

## The complaint

Mr R complains about cancellation of his motor insurance policy by Marshmallow Financial Services Ltd trading as Marshmallow (Marshmallow).

References to Marshmallow in this decision include their agents.

## What happened

Mr R took out a motor insurance policy with Marshmallow in June 2022, coming into force in July 2022, with a total cost of £1,018.91. Mr R chose to pay by monthly instalments on a card account, making an initial payment of £155.96 with the balance to be paid through eleven further monthly payments of £78.45. At the beginning of June 2023 Marshmallow tried to take the final payment of £78.45 but the payment was declined. Marshmallow emailed Mr R to say the payment had failed, saying he needed to make the payment within 14 days, otherwise his policy would be cancelled.

Mr R contacted Marshmallow through a web chat facility to discuss his payments. He was experiencing health problems requiring hospital appointments and surgery and struggling to make payment of his premium. Marshmallow granted him a seven-day payment extension. Marshmallow emailed Mr R on the day before the extension deadline expiry, saying the payment had to be made by 11am the following day. Payment wasn't received by that time, so Marshmallow cancelled the policy, with effect from the end of the day. Marshmallow calculated an outstanding balance of the premiums paid, the time Mr R had been on cover, together with a £50 fee for the cancellation. This came to a total of £80.99.

Marshmallow provided a link to Mr R's account to enable payment to be made, which they said was due within seven days. Mr R contacted Marshmallow the following day to say the link didn't work. Mr R tried again to make payment, but the link had expired. He contacted Marshmallow again the same day but was told his policy had already been cancelled.

Unhappy at what happened, Mr R complained to Marshmallow. In their final response, they set out the sequence of events and their policy on cancellations. They said once they cancelled the policy, the link was inactive. Mr R had tried to make payment earlier on the day the cancellation was processed, but the payment was declined by Mr R's bank, due to insufficient funds being available. Even had this payment been successful, it would have been after the cancellation had been processed. Marshmallow said they'd provided options for Mr R to make payment of the amount due or to contact them to see if they could help.

On charging a cancellation fee, Marshmallow referred to the policy wording on cancellations, which stated if they had to cancel a policy due to a missed monthly payment, a policyholder would still owe any outstanding payments prior to the cancellation. The wording also provided for a £50 cancellation fee to be charged. So, Marshmallow wouldn't be refunding the cancellation charge, and the £80.99 balance remained due. On his No Claims Discount (NCD), as Mr R had been insured with Marshmallow for less than one year, he hadn't earned any NCD. Marshmallow added they would only be able to provide a document saying he hadn't made any claims under the policy.

Mr R then complained to this Service. He was unhappy at his policy being cancelled. He'd lost his NCD entitlement and cancellation of his policy would affect his ability to obtain insurance in the future. He didn't think Marshmallow took his extenuating circumstances into account, as he was working for an agency at the time, and he had no income whilst he was undergoing treatment for his health problem. This had also caused him to drop out of his degree course. He wanted the opportunity to make his final policy payment to secure his NCD entitlement.

Our investigator upheld the complaint, concluding Marshmallow hadn't acted fairly. He was satisfied Marshmallow acted fairly in granting an extension of the payment deadline to Mr R as he was struggling to make payment of the instalment due, and they'd been clear in their communication to Mr R about what would happen if payment wasn't made by the deadline extension. Mr R didn't make payment by the deadline extension, and there were options for him to do so.

The investigator thought Marshmallow acted fairly and reasonably in their communication and support to Mr R but didn't think it fair to cancel the policy because of the missed payment. He expected Marshmallow to consider other ways to support Mr R given what he'd told them about the difficulties he was experiencing. And in recalculating the amount due from Mr R (from £78.45 to £80.99) they had put Mr R in a worse financial position, which the investigator didn't think fair.

As Mr R was paying through monthly instalments, the full annual premium would already have been paid to Marshmallow by the credit finance agreement provider. Mr R would have had a contract agreement with Marshmallow and a second agreement with the finance provider, so there would have been scope to see if the finance provider could have assisted further, and Marshmallow could have referred Mr R to the finance provider to see what support they might have been able to offer. So, cancelling the policy before other options could have been explored was unfair to Mr R.

To put things right, the investigator thought Marshmallow should remove the record of the policy cancellation from the shared insurance database and allow Mr R one year's NCD. They should also refund Mr R the £50 cancellation fee and pay £50 compensation for distress and inconvenience. The total of £100 should be offset against the outstanding balance due of £80.99, leaving a net amount of £19.01 to be paid to Mr R.

Marshmallow disagreed with the investigator's view and asked an ombudsman to consider the complaint. They said it wasn't possible to issue one year's NCD as Mr R did not complete one year of cover under the policy. If another insurer contacted them to ask for confirmation of one year's NCD, they would be providing inaccurate information if they confirmed one year's NCD. They also said they didn't have a credit provider for the policy with Mr R, so they didn't receive any annual payment for the policy. Mr R paid the policy premium to them, through payments taken from his card account. While they would be happy to waive the cancellation fee, they'd given Mr R an extension for payment of the instalment and did what they could to support him. They weren't responsible for Mr R not paying the instalment by the deadline extension.

