

## **The complaint**

Mr G complains that Marshmallow Insurance Limited unfairly declined his motor insurance claim and avoided his policy.

## **What happened**

I previously issued a provisional decision on this case which was as follows:

*The circumstances of this case are known to both parties, but in summary Mr G has a motor insurance policy underwritten by Marshmallow. During the period of cover, Mr G was involved in an incident and so claimed under his policy. Marshmallow declined Mr G's claim and avoided the policy as it said Mr G made a deliberate qualifying misrepresentation when he took the policy out as he failed to inform it that he was using the vehicle for delivery driving. Unhappy with Marshmallow's decision, Mr G complained.*

*Marshmallow didn't uphold the complaint as it was satisfied its decision to decline the claim and avoid the policy was reasonable in the circumstances. Mr G remained unhappy, so he referred his complaint to this Service.*

*Our Investigator upheld the complaint as they weren't satisfied Mr G had made a misrepresentation. They said Mr G had a separate "hire and reward" policy in place that covered his delivery driving usage. And when applying for the policy, Mr G was never asked if he had another insurance policy that covered him for additional usage. They recommended Marshmallow reconsider the claim in line with the remaining terms, pay 8% simple interest on the claim settlement from the date of avoidance, reinstate the policy should Mr G wish so, and pay £200 in compensation to reflect the distress and inconvenience caused.*

*Marshmallow didn't agree and maintained that Mr G made a deliberate qualifying misrepresentation. So, it asked for an Ombudsman to make a final decision.*

*As the case couldn't be resolved, it 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.*

*Having considered all available evidence, I intend to uphold this complaint. However, my outcome differs from that of our Investigator – which I recognise Mr G will be disappointed with. But I'd like to explain why.*

*I know I've summarised the circumstances of this case in less detail than presented. But I want to assure both parties that I've carefully considered all the information provided. I may not respond to every point or piece of evidence. But I've focused on the issues I consider to be key to the outcome of the case. This isn't meant as a discourtesy but reflects the informal*

*nature of this Service – and the rules this Service are expected to adhere to enable me to do this.*

*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 Mr G failed to take reasonable care not to make a misrepresentation when he applied for his policy through a comparison website as he didn't tell it he was using the car for delivery driving.*

*I've looked at the questions Mr G was asked during the application – specifically surrounding the usage of the vehicle. Having done so, I can see Mr G was asked the following –*

*“What do you use the car for?”*

- Social use only (personal use such as shopping or visiting friends and family)*
- Social and commuting (personal use and driving to and from a single place of work or study)*
- Social, commuting and business (You drive to various locations for work. You can also add other drivers who use the car for business)”*

*Mr G responded to this question by answering “Social and commuting” – which led Marshmallow to offer a quotation for “social, domestic, pleasure and commuting.” However, upon notification of the claim, Marshmallow discovered that Mr G also used the vehicle for business use – specifically delivery driving.*

*Mr G has said he answered this way as he had a separate policy in place, provided by the delivery company that he worked for, and that provided cover for business use. The claim was unrelated to business use. And this policy was always only to cover him for social, domestic, pleasure and commuting. Mr G also explained that he was never asked about additional policies for his delivery driving usage.*

*While I recognise Mr G wasn't asked about policies for additional use of the vehicle, I need to consider what Mr G was specifically asked. And while I understand the reason Mr G chose to answer the way he did, the question he was asked was about what he used his vehicle for – not what he wanted the policy to cover. As Mr G also used the vehicle for delivery driving, regardless of whether he intended to cover this usage under the policy with Marshmallow or not, I find that his answer didn't correctly reflect his usage of the vehicle. I'm persuaded that the question asked was clear and specific, and I find that a reasonable consumer wouldn't have likely answered the same way given it was asking about complete vehicle usage. And so, I don't think Mr G took reasonable care when responding to this question and made a misrepresentation.*

*Marshmallow has provided its underwriting guidance which is commercially sensitive in nature. This means I am unable to share this information with Mr G. I recognise this will be frustrating, but I hope I can provide some assurance that this has been independently considered as part of the decision.*

*While I can't share that information because it's commercially sensitive, I'm satisfied it shows that had Mr G answered this question differently and disclosed that he was using the vehicle for delivery driving, Marshmallow wouldn't have offered any cover.*

*As this information materially impacted Marshmallow's ability to offer cover, I'm satisfied Mr G's misrepresentation was a qualifying one.*

