

The complaint

S, a limited company, complains that Marsh Ltd (“Marsh”) has provided incorrect information about a Commercial Combined policy. S says this led to it not receiving an appropriate refund when cancelling the insurance.

Any reference to S or Marsh includes respective agents or representatives.

What happened

The background of this complaint is well known to both parties, so I’ll summarise events.

- In January 2020 Marsh provided S with a quote for a Commercial Combined policy.
- Marsh says alongside the quote and policy documentation, it highlighted key areas of the terms and conditions to review – including a minimum and deposit premium endorsement. And that this endorsement stated that all premiums were non-refundable in the event of a mid-term cancellation.
- Marsh said S spoke to one of its agents on 21 January 2020 to discuss the terms. And S then agreed to proceed with the quote shortly after.
- The following year, Marsh says it emailed S a renewal quote in March 2021 alongside the policy documentation, which S agreed to.
- The following year, on 30 March 2022, Marsh emailed S a renewal quote and policy documentation. Marsh says S agreed and it provided the invoice for payment and confirmed the policy was renewed.
- On 4 April 2022 Marsh says it sent the policy documentation – which included a schedule and policy terms.
- On 12 April 2022 S emailed Marsh to explain changes in S’s business. It asked if the insurer could change the company name, and if not, S wanted a return of the premium paid and it would instead take out the policy on a monthly basis until changes were complete.
- Marsh responded on 14 April 2022 and explained the insurer couldn’t change the company name, nor could Marsh amend the payments from an annual to monthly basis as payment had already been made in full. But Marsh said:

“I would like to reassure you that once you cancel the policy, you will receive a pro-rata refund for the remaining cover which you no longer require. We won’t just keep the premium paid already.”
- In late April 2022 S said the policy would not need to continue past 29 May 2022 and requested a refund from the insurer. Some back and forth followed about the date the cancellation would need to take place.
- In July 2022 Marsh confirmed a refund of £295.88 was due. And that the terms for “Employers Liability” and “Public Liability” allowed the insurer to retain full premiums even upon cancellation.

- S complained, saying it was expecting a refund sum of around £1,400 due to what it had been told by Marsh – and that its information about a pro-rata refund was wrong.
- Marsh agreed it had given incorrect advice about a pro-rata refund but stated this had come after the policy was arranged and prior to this it had given accurate information, and the misinformation had not impacted the date of cancellation.
- One of our Investigators looked into what happened and partially upheld the complaint. He said S had an obligation to review its policy documentation when taking the insurance out and Marsh had provided it with the appropriate information to review at inception and renewal.
- But the Investigator said Marsh had provided incorrect information about the refund after the policy was set up, and this mistake had caused some confusion and disruption to S. So, he awarded £50 in compensation for the inconvenience caused.
- Marsh agreed, but S didn't. S said Marsh was aware before the cooling off period had ended that it only required three months insurance and was given the advice to cancel the policy when it wasn't needed. S also highlighted Marsh's own terms which state it would only retain commission/fee amount to cover its own administration and advisory costs.

So, the matter was passed to me for an Ombudsman's decision. I issued my provisional thoughts on 21 February 2023 outlining why I intended to uphold the complaint. I've included an extract of this below.

- "The key facts of this matter aren't in dispute – all parties agree that Marsh's agent gave incorrect information to S about the refund terms of the policy after the insurance was taken out.
- The crux of the complaint that remains in dispute is the extent of the impact of that incorrect information. Marsh has said there is a limited impact as the policy was already taken out by this time. And on its face, if S is already bound by the terms of the agreement, I can understand this logic.
- S has said if it had been told that there wasn't a pro-rata refund on most parts of its policy when it asked – it would've cancelled the policy altogether in line with a right to a cooling off period of 14 days.
- So, I've looked at the policy wording. Under the "*All Risks Policy Wording*" that Marsh has provided, under the heading "*Your Cancellation Rights*" it says:

"During the cooling-off period of fourteen (14) days

You have the statutory right to cancel this Policy within fourteen (14) days from the purchase of this Policy or its renewal date or from the day on which You receive this Policy or renewal documentation, whichever is the later.

