

## **The complaint**

Mr H complains about his insurer, Marshmallow Insurance Limited (Marshmallow) charging a fee when he cancelled his policy in the cooling off period.

Any reference to Marshmallow in this decision includes their agents.

## **What happened**

In January 2023 Mr H took out a new motor insurance policy with Marshmallow, instead of renewing his existing policy with Marshmallow, with a policy start date at the beginning of February 2023. The premium for the new policy was higher than that for his previous policy, though there were differences in the cover provided between the two policies.

Policy documents for the new policy were uploaded to Mr H's online account and Mr H asked that his old policy expire. However, he asked Marshmallow whether he could drive other vehicles under his new policy, to be told it wasn't possible to add this cover, saying it could only be added as part of the quotation process (not retrospectively).

Mr H then asked Marshmallow to cancel his new policy and refund the premium he'd paid. Marshmallow said they calculated refunds (and any applicable charges) on a pro-rata basis, meaning Mr H would only pay for the time he was on cover under the policy. Marshmallow said that as Mr H was within the 14-day cooling-off period under his new policy, they would make a cancellation charge of £25, to cover the costs incurred in cancelling the policy.

Unhappy at Marshmallow applying the £25 fee, Mr H complained to Marshmallow, saying he didn't believe they were entitled to charge a cancellation fee within the 14-day cooling-off period for policies taken out online, under the Consumer Rights Act 2015. He thought the £25 fee, even though in the policy terms and conditions, represented an unfair contract as the terms and conditions weren't provided until a policy quotation had been accepted.

Marshmallow didn't uphold the complaint. In their final response, they maintained their position about the £25 cancellation fee to cover the costs of cancelling the policy, referring to the policy wording they'd provided to Mr H before asking him to confirm he wanted to take out the policy. The wording stated that cancellation within the 14-day cooling-off period would mean a pro rata refund and a £25 administration fee. Marshmallow confirmed cancellation of the policy (from two days after it started) and issue of a refund of £374.48. Marshmallow didn't think they'd made any mistakes in what they'd done.

Mr H then complained to this service. He said he'd cancelled the new policy when he realised from the policy documents it didn't cover him for driving other vehicles. He'd received a refund of ££374.48 of the £399.48 premium he'd paid – so Marshmallow had deducted the £25 fee. He didn't think Marshmallow could charge a fee during the cooling-off period under the Consumer Rights Act (he should receive a full refund) and provided an extract he thought supported his view. He wanted Marshmallow to refund the £25 fee and stop the practice of charging a fee for cancellation in the cooling-off period.

Our investigator initially upheld the complaint, asking Marshmallow to refund the £35 cancellation fee (with interest). She thought Marshmallow should have told Mr H about the cancellation fee before Mr H took out the policy, not just to include reference to it in the policy terms and conditions issued after the policy was initially taken out. Marshmallow hadn't provided any evidence to show it told Mr H about the cancellation fee before he agreed to take out the policy, so the investigator thought it unfair to deduct the cancellation fee from the refund of premium.

Marshmallow agreed with our investigator's initial view and said they'd refund the £25 fee. Mr H disagreed with the investigator's initial view because he didn't think it addressed the issue of there being a legal obligation to make a *full* (Mr H's emphasis) refund within 14 days of a cancellation of a purchase made under 'distance selling' regulations. Mr H provided an extract from the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which he thought supported his view.

Our investigator considered Mr H's response and issued a second view, which remained unchanged. She referred to this Service's role as an informal complaints resolution service, to decide what would be a fair and reasonable outcome in the circumstances of a complaint brought by a consumer. She also referred to the Financial Conduct Authority (FCA) Insurance Conduct of Business Sourcebook (ICOBS) 7, which provided for a consumer to be charged a pro-rata premium for the time on cover under an insurance policy and an administration fee proportionate to the service provided. So, had Marshmallow told Mr H about the £25 administration fee for cancellation of the policy before the policy was purchased, Marshmallow would have been entitled to charge the fee. If Mr H wanted a specific decision about whether Marshmallow had breached the requirements of the Consumer Contracts Regulations, that would be for a court to determine.

