

The complaint

Mr M1 and Mr M2 complain that Marshmallow Insurance Limited avoided their motor insurance policy and declined their claim.

What happened

Mr M1 took out a motor insurance policy with Marshmallow, adding his son (Mr M2) as a named driver. A few months later, Mr M2 was involved in an accident while driving Mr M1's vehicle. So, they made a claim under the policy.

Marshmallow declared the vehicle a total loss and offered Mr M1 a cash settlement. Mr M1 thought Marshmallow's offer was too low. While he was attempting to negotiate a higher settlement, it came to light that Mr M1 had replaced the car's multimedia system prior to taking out the policy.

Marshmallow said Mr M1 made a misrepresentation by providing false information when he took out the policy. It said it was avoiding the policy, and this meant it wouldn't proceed with the settlement of his claim.

Mr M1 raised a complaint. Marshmallow maintained its position regarding the policy avoidance, but it offered him £250 to compensate him for some poor communication.

Mr M1 remained unhappy and asked our service to consider the matter. Our investigator thought Marshmallow's decision to avoid the policy was reasonable. However, he didn't think it was fair for it to retain Mr M1's premiums. He also thought it should increase its compensation award to £500.

Mr M1 disagreed with our investigator's outcome and asked for an Ombudsman's decision. So, the complaint has been passed 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.

Having done so, I've reached broadly the same conclusion as our investigator. I'll explain why.

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.

Reasonable care

Marshmallow says Mr M1 failed to take reasonable care when he took out his motor insurance policy online in April 2025. It's provided a screenshot of the question he was asked about modifications to his vehicle:

"Does it have any modifications?"

"If any changes have been made since it first left the factory, choose 'yes'."

Mr M1's policy documents indicate he answered "no" to this question.

Marshmallow has provided another screenshot which shows that if Mr M1 had answered "yes", he would have been presented with a further question:

"What kind of modification was made?"

"Choose the modification and click 'save'. You can then add more if you need to."

The screenshot shows that one of the options in the drop-down box underneath this question was "screen changes".

Mr M1 says he didn't consider the new multimedia system to be a modification as he was replacing a faulty system. He says there were additional features owing to it being a new version and changes in technology. It was a plug in, plug out process and it didn't have any impact on the driveability of the car.

I've considered Mr M1's points. However, I think it was clear from the wording of Marshmallow's question that he needed to let it know about "any changes" that had been made to his vehicle since it left the factory. In emails he sent to Marshmallow after his claim, Mr M1 said he had upgraded the multimedia system with a bigger screen in December 2024. This was before he took out the policy. So, I don't think Mr M1 took reasonable care not to make a misrepresentation.

Qualifying misrepresentation

I've gone on to consider whether Mr M1's misrepresentation was what CIDRA describes as "qualifying". Would it have made a difference if Mr M1 had made Marshmallow aware of the modification to his vehicle?

Marshmallow has provided us with evidence of its underwriting criteria that shows it wouldn't have offered Mr M1 if it had known about the modification. So, I'm satisfied Mr M1's misrepresentation was a qualifying one.

Remedy

The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless. It's for the insurer to show that a qualifying misrepresentation is deliberate or reckless.

A qualifying misrepresentation will be deliberate or reckless if the consumer:

- Knew the information they provided was untrue or misleading or did not care whether it was untrue or misleading and
- Knew that the matter to which the misrepresentation related was relevant to the insurer or did not care whether or not it was relevant to the insurer.

If it's not deliberate or reckless a qualifying misrepresentation will be considered careless.

Marshmallow has treated Mr M1's misrepresentation as deliberate. If an insurer can show a qualifying misrepresentation is deliberate or reckless it is allowed to avoid the policy, refuse all claims and retain the premiums. This is what Marshmallow has done. However, having considered what's happened here, I'm not persuaded Mr M1's misrepresentation was deliberate.

Marshmallow feels Mr M1 should have realised the multimedia upgrade was a vehicle modification because of the industry in which he works. It's also pointed out that Mr M1 said the new system was worth £2,000. I have considered Marshmallow's points, but I'm not persuaded that these show Mr M1 deliberately tried to mislead Marshmallow into providing cover, without knowing or caring if this information was important to it. Mr M1 says he didn't think he needed to report the replacement of the multimedia unit because it didn't have any impact on the performance of the car. I'm persuaded this was a genuine misunderstanding on the part of Mr M1. So, I think it's more likely Mr M1's misrepresentation was careless, rather than deliberate or reckless.

If a misrepresentation is careless and the insurer can show it wouldn't have provided the insurance on any terms, it may avoid the policy and refuse all claims, but it must return the premiums. So, I think Marshmallow should return Mr M1's premiums and add interest at 8% simple per year to compensate Mr M1 for the time he has been deprived of these funds.

Distress and inconvenience

In its response to Mr M1's complaint, Marshmallow offered him £250 compensation for some poor communication. It's acknowledged that it didn't provide responses to his queries as promptly and clearly as it should have done.

Marshmallow has recognised that Mr M1 was finding the situation particularly difficult. He'd made it aware he was struggling without a car and feeling stressed and worried.

I've explained why I don't think Marshmallow's decision to avoid the policy and decline his claim was unfair. However, this was a particularly stressful situation for Mr M1, so I think Marshmallow's poor communication had a greater impact on him than it otherwise might have done. So, I think it would be fair for Marshmallow to increase its award of compensation from £250 to £500, in line with our investigator's recommendation.

Putting things right

Marshmallow should:

- Refund Mr M1's premiums and
- Add interest to the above at 8% simple per year* from the date the policy was avoided until the date the payment is issued.

- Pay Mr M1 a total of £500 for distress and inconvenience (including the £250 it offered in its final response letter).

*If Marshmallow considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M1 how much it's taken off. It should also give Mr M1 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 I've explained, I uphold Mr M1 and Mr M2's complaint and direct Marshmallow Insurance Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M1 and Mr M2 to accept or reject my decision before 13 March 2026.

Anne Muscroft
Ombudsman