

The complaint

Mrs M complains that Marshmallow Insurance Limited (“Marshmallow”) declined a claim under her car insurance policy. Mrs M is represented in her complaint, but for ease I’ll refer to her throughout.

What happened

Mrs M had a motor insurance policy with Marshmallow covering her car. The policy started in February 2023. It covered her for social, domestic, pleasure and commuting to one place of work.

When she originally searched for cover through a price-comparison website, she told it she worked as a market trader. This meant Marshmallow declined to cover her. Mrs M says she has two occupations. She applied again for cover saying she worked in the insurance industry and took out a policy with Marshmallow.

About a week after her policy started, Marshmallow asked her to validate some information including her occupation. She told it that she worked in insurance on a full-time basis, and also worked as a market trader part-time.

In July 2023 she was involved in a collision with a third party, causing damage. She contacted Marshmallow and made a claim.

Marshmallow declined her claim. It said it wouldn’t have covered her if it had known she was a market trader. It also said she was using the car for business purposes, which wasn’t covered under its policy. It voided her policy from the beginning.

Mrs M brought her complaint to this service. She says that the rejection of her claim is unfair and asks that Marshmallow covers the third-party claim and her own damage. She also asks for a refund of the unused portion of her policy.

Our investigator looked into Mrs M’s complaint and thought it would be upheld. They thought Mrs M had told Marshmallow the right information about her roles. They said Marshmallow should deal with Mrs M’s claim according to the terms of her policy and pay her £300 for her distress and inconvenience.

Marshmallow didn’t agree with the view but Mrs M accepted it.

I issued a provisional decision:

Having read the file of evidence, I’m proposing to uphold Mrs M’s complaint. I’m issuing this as a provisional decision because I have taken a different stance on what needs to happen to the premium she paid. I’ll explain why.

Marshmallow has supplied this service with its underwriting criteria which show it does not accept market traders on its policies.

But I can see that Mrs M told Marshmallow about both of her roles when it carried out

validation checks on her just after inception of her policy.

Marshmallow hasn't explained why it didn't deal with this at the time. Because it didn't ask further questions or tell Mrs M there was a problem, I don't think it's fair that it used this as a reason to reject her claim about five months later.

In its final response, Marshmallow has also said Mrs M used her car for market trading purposes. In taking this stance, Marshmallow has referred to this section of the policy wording:

"Any liability, loss or damage arising while the insured vehicle is being used for a purpose which is not permitted or is excluded by the certificate of motor insurance"

But it's not provided evidence of this. Mrs M has said she was shopping and it was on a day she didn't carry out her market trading. She was also in a town she doesn't trade from. So I think it's fair I say she was driving that day under social and domestic use.

It follows that I also don't think it's fair that Marshmallow uses this as a further reason to decline her claim.

Marshmallow also voided Mrs M's policy *ab initio* when it refused to pay her claim. Because I reasonably think Marshmallow didn't fairly handle her claim, it follows that I also think its avoidance of her policy is unfair.

Under the terms of its policy, Marshmallow has the ability to retain the full annual premium Mrs M paid. It can do this because there's a claim under her policy. The appropriate part of the policy wording is this:

"There will be no refund of premium allowable if there has been a loss or incident likely to give rise to a claim, or you have already made a claim under your policy, during the current period of insurance."

I've said above that I don't think Marshmallow's actions in refusing the claim and voiding her insurance were fair. And Mrs M has been left without cover from the very beginning of her policy. She's also talked about the increased costs she's had when asking for quotes with other companies because she needs to tell them about her claim and that her policy was cancelled.

Although its policy wording allows it to keep Mrs M's premium, I think its use here is unfair.

That part of its policy wording has the impact of only benefitting Marshmallow. But the impact on Mrs M is that she's been left without cover for the year of insurance she paid for because Marshmallow unfairly cancelled her policy. She did have the "use" of part of the policy from February to July, but I think it's fair Marshmallow needs to refund Mrs M the unused portion of her policy.

It also needs to remove any cancellation markers it's placed on its internal database and any external databases it's updated. And it should write to Mrs M and confirm it's done this. I can also see Mrs M has been caused distress and inconvenience as a result of Marshmallow's action. She has accepted £300 for this in the view, and I think this amount is appropriate.

Responses to my provisional decision

Mrs M accepted my provisional decision but Marshmallow didn't. It said it thought Mrs M deliberately misrepresented her occupation, which meant under the Consumer Insurance

(Disclosure and Representations) Act 2012 ("CIDRA") it thought it was fair that it voided her policy and kept the premium.

It also said the work of a market trader involved carrying goods, which meant Mrs M's policy wasn't valid as it would be used for business purposes.

Marshmallow also said it didn't agree with my provisional decision because this service had issued a previous decision not upholding a similar complaint.

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.

In its response to my provisional decision, Marshmallow has contended that CIDRA applies in this case.

But in my provisional decision I said that Mrs M had told Marshmallow in full about both of her occupations. Indeed, Marshmallow contacted her specifically to check this, following its system presumably raising her occupation as an issue because she'd asked for quotes previously as a market trader.

So I don't think it's fair to say Mrs M mis-represented her occupations when she did tell Marshmallow about them.

By not acting on the information it had, Marshmallow has effectively waived its right to depend on that information in voiding Mrs M's policy.

Marshmallow also hasn't provided evidence that Mrs M was using her car for transporting market goods, or for business use, at the time of the collision.

As an informal dispute resolution service, it's this service's approach that we consider cases on an individual basis, so I'm not bound by the decisions made in other cases.

As Marshmallow hasn't provided new information about Mrs M's case, my final decision and reasoning remain the same as in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I require Marshmallow Insurance Limited to:

- Settle Mrs M's claim in accordance with the remaining terms and conditions of her policy.
- Refund the unused portion of her policy from the date it issued cancellation of her cover to its original expiry date.
- Remove markers of it cancelling her policy from its internal and any external databases it has updated. It should also write to Mrs M and confirm it's done this.
- Pay Mrs M £300 for her distress and inconvenience.

Marshmallow Insurance Limited must pay the amount within 28 days of the date on which we tell it Mrs M accepts my final decision. If it pays later than this, it must also pay interest on the amount 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 Mrs M to accept or reject my decision before 12 April 2024.

Richard Sowden
Ombudsman