

The complaint

Miss M complains that Marshmallow Insurance Limited unfairly declined her motor insurance claim after her car was stolen.

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows;

Miss M had a fully comprehensive motor insurance policy with Marshmallow.

On 30 May 2023, her car was stolen from a driveway. Miss M reported the theft to the police, and she made a claim to Marshmallow.

In support of her claim, Miss M sent CCTV of the theft to Marshmallow. After viewing the CCTV, Marshmallow decided that Miss M had failed to safeguard her vehicle by not locking the car. As she was unable to locate the spare key, Marshmallow also said it thought it was likely the spare key was in the vehicle at the time.

Marshmallow declined the claim and cancelled the policy. It sent £3.63 to Miss M as a refund. She was charged £130 to cancel the policy. Miss M says the correspondence Marshmallow sent wasn't professional and that she was sent smiley faces in the messages. Miss M did not accept the outcome of the complaint. She said she had CCTV that showed her locking the car and she said there were a number of thefts of cars with keyless entry in her area at around the same time. She believed the car had been stolen after a transponder was used by the thief to gain access to her vehicle.

Marshmallow asked for further CCTV, but Miss M says this was not available because the insurer took too long to ask for it. Miss M feels she was disadvantaged because she had saved everything from the CCTV she thought would be relevant.

Miss M complained to Marshmallow. In response to her complaint, Marshmallow said that it was concerned when it found out Miss M only had one key to her car and so it had to doublecheck whether the vehicle had been safeguarded before it was stolen. It said that after checking the CCTV, the indicators on the car do not flash before the thief enters the vehicle. Marshmallow concluded the car was not locked and said there had been a discrepancy as to when Miss M said she had last driven the vehicle.

Marshmallow eventually agreed to record the cancellation of Miss M's policy as a customer cancellation. That meant she would not have to disclose the cancellation to future insurers, and it agreed to refund part of the cancellation fee.

Miss M did not accept that outcome and so she complained to the Financial Ombudsman Service. Our investigator thought it was reasonable for Marshmallow to decline the claim. And that its steps to mark the cancellation as cancelled by Miss M and to refund an additional part of the cancellation fee was fair.

As Miss M didn't agree the matter has been passed to me for review.

What I've provisionally 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 that Marshmallow didn't act unreasonably in turning down Miss M's claim. But I think it should refund all of the cancellation fee and pay her some compensation as I don't think it acted fairly in cancelling Miss M's policy. I'll explain why.

I have a fair degree of sympathy for Miss M as her car was clearly stolen on the night in question. However, her policy is clear that she needs to take steps to ensure her car was secure and not left unlocked which is a common clause in most motor insurance policies. It isn't my role to determine Miss M's motor insurance claim. What I am looking at is whether Marshmallow acted reasonably when it declined the claim and I think it has, I'll explain why.

The terms and conditions that apply to Miss M's policy say that she will be covered against any loss of her vehicle caused by theft. However, the policy also says that Miss M will not be covered where the loss arise because she failed to safeguard the car. Examples of failing to safeguard the vehicle include if the vehicle has not been secured by door lock or if the keys have been left in the vehicle. The policy specifically says 'You or any person in charge of the insured vehicle are required to take all reasonable care to safeguard it and its contents from loss or damage, for example, the vehicle should not be left unlocked'.

Marshmallow doesn't dispute that Miss M's car was stolen. However, it said it will not pay the claim because it believes Miss M's car was either left unlocked on the driveway or that the key was left inside the vehicle allowing the thief to enter. In applying that to the policy terms, Marshmallow declined the claim because it didn't think the vehicle had been safeguarded.

I've listened to the call between Miss M and Marshmallow, and I've viewed the CCTV footage that was provided. I've also had careful regard to the police report.

Upon listening to the call recording, I can see that although she was not resident at the property from where the car was stolen, Miss M was clear that the spare key was kept at that address. When she reported the theft to Marshmallow, the key was missing, and I understand it has never been located.

Miss M reported to the police that she thought the key had been stolen from the house. In looking at the police report, I can see that Miss M says she last saw the missing key on 27 May 2023 inside a key cupboard by the front door. I understand there was a forensic examination of the address but there was no evidence of forced entry or exit to the property or any suggestion of a burglary at the address.

The CCTV of the theft doesn't show the thief entering or exiting the house where Miss M was staying. It shows him on the street walking slightly past the car on the drive. He then sees the car and backtracks before quickly getting inside the vehicle and erratically driving away.

Miss M provided CCTV footage of her arriving at the address on 27 May 2023. She says that this shows her exiting the vehicle and locking it again. Miss M provided evidence from the manufacturer of the car evidencing that the car would flash once when it was locked and twice when unlocked. And I can see that the car flashed once in this footage.