In my findings, from the sequence of events I thought Marshmallow did look to support Mr R by providing an initial extension of 14 days for payment of the instalment. And then providing a further extension when he contacted them and told them about his health issues. The indications from the web chat are that Mr R accepted the further extension. And he had the opportunity to contact Marshmallow again before the extended deadline of 21 June, but I haven't seen anything to indicate he did (before contacting them on 23 June).

Taking these points together, while I recognised Mr R's difficult circumstances, I couldn't conclude Marshmallow acted unfairly or unreasonably through providing two extensions of

the deadline for payment of the instalment, the second of which Mr R accepted. They also gave clear notice of the policy cancellation if payment wasn't received, which it wasn't.

I also thought the policy terms clear, and they acted in line with the terms in cancelling the policy. So, I couldn't conclude Marshmallow acted unfairly in cancelling the policy. That being the case, I couldn't reasonably ask them to remove record of the cancellation from the relevant databases, internal or external.

On the issue of the NCD, as I've concluded they acted fairly and reasonably in cancelling the policy, then I couldn't conclude it unreasonable not to issue a year's NCD, even though Mr R paid most of the policy premium.

On the cancellation fee, while I thought Marshmallow were entitled to charge it, I thought it reasonable to waive it in the circumstances of the case.

As I reached different conclusions to those of our investigator, I issued a provisional decision to allow both parties the opportunity to consider matters further. This is set out below.

*What I've provisionally decided – and why*

*I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I'd first want to acknowledge the circumstances through which Mr R found himself in financial difficulties leading up to the cancellation of his policy, particularly the health issues he has told us about and the need for treatment and surgery. I also recognise the impact it had on his degree course and having to drop out. I've borne this in mind when deciding, as is my role here, whether Marshmallow have acted fairly towards Mr R.*

*The key issue in Mr R's complaint is Marshmallow cancelling his policy because he didn't make the final monthly instalment payment. He says he was struggling financially due to health issues (which Marshmallow didn't take account of) and when he tried to make payment through the link provided by Marshmallow it didn't work. Mr R is also unhappy he hasn't been given one year's NCD. Marshmallow say they gave Mr R a payment extension in addition to the fortnight they initially provided, and he could have contacted them to discuss options for payment of the outstanding premium.*

*When considering the case, I've looked closely at the sequence of events set out above. When the final payment instalment was declined, Marshmallow contacted Mr R to give him 14 days to make the payment, or they would cancel the policy. As the payment was due on 14 June, the 14 day period ran to 11am on 15 June. I can see a further email on the morning of 14 June reminding Mr R about the deadline and setting out options for payment and to contact them to see if they were able to help.*

*There's then a further email from Marshmallow on the afternoon of 15 June, saying the policy had been cancelled (as payment hadn't been received). This was followed almost immediately by a web chat initiated by Mr R, saying he'd been given an extension until 21 June due to what he'd told Marshmallow about his health issues. The Marshmallow agent on the chat initially says they can't see any record of a conversation about an extension, but Mr R provides evidence of it and the agent apologises and reverses the cancellation and extends the deadline for payment of the instalment to 11am on 21 June, which Mr R acknowledges.*

*Marshmallow contact Mr R again on 20 June to say the instalment is overdue and the policy will be cancelled the following morning if payment isn't received. The same payment and*

contact options are provided as in the email of 14 June. The email also refers to the £50 fee if the policy is cancelled. There's a further email on 21 June, after the 11am deadline, cancelling the policy with effect from the end of the day. A further email on 22 June confirms the cancellation and the balance due of £80.99 (with an explanation of how the balance is calculated) which is payable within seven days. The email provides the option of contacting Marshmallow for additional support or if paying the balance is difficult.

Mr R contacts Marshmallow on 23 June to raise his complaint, saying he tried to make payment on 21 June, but was unable to do so as the link provided didn't work. He wants to make the payment to maintain his NCD.

From Marshmallow's final response, they say Mr R attempted to make payment early on 22 June, but the payment was declined by his bank due to insufficient funds. There's no indication of a payment being made (or attempted) before that date and as the payment attempt was made after the policy was cancelled, the link wouldn't have worked.

Looking at this sequence of events, I think Marshmallow did look to support Mr R by providing an initial extension of 14 days for payment of the instalment. And then providing a further extension when he contacted them and told them about his health issues. The indications from the web chat are that Mr R accepted the further extension. And he had the opportunity to contact Marshmallow again before the extended deadline of 21 June, but I haven't seen anything to indicate he did (before contacting them on 23 June).

