

## The complaint

Mr J has complained that Marshmallow Insurance Limited declined his claim and cancelled his motor insurance policy.

## What happened

Mr J was involved in an incident on 22 October 2023 in which his car was severely damaged.

Marshmallow rejected the claim he made as his car did not have a valid MOT certificate. It said that an MOT was required by law and that driving without a certificate was in breach of UK road law and in breach of the policy terms.

Mr J submitted an engineer's report. This stated that the car was in very good condition with a full and complete service history. The last service had been carried out on 17 August 2023. The report confirmed that an MOT had been booked for 24 October 2023. The engineer couldn't see any reason why the car wouldn't have passed the MOT test criteria.

Marshmallow didn't change its stance and so Mr J referred his complaint to this service. Mr J is represented but for simplicity I will just refer to Mr J.

Our investigator recommended that the complaint be upheld. They didn't think that the evidence showed that the accident resulted from the lack of an MOT certificate. The investigator didn't find the immediate cancellation of Mr J's policy was fair or in accordance with the policy terms. They recommended that Marshmallow:

- Reinstatement of the policy and deal with the claim subject to the remaining terms and conditions of the policy;
- Reimburse any loss of use expenses that Mr J could evidence;
- Remove the record of cancellation from Marshmallow's internal records, and provide a letter to Mr J to this effect;
- Pay compensation to Mr J in the sum of £500 distress and inconvenience he experienced due to the unreasonable declination of his claim and unfair cancellation of his policy.

Mr J agreed with the investigator's assessment, but Marshmallow appealed. It said that a service doesn't take the place of an MOT. An MOT will determine if a car is roadworthy and a service doesn't complete the same checks. It said that the car wasn't deemed legally roadworthy at the date of loss. It agreed that its policy wording needed updating to reflect that it could cancel a policy earlier than with 7 day's notice.

As no agreement has been reached the matter has been passed to me to determine.

## **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 agree with the conclusions reached by the investigator. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority ('FCA'), has set out rules and guidance contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS').

The relevant section, ICOBS 8.1.1, provides that insurers must not unreasonably reject a claim. ICOBS 8.1.2B provides that rejection of a claim for breach of a condition or warranty ... is unreasonable unless the circumstances of the claim are connected to the breach.

Additionally Section 11 of the Insurance Act 2015 also states that an insurer may not rely on non-compliance with a term to exclude its liability if the insured shows that the non-compliance with the term couldn't have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

So it is clear from the rules and legislation that a claim can't be rejected simply because there has been a breach of a policy term. With this in mind I've looked carefully at all the circumstances to decide whether Mr J has been treated fairly.

Mr J's policy clearly excludes cover where the insured vehicle doesn't have a Department of Transport MOT if one is required by law. It isn't in dispute that Mr J didn't have a valid MOT certificate – an MOT test was booked in for two days after the accident. I haven't ignored Marshmallow's submission that the car wasn't deemed legally roadworthy at the time of the accident. And I appreciate that in some circumstances this is an important consideration. But I'm satisfied that Mr J has demonstrated, through the report of the motor engineer, that the vehicle was in very good condition.

The engineer's evidence is: *From my own physical examination of the vehicle it is my professional opinion that on the balance of probability the vehicle was roadworthy prior to the accident and as such the actual function and operation of the vehicle did not contribute to this accident.* I can see that a detailed examination led to this conclusion which I find is persuasive. And Marshmallow hasn't submitted any evidence to show that the accident was related in any way to the fact that the MOT certificate had expired, or that the vehicle was in fact unroadworthy prior to the accident. It follows that I'm satisfied that Mr J has shown the breach didn't increase the risk of loss. I don't find that Marshmallow treated Mr J fairly by declining his claim in these circumstances.

Further Marshmallow cancelled Mr J's policy immediately. The policy says that seven days' notice will be given. This meant that Mr J had to declare a policy had been cancelled when applying for new insurance, resulting in a greatly increased premium. I find that compensation is due for the distress and inconvenience he has been through as a result of his claim being declined and his policy being cancelled. Taking everything into consideration I'm satisfied that £500 is fair.

## **My final decision**

For the reasons given above my final decision is that I uphold this complaint. I require Marshmallow Insurance Limited to:

- Reinstate the policy and deal with the claim subject to the remaining terms and conditions of the policy;

- Reimburse any loss of use expenses that Mr J can evidence resulting from the declinature of his claim;
- Remove the record of cancellation from Marshmallow's internal records, and provide a letter to Mr J to this effect;
- Pay compensation to Mr J in the sum of £500 distress and inconvenience he experienced due to the unreasonable declinature of his claim and unfair cancellation of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 July 2024.

Lindsey Woloski  
**Ombudsman**