- ***To cancel this Policy please write to Your insurance adviser or Our Binding Underwriter to confirm Your requirements.***
- ***Upon receiving Your instructions We will cancel this Policy:***
 - ***where You request that no cover is to be provided by Us, You will be entitled to a full refund of premium alternatively;***
 - ***where You request this Policy coverage to be operative for a limited number of days within the cooling-off period You will be entitled to a refund of premium paid, less a***

*deduction for any time for which **We** have provided cover. This is calculated in proportion to the time **We** have provided cover provided there have been no claims or circumstances that have occurred which may give rise to a claim under this **Policy**, in which case no premium will be refunded.*

- *If **You** do not exercise **Your** right to cancel this **Policy** the insurance will continue in force and **You** will be required to pay the full premium.*
- So, it appears to me that S could've cancelled the policy within those first 14 days and received a full refund or a refund minus the period of time they were on risk.
- The policy was taken out on 31 March 2022. And Marsh sent its policy documents to S on 4 April 2022 – which I would think it was reasonable to consider to be the date S received its “*renewal documentation*” as specified in the above terms.
- S clearly contacted (by phone and email) Marsh referring to upcoming changes in its business within “*the next couple of months*” on the 11 and 12 April 2022 – which Marsh has quoted within its own final response.
- Marsh's response containing misinformation was on 14 April 2022. Based on what I've been given, this appears to within the 14 days of the renewal documentation being sent (on 4 April 2022).
- I've thought about what should've happened. If in that email Marsh had confirmed that S wouldn't be entitled to a pro-rata refund, it strikes me that it would've likely taken steps to cancel this policy, knowing it would otherwise have paid premiums for cover it was unlikely to ever use. And instead, it seems likely S would've sought to take out a similar one on a rolling basis, as it suggested in its email of 12 April 2022.”

And I outlined that I would propose to direct Marsh Ltd to either:

- Calculate whatever likely premiums S would've incurred in setting up a monthly rolling policy on similar terms for the period the insurance did run for before cancellation. It can then deduct this sum from the actual premiums paid to estimate a likely refund S would've received – and pay S this sum.
- Or, alternatively*
- Pay S the sum S would've received had its policy terms been set up on the basis of a pro-rata refund. And while S had said this sum equated to £1,400 I would leave this to Marsh to calculate.
 - Alongside this, I said I would direct Marsh to pay 8% simple interest on the payment and a compensatory sum of £50.

S agreed. Marsh disagreed, asking me to consider there were six days between the date S enquired about cancellation terms and the end of the 14 day cooling off period. It said if S had cancelled it would've likely been left uninsured or if it was successful in obtaining alternative terms the short-term rates would likely be much higher. And that this risk had limited market options due to the nature of the business. So, Marsh said it seemed unlikely there would be more cost-effective options available.

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'm upholding this complaint.

- I've considered Marsh's most recent submission. And I accept that S would have had limited time to obtain insurance elsewhere and this may have hindered its ability to obtain a competitive rate elsewhere. But it hasn't proven this beyond its own speculation. And as it has said, this was *possible*, until this opportunity was taken away from S by Marsh.
- So, Marsh hasn't changed my mind and I'm still satisfied it will need to put things right in line with the direction I gave in my provisional decision.
- Marsh hasn't provided me with any estimate or a quote for a similar policy on a monthly or shorter-term basis. As a result, to bring this matter to a close, I will direct it to carry out the latter of the options I gave it, and simply refund S' premiums as if the policy did allow for a pro-rata refund.

My final decision

I uphold this complaint. Marsh Ltd must:

- Pay S the sum S would've received had the policy provided a pro-rata refund.
- Marsh will also need to pay 8% simple interest on this payment from the date the refund would've been due up until the date of payment.
- Pay S £50 in compensation.

Marsh Ltd must pay the compensation within 28 days of the date on which we tell it S accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask S and S to accept or reject my decision before 30 March 2023.

Jack Baldry
Ombudsman