Taking these points together, while I recognise Mr R's difficult circumstances, I can't conclude Marshmallow acted unfairly or unreasonably through providing two extensions of the deadline for payment of the instalment, the second of which Mr R accepts. They also gave clear notice of the policy cancellation if payment wasn't received, which it wasn't.

I've also considered whether Marshmallow acted in line with the policy terms and conditions. They refer to the following policy wording in their final response, regarding cancellations. Under Section 3: Cancellations it states:

*"If you opt to pay your insurance premium on a monthly basis and your policy is cancelled by us, you will not be charged for any future months after the cancellation. However, if we have cancelled your policy due to a missed monthly payment(s) you will still owe us for any outstanding payments prior to the cancellation.*

*We will deduct an administration charge of £50 (including Insurance Premium Tax) from any refund."*

Looking at this, I think the policy terms are clear and they acted in line with the terms in cancelling the policy.

So, I can't conclude Marshmallow acted unfairly in cancelling the policy. That being the case, I can't reasonably ask them to remove record of the cancellation from the relevant databases, internal or external.

Marshmallow also note that there isn't a separate credit provider for the policy with Mr R, so they didn't receive any annual payment for the policy. Mr R paid the policy premium to them, through payments taken from his card account. In which case, it is their decision about cancelling the policy, having given clear, due notice and two extensions of the deadline for payment of the instalment.

On the point about the NCD, Marshmallow say that as they cancelled the policy before its expiry, then Mr R won't have earned a year's NCD (the minimum period). As I've concluded

*they acted fairly and reasonably in cancelling the policy, then I can't conclude this is unreasonable, even though Mr R will have paid most of the policy premium.*

*On the cancellation fee, the above policy terms provide for it to be charged where a policy is cancelled, so I can't conclude it was unreasonable to charge it as part of the calculation of the outstanding balance at the point of cancellation. However, I note Marshmallow have offered to waive the fee, which would have the effect of reducing the outstanding balance by £50. While I think they could charge it given the policy wording, I think it's a reasonable offer in the circumstances of the case.*

*My provisional decision*

*For the reasons set out above, it's my provisional decision to uphold Mr R's complaint in part. I intend to require Marshmallow Financial Services Ltd trading as Marshmallow to:*

- *Waive the £50 cancellation fee as part of the calculation of the outstanding balance at the point of cancellation.*

Mr R responded to make several points. First, when he tried to make payment the link provided by Marshmallow didn't work and he'd contacted Marshmallow to make them aware of the issue. When he tried a second time, payment was declined by his bank due to insufficient funds in his account. Second, he thought having a cancellation marker on his account was unfair because it meant obtaining insurance would be so expensive he wouldn't be able to take out new cover. It was also unfair because he'd paid the majority of the premiums due under the policy and was close to having a full year's NCD. He was also unwell at the time and undergoing surgeries and working through an agency so didn't qualify for sick pay, affecting his ability to make premium payments. He wasn't eligible for benefits as a full-time student, so had to drop out of his course to become eligible.

Marshmallow responded to accept the provisional decision.

### **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 acted fairly towards Mr R.

I've considered each of the points raised by Mr R. On the point about when he tried to make payment the link provided by Marshmallow didn't work, while this might have been the case, as Mr R also states, he made a second attempt to effect payment – but the payment was declined by his bank due to insufficient funds in his account. While this was unfortunate, I can't hold marshmallow responsible for the action of the bank in declining payment.

I've noted what Mr R has said about having a cancellation marker on his account meant obtaining insurance would be so expensive he wouldn't be able to take out new cover. However, of itself this isn't a reason to conclude marshmallow acted unfairly in recording the cancellation. I concluded they acted fairly and reasonably in cancelling the policy and recording the cancellation, and I haven't changed my view on this point.

On the point about it being unfair not to award a full year's NCD because he'd paid the majority of the premiums due under the policy and was close to having a full year's NCD, unfortunately the minimum NCD period is one year, which would be dependent on having a policy for a full year (and paying the full premium). And while close to the end of the policy, these conditions weren't met.

I recognise what Mr R has said about being unwell at the time and undergoing surgeries and working through an agency so didn't qualify for sick pay, affecting his ability to make premium payments. And that he wasn't eligible for benefits as a full-time student, so had to drop out of his course to become eligible. But my role here is to decide whether Marshmallow acted fairly and reasonably towards Mr R in his circumstances. I noted the extensions they provided to Mr R to allow him the opportunity to make payment, but he wasn't able to do so. I think providing the extensions was reasonable, but I can't hold Marshmallow responsible for Mr R not making payment.

Taking all these points together, I haven't changed my view of this complaint, so my final decision remains the same as my provisional decision.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr R's complaint in part. I require Marshmallow Financial Services Ltd trading as Marshmallow to:

- Waive the £50 cancellation fee as part of the calculation of the outstanding balance at the point of cancellation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 August 2024.

Paul King  
**Ombudsman**