However, this footage was a few days before the theft of Miss M's car and obviously there is a few days period when the car could have been used or just unlocked. I know Miss M didn't

keep any intervening footage but given there were clear questions around the second key that remains outstanding and the possibility of a burglary I find this surprising.

Turning back to the time of theft it is clear from the CCTV that the vehicle lights didn't flash at the time of theft and the thief just entered the car before quickly driving off. As Miss M has highlighted there are other ways of stealing a car without a genuine key, but I would still expect the vehicle lights to flash as the thief entered the car which suggests it was unlocked.

Given all of this, and despite my natural sympathy for the position Miss M has found herself, I don't think Marshmallow has acted unreasonably. It would appear, on balance, that the missing key was most likely used to steal the car and there is no evidence that the key was stolen from the house during a burglary so it seems likely that the key was left in the car or, at the very least, the car was left unlocked. And so, I don't think Marshmallow has acted unreasonably in relying on its 'reasonable care' clause.

Finally, I note that Marshmallow has accepted that it didn't handle the claim and subsequent cancellation of the policy very well. Although I think it acted fairly in declining the claim given the available evidence I don't think it acted fairly in cancelling Miss M's policy. I say this as I don't see any reason why it cancelled the policy even though it declined the claim. I think it should have allowed Miss M to place another car on cover if she wished or to choose to cancel the policy herself.

Miss M has clearly been the victim of theft here and there isn't any suggestion that she was involved in the theft, just that the car was most likely left insecure. And it must have been very worrying for Miss M to have her policy cancelled by her insurer in addition to the stress and worry of having her claim turned down. As such, I think it would be fair for Marshmallow to refund all the cancellation costs it charged Miss M, plus 8% simple interest for the time she was without the money. And it should provide a letter of explanation plus £200 compensation for the clear stress and worry caused at an already very stressful and difficult time.

Replies and developments

Miss M didn't respond to the provisional decision while Marshmallow disagreed that it should pay compensation for cancelling the policy. It said its decision to cancel the policy was in line with its policy wording and its decision to decline the claim. It repeated its policy wording under 'General Conditions' which says, 'You or any person in charge of the insured vehicle are required to take all reasonable care to safeguard it and its contents from loss or damage, for example the vehicle should not be left unlocked.' And said it has the right to cancel the policy for 'Your failure to comply with any of the General conditions or General exceptions set out by this policy.'

However, Marshmallow highlighted that due to what happened they thought the fairest thing to do, in the particular circumstances, would be to amend the cancellation to a customer cancellation. It said it only did this as a gesture of goodwill and so Marshmallow disagrees it has done anything wrong here or that it should compensate for this error. And went on to say that it had already refunded the £80 in relation to this.

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.

As both sides seem to accept the general position outlined in relation to the decline of the claim I don't propose to rehearse the arguments again here.

I know Marshmallow feels that it didn't do anything wrong and that it acted in line with the policy terms and conditions in cancelling the policy, but I don't think this was fair or reasonable in the particular circumstances of this case. I say this as although, on balance, Miss M seems to have left her car unlocked which led to the theft I don't think it would be fair to cancel her policy for leaving her car unlocked. Unfortunately, people do leave their cars unlocked from time to time due to human error and busy lives, but I don't think it would be fair to cancel a consumer's policy solely for this although I accept it wasn't unreasonable to decline the claim. And Miss M has been the victim of crime here and had an expensive car stolen so it doesn't feel fair or reasonable for her to have had her policy cancelled, charged over £100 in cancellation fees, to have been refunded around £3 initially and to have had a cancellation marker placed against her name.

Marshmallow seems to have acknowledged that it got things wrong here in looking to remove the cancellation marker and refunding more of Miss M's premium. I know it says this was done as a gesture of goodwill, but I feel it clearly shouldn't have placed a cancellation marker against Miss M here in the first place which could have had an adverse effect on Miss M.

Ultimately, although I accept Marshmallow didn't act unreasonably in declining the claim I don't feel it acted fairly in cancelling the policy at an already very difficult time for Miss M. It should have just allowed her to place another car on cover if she wished and by failing to act fairly here it caused a fair degree of stress and inconvenience to Miss M at an already very difficult time.

Given all of this, I maintain that the fair and reasonable thing to do, in the particular circumstances of this case, is for Marshmallow to refund Miss M's cancellation fee and only charge time on cover. And it should pay £200 compensation for the clear stress and inconvenience caused by cancelling the policy.

My final decision

It follows, for the reasons given above, that I partly uphold this complaint. I require Marshmallow Insurance Limited to refund Miss M's cancellation fee and only charge time on cover. And to pay £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 21 June 2024.

Colin Keegan
Ombudsman