*Marshmallow has said Mr G's misrepresentation was deliberate. And it is for Marshmallow to show that Mr G made a deliberate qualifying misrepresentation. It said it was satisfied the categorisation should be deliberate because Mr G undertook delivery driving while knowingly covered under a policy that only provided cover for social, domestic, pleasure and commuting and didn't inform Marshmallow of this.*

*While I understand why Marshmallow considered the misrepresentation to be deliberate, I don't agree. I'm not persuaded Mr G knew that this information was relevant to Marshmallow given he had alternative cover in place which covered him for his delivery driving and was arranging this policy to provide cover solely for social, domestic, pleasure and commuting usage. While I agree Mr G didn't answer the question surrounding usage correctly, I don't think he intended to mislead. I therefore think the misrepresentation was careless, rather than deliberate or reckless.*

*As I'm satisfied Mr G's misrepresentation should be treated as careless, I've looked at the actions Marshmallow can take in accordance with CIDRA. This states where Marshmallow wouldn't have offered any cover, it can avoid the policy from the point of misrepresentation, return any unused premiums, treat the policy as though it never existed and not deal with any claims, and look to recover any costs it has paid to a third party on any claim after the misrepresentation.*

*Therefore, as I'm satisfied Mr G's misrepresentation was careless, I don't think Marshmallow has acted fairly. Because the misrepresentation was careless and Marshmallow wouldn't have offered cover at all, CIDRA allows Marshmallow to avoid the policy. But it must return any unused premium. Marshmallow hasn't done this, so it now needs to return the premium and pay interest to recognise the delay.*

*I recognise this will be significantly disappointing for Mr G given his claim wasn't related to delivery driving and his claim will still not be covered. However, as Marshmallow wouldn't have agreed to offer cover had it known about Mr G's full usage of the vehicle. I'm satisfied Marshmallow is entitled to decline Mr G's claim.*

## **Replies**

Mr G responded to my provisional decision providing a screenshot of Marshmallow's usage questions through its website. He said this demonstrated Marshmallow was asking what cover he wanted under the policy, rather than establishing what his complete usage of the vehicle was. Mr G also explained that while he recognised the provisional decision referred to the relevant laws, the claim and complaint had led him to experience financial difficulties.

Marshmallow accepted my provisional decision and didn't provide any further comments or evidence.

## **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.

Neither party has disagreed with my summary of the events Mr G complained about here. So, I won't revisit the events again in any detail. Instead, I have gone on to consider the responses provided by both parties to confirm if this changes things. Having carefully considered the additional evidence provided by Mr G, I have decided not to depart from my provisional conclusions. I'll explain why.

The screenshot Mr G has provided sets out the question Marshmallow asks through its online platform. It isn't clear whether this screenshot is for a new policy, or whether these are the questions presented to existing policyholders when making a change to their policy.

But as Mr G arranged the policy through a comparison site, the question relevant to his complaint is the one detailed in my provisional decision – which asked Mr G what he used the car for. Additionally, while the screenshot confirms Mr G's answer would enable Marshmallow to decide what kind of journeys Marshmallow would cover, it asked the same question as that on the comparison site. And as Mr G was using the car for business use, despite arranging cover elsewhere for this, I'm satisfied a reasonable consumer would have answered the question differently.

Had this question been answered accurately, I'm persuaded Marshmallow wouldn't have offered Mr G any cover, as this fell outside the level of risk it was prepared to accept and it has evidenced this within its underwriting guidance. This means Mr G wouldn't have been able to proceed to Marshmallow's online application and purchase a policy with it.

I'm sorry to hear about the financial difficulties Mr G has experienced. I appreciate this situation has placed him under strain. While Marshmallow has certain rights when avoiding a policy, it has additional obligations under the Road Traffic Act. So, I would expect it to work with Mr G to agree a fair and manageable repayment plan for any recoveries of its outlay

But for the reasons I have explained, I'm persuaded Mr G made a careless qualifying misrepresentation. And so, Marshmallow should now carry out the relevant remedy under CIDRA.

## **My final decision**

My final decision is that I uphold this complaint and I direct Marshmallow Insurance Limited to:

- Treat the misrepresentation as a careless qualifying misrepresentation, rather than deliberate
- Return the insurance premium
- Pay 8% simple interest\* on the premium from the date of avoidance 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 Mr G how much it's taken off. It 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 G to accept or reject my decision before 9 April 2026.

Oliver Collins  
**Ombudsman**