumed his policy with the other insurer was sufficient. So, they offered to refund his premium and pay £250 compensation. An Investigator looked into what happened and thought the offer was fair, but also recommended Marshmallow pay 8% interest on the premium that should have been returned at the time they voided the policy.

Marshmallow agreed with the Investigator's outcome. Mr M still thought his policy was cancelled without a valid reason and wants Marshmallow to pay for his loss of earnings because he hasn't been able to work as a delivery driver since. He also doesn't want the voidance to affect future insurance. The complaint couldn't be resolved so it has come to me to decide.

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 ours is an informal service, I'm not going to respond to every point or piece of evidence Mr M and Marshmallow sent us. Instead, I've focused on what I consider to be key or central to the complaint. But I'd like to reassure both that I have considered everything submitted.

Although Marshmallow initially classified Mr M's actions as a deliberate misrepresentation, they have now said it should be classified as a careless one. And they've relied on The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) to explain their actions. CIDRA 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 they 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 think Mr M failed to take reasonable care when he gave his answer to questions about his occupation and what he used his vehicle for. When applying for the policy, he was asked, "What do you do for a living?" and "What industry do you work in?" The statement of fact confirmed Mr M answered that he was a chef and he worked in a restaurant. Mr M was also asked "Do you have another job?" but he didn't disclose his job as a delivery driver. He was asked "What will you use the car for?" for which he answered, "social and commuting" and the statement of fact confirms he said he would use his vehicle social, domestic, pleasure and commuting. But Mr M was also using the vehicle for deliveries.

Mr M said there's nothing in the policy that says he isn't allowed to take another policy out for work. But the question Marshmallow asked when he took the policy out wasn't what he wanted the policy for – it was what he will use the car for. And he didn't disclose his delivery driver job when he had the opportunity to. I'm satisfied the questions were reasonably clear about whether Mr M was using his vehicle for work and about his occupation. And I think a reasonable person would have answered the questions differently. So, I think Mr M failed to take reasonable care when answering them.

Marshmallow have shown this Service evidence they wouldn't have offered Mr M a policy had he answered reasonably. So, I'm satisfied the misrepresentation is a qualifying one.

Mr M was under the impression he didn't need to disclose his delivery job as he had separate cover for it. Marshmallow have now accepted he made a mistake and I think it would have been fair for them to treat his misrepresentation as careless, rather than deliberate or reckless. I've thought about the actions Marshmallow can take in accordance with CIDRA.

Since the misrepresentation is considered careless, and Marshmallow can show they won't have offered the policy had Mr M answered correctly, CIDRA entitles them to avoid the contract and refuse all claims but must return the premium paid. Marshmallow have avoided the policy, but have only offered to return the premium since coming to this Service. I'm directing them to do this – and pay 8% interest on the amount they return from when the policy was voided until they pay it.

I don't think Mr M deliberately intended to mislead Marshmallow and they have acknowledged it would have been distressing to accuse him of deliberately misrepresenting when he acted carelessly. Marshmallow have offered £250 to try to put things right – and I think this is a reasonable amount in the circumstances as it's in line with what I would award when the impact of an insurer's mistake has caused some distress and inconvenience. So, I'm directing them to pay this. I appreciate Mr M wants Marshmallow to pay for his loss of earnings since he hasn't been able to make deliveries. I'm sorry to hear about Mr M's financial difficulties, but Marshmallow were entitled to void his policy under CIDRA, so I won't be directing them to pay for any losses that were caused by this or to remove the voidance on from relevant databases.

My final decision

For the reasons above, I uphold this complaint and direct Marshmallow Insurance Limited to pay Mr M:

- The policy premium Mr M has paid.
- 8% simple interest per year on this amount from when the policy was voided until Marshmallow pays it.*
- £250 compensation.

*If Marshmallow think they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr M how much they've taken off. They should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 April 2026.

Andrew Wakatsuki-Robinson
Ombudsman