Mr H disagreed with the investigator's second view and asked that an ombudsman review the complaint. He said there was an important point as to whether Marshmallow was entitled to take the action they took (charging an administration fee for cancellation of the policy). Mr H said this was the fundamental part of his complaint. He didn't think Marshmallow could charge an administration fee for policy cancellation in any circumstances under the Regulations, regardless of whether the fee had been notified in advance.

### **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.

My role here is to decide whether Marshmallow has acted fairly towards Mr H.

The two key issues in Mr H's complaint are, firstly, whether Marshmallow acted fairly in charging a cancellation fee when Mr H cancelled his new policy, within the cooling-off period. Mr H says they weren't entitled to do this, referring to the policy terms and conditions setting out the fee not being provided until a quotation had been accepted.

The second issue is whether Marshmallow are entitled to charge a fee under consumer regulations. Mr H maintains Marshmallow aren't able to do so under consumer regulations. On the first issue, I've noted Marshmallow have agreed to refund the £25 administration fee they deducted from the refund of the policy premium made to Mr H following the cancellation of his policy.

While they've agreed to refund the administration fee, I have considered the issue. I've looked at the policy document setting out the policy terms and conditions for Mr H's new

policy. The relevant section for Mr C cancelling his new policy is headed *Cancellation by you* and states:

*“You can cancel your policy either by logging into your customer account, emailing [Marshmallow email address] or getting in touch via live chat on our website.*

***Cancelling the policy within the cooling off period***

*This insurance provides you with a cooling off period to decide whether you wish to continue with the full policy. The cooling off period is for 14 days from the date your policy commences.*

*If you cancel within the cooling off period, and you have not made a claim, you will receive a pro rata refund and be charged a £25 administration fee.*

*If you cancel before your policy has commenced, you will receive a full refund from us, of any premium payment made, minus a £25 administration fee.”*

I’ve noted that the equivalent section in the policy document for his old policy doesn’t include reference to a £25 administration fee {“you...will not be charged a cancellation fee”}.

While I think the wording is clear, Marshmallow haven’t sought to challenge the view of our investigator that this wasn’t made clear to Mr H before he accepted the quote and took out his policy. Based on this, I’ve concluded they didn’t act fairly and reasonably in then applying the fee when Mr H said he wanted to cancel the policy.

Having agreed to refund the fee, I think that’s a reasonable way of putting things right. But as the fee was deducted from the refund of premium (I’ve also noted Marshmallow effected the cancellation from the start of the policy, meaning there was no pro rata deduction for time on cover) then they should also add interest, at a rate of 8% simple, to the refund of the fee from the date they made the premium refund to the date they refund Mr H.

Turning to the second issue, I’ve considered the points raised by Mr H. However, as indicated above, the role of this Service is to act as an informal complaints resolution service for complaints made by consumers against a financial services business. And, as set out above, to decide whether a business has acted fairly and reasonably towards a consumer, in the specific circumstances of a case.

Our role isn’t that of a regulator of financial services businesses – that’s the responsibility of the FCA. So, it isn’t to regulate the conduct of businesses and their operations more generally. This would include their operational practices, such as the levying of administration fees where insurance policies are cancelled.

It’s also not our role to determine whether a business has acted unlawfully – the point Mr H raises about whether Marshmallow breached the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 – that’s a matter for the courts.

So, taking these points together, I’m not making any findings or conclusions on this issue.

**My final decision**

For the reasons set out above, my final decision is that I uphold Mr H’s complaint. I require Marshmallow Insurance Limited to:

- Refund Mr H for the administration fee (£25) they charged when cancelling his policy.

Marshmallow Insurance Limited should also add interest, at a rate of 8% simple, on the refunded administration fee from the date they deducted the fee to the date they refund the fee, assuming Mr H accepts my final decision.

If Marshmallow Insurance Limited consider they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr H how much they've taken off. They should also give Mr H a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 December 2023.

Paul King  
**Ombudsman**