

The complaint

Mr R complains that Marshmallow Insurance Limited declined his claim on his motor insurance policy following the theft of his car. He wants his policy reinstated and his claim paid.

What happened

Mr R's car, which contained his work tools, was stolen from outside his home. Mr R tried to claim on his policy, but Marshmallow cancelled his policy and declined his claim because it said there had been a breach of policy terms. It said Mr R was using his car outside the permitted classes of use provided by his policy.

Marshmallow later said Mr R wasn't permitted to carry work related goods, and that he had misrepresented his occupation. Marshmallow later offered to remove the cancellation marker and pay Mr R £150 compensation for its miscommunication. But Mr R rejected this offer.

Our Investigator recommended that the complaint should be upheld. He thought Marshmallow hadn't given Mr R seven days' notice of the cancellation, as required by the policy.

He thought Marshmallow hadn't shown that Mr R was using his car for a use that wasn't covered, or that this was material to its loss. He thought cancellation for carrying work-related goods wasn't included in Mr R's policy. He didn't think Mr R had misrepresented his occupation.

He thought Marshmallow wasn't able to show what questions Mr R was asked, what he answered, that he misrepresented, or that Marshmallow wouldn't have accepted the risk if it had known that Mr R might use his car for work. And even if the policy had been reasonably cancelled, he thought this wouldn't affect the claim made beforehand.

So he thought Marshmallow hadn't acted fairly in cancelling Mr R's policy and declining his claim. He thought it should remove the cancellation marker, reconsider the claim and, if it was settled, add interest to any payment, and pay Mr R £200 compensation for his trouble and upset.

Marshmallow replied that the underwriters confirmed that the policy had been cancelled for breach of policy terms as Mr R's cover excluded commercial use. It said Mr R was using his car for business purposes and carrying tools of the trade, which wasn't permitted.

Marshmallow and Mr R asked for an Ombudsman's review, so the complaint has come to me for a final decision.

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.

Marshmallow has agreed that it had made an error when it said Mr R had made a misrepresentation. I can't see that it has shown evidence that Mr R made a misrepresentation. And so I won't consider that further here.

Marshmallow said it hadn't been consistent in its communications with Mr R. But it said it had declined the claim as it thought Mr R had breached his policy terms and conditions and used his car for an excluded use. So I have considered here whether this was fair and reasonable.

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably. Marshmallow relied on the following policy term stated on the policy certificate to decline the claim:

"The policy holder and any named drivers are covered to drive for social, domestic and pleasure purposes. This cover also includes commuting to and from a fixed place of work.

Excluding: Commercial travelling, racing, pacemaking, speed testing, competitions, rallies, trials or use for any purpose in connection with the Motor Trade."

And then it said it had cancelled the policy because Mr R had been in breach of this term. But I don't think this was fair or reasonable for the following reasons.

I can't see that Marshmallow had evidence that Mr R was using his car outside the permitted usage when it was stolen. Mr R explained when he made the claim and later that he was employed to fit boilers and used his car to drive to and from his workplace where he was provided with a vehicle. From what I can understand, the last time the car was used was when Mr R returned from work. So Mr R was commuting to and from a fixed place of work, which was permitted by the policy.

Mr R also said that he did other work at the weekends, and he had tools in the car for this purpose. But Marshmallow didn't ask him any further details about this, like when he had started this practice, or how often he did this. So I can't see when this change in circumstances started or that Marshmallow established that Mr R selected the wrong usage when he took out his policy.

And Marshmallow hasn't shown how this would be material to the loss as it didn't ask Mr R about his last journey before the theft. Also, it hasn't shown evidence of whether it would not have offered cover if Mr R had told it about this additional work. And so I can't see Marshmallow has established that Mr R caused a fundamental change in risk.

Marshmallow then said it had cancelled the policy because Mr R was carrying work goods. But I can't find any reference in his policy to show that having work-related tools in the car would be excluded from cover.

Mr R made his claim before the policy was cancelled. So the policy was in force when Mr R's car was stolen. It follows that Marshmallow will have to deal with it.

So I think Marshmallow unfairly declined the claim and cancelled Mr R's policy. And I think it should now remove the cancellation marker and deal with the claim. If an award is made, then interest should be added to this settlement from a month after notification as Mr R has been without his money for some time.

I also think Marshmallow provided a poor level of service in dealing with this claim:

- It cancelled the policy without giving seven days' notice, as required by its own terms and conditions.
- It gave Mr R different and confused reasons for why his policy had been cancelled and his claim declined.
- It didn't show that it wouldn't have offered cover to Mr R with the change in circumstances.

Marshmallow offered Mr R £150 compensation for its confused communications. But I don't think that's sufficient in the circumstances. I think it should pay Mr R £200 compensation for the trouble and upset caused by its errors over several months, in keeping with our published guidance.

Putting things right

I require Marshmallow Insurance Limited to do the following:

1. Remove the cancellation marker from any databases where it's been recorded.
2. Reconsider the claim in line with the remaining terms and conditions of the policy and, if it's to be settled, pay the claim adding interest at 8% simple per year from a month after the first notification of loss to the date of settlement†.
3. Pay Mr R £200 compensation for the distress and inconvenience caused by its level of service.

†If Marshmallow considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R 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 given above, my final decision is that I uphold this complaint. I require Marshmallow Insurance Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 January 2024.

Phillip Berechree
Ombudsman