

## **The complaint**

Mr A complains that Marshmallow Insurance Limited avoided (treated it as if it never existed) his motor insurance policy, declined his claim and retained the premiums he had paid. He wants it to remove the avoidance and deal with his claim.

## **What happened**

Mr A made a claim on his policy following an accident. Marshmallow validated the claim and asked Mr A to provide a copy of the car's V5 registration document. Marshmallow then found that Mr A hadn't updated the V5 to show that he was the car's registered owner and keeper.

Marshmallow considered this to be a deliberate misrepresentation. It said it wouldn't have offered cover if Mr A had disclosed this. And so it avoided the policy, declined the claim and retained the policy premiums. It also said Mr A was responsible for claim costs, including his car's recovery and storage charges.

Mr A complained that he was new to the UK and unfamiliar with the legal requirements for car ownership. Marshmallow considered this and changed the misrepresentation to reckless. But the impact remained the same.

Our Investigator didn't recommend that the complaint should be upheld. She thought Marshmallow had asked Mr A a clear question about the car's ownership when he took out the policy. But he had answered this incorrectly. She agreed the misrepresentation had been reckless. So she thought Marshmallow was entitled to avoid the policy and decline the claim.

Mr A replied asking for an Ombudsman's review, so the complaint has come to me for a final decision. He said he only became aware of the V5 when Marshmallow requested this. He thought the car's seller should have put the V5 in his name.

## **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.

Mr A has explained the effect the avoidance has had on his employment and finances. And I acknowledge the significant impact this has had for him. Marshmallow avoided Mr A's policy and declined his claim because it said he had misrepresented that he was the car's owner and registered keeper.

So 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 online application that he was the car's registered keeper. And I've looked at the question he was asked when he completed the application, and I agree he failed to take reasonable care.

This is because he was asked:

*"Who is the car registered to?"*

*You'll find the registered keeper on the vehicle's V5 document."*

The options show as:

- *"Me*
- *Someone else"*

I think Mr A was provided with advice so that he could answer this question correctly. And so I'm satisfied this was a clear question asked by Marshmallow.

Mr A answered "Me". But the V5 document, which Mr A was directed to check, was in the name of the previous owner. And so the car was still registered to the previous owner.

Mr A said he was unaware of the V5 or the requirement to put the car in his name. He said he'd bought the car at auction and was unaware of UK laws about car registration. He said this was his first time taking out a motor insurance policy. But he'd had the car for eight months at the date of the claim. He told Marshmallow that he'd been in and out of the UK for some years. And I think Mr A could have obtained advice about car ownership laws in this time.

Mr A thought the seller of the car should have updated the V5. But I can't consider the actions of the seller as Mr A's complaint is about Marshmallow. And so I have to consider whether Marshmallow acted fairly and reasonably, bearing in mind the relevant law.

And I think this means Mr A failed to take reasonable care not to make a misrepresentation when he said he was the car's registered keeper.

Marshmallow has provided evidence which shows that if Mr A had not made this misrepresentation it would not have provided cover at all. This means I am satisfied Mr A's misrepresentation was a qualifying one under CIDRA.

Marshmallow thought Mr A's misrepresentation was a reckless misrepresentation. CIDRA states the following:

*"(1) For the purposes of this Act, a qualifying misrepresentation (see section 4(2)) is either -*

*(a) deliberate or reckless, or*

*(b) careless.*

*(2) A qualifying misrepresentation is deliberate or reckless if the consumer -*

*(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and*

*(b) 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.*

*(4) It is for the insurer to show that a qualifying misrepresentation was deliberate or reckless.*

*(a) that the consumer had the knowledge of a reasonable consumer, and*

*(b) that the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.”*

As I've said above, Marshmallow's question directed Mr A to check his V5 to see who the car was registered to. It's clear that Mr A had access to the car's V5 document showing it to be registered to the previous owner. The document explains how the V5 can be updated with the DVLA.

But Mr A hadn't taken any action to do this when he bought the car. And he hadn't taken any action during the eight months he owned the car before the accident.

Mr A said that he was new to the UK and Marshmallow targeted its sales at new arrivals and so it shouldn't expect him to be aware of UK laws about car ownership.

But Mr A told Marshmallow that he had been in and out of the UK for over a decade. And the Statement of Fact records that Mr A had been living in the UK for six years. And so I think he should have been reasonably aware of the requirements for the V5.

And so I think Mr A should have had the knowledge of a reasonable consumer. And he was asked a clear question about the car's registration, which he answered incorrectly. So I'm satisfied that Marshmallow has shown that Mr A's misrepresentation was reckless.

As I've said above, if the qualifying misrepresentation was reckless 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.

Marshmallow has provided us with evidence from its underwriting guide showing that if Mr A hadn't made the misrepresentation it wouldn't have offered him cover at all.

Therefore, I'm satisfied Marshmallow was entitled to avoid Mr A's policy, decline his claim and retain his premiums in accordance with CIDRA. And I think this produces the fair and reasonable outcome in this complaint.

Marshmallow dealt with the other driver's costs under its responsibilities under the Road Traffic Act. But as the policy was avoided, I'm satisfied that Marshmallow isn't required to reimburse or cover Mr A's claim costs.

## **My final decision**

For the reasons given above, my final decision is that I don't uphold this complaint.

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

Phillip Berechree  
**Ombudsman**