

The complaint

Mr I has complained about Marshmallow Insurance Limited's decision to cancel his motor insurance policy and decline his claim under it.

What happened

Mr I had an accident in April 2022 and made a claim under his policy for damage to his car. Marshmallow cancelled Mr I's policy and turned down his claim because he didn't tell it he'd started a secondary occupation as a delivery driver in December 2021. It originally suggested that this was a change of occupation, but has since accepted it was an additional secondary occupation and his main occupation - a cleaning contractor - remained the same. Marshmallow also originally suggested Mr L was using his car for deliveries at the time of the accident, but later admitted it got this wrong as well.

Mr I complained, but Marshmallow wouldn't alter its position. So Mr I asked us to consider his complaint. He provided evidence to show that he took out separate monthly policies to cover his car when he was doing deliveries and that the first of these started on 29 December 2021. Mr I has also said he called Marshmallow at some point after starting as a delivery driver, but before his accident, to ask if he could be covered for delivery driving under his policy with Marshmallow. And that when it told him he couldn't, he carried on obtaining separate cover for deliveries.

One of our investigators considered Mr I's complaint. She said Marshmallow should settle his claim for the damage to his car, cover the expenses he incurred due to it being turned down and pay him £250 in compensation for distress and inconvenience. She said Marshmallow should do this because it cancelled the policy after Mr I's accident and this meant it was providing him with cover at the time of it.

Marshmallow didn't agree with the investigator's view and asked for an ombudsman's decision. It said that because Mr I didn't tell it when he started working as a delivery driver it wasn't obliged to deal with his claim. This was because if he had told them it wouldn't have continued covering him. It provided a copy of an underwriting guide, which it said proves this.

I spoke with Mr I at some length about what happened. He explained to me that, as far as he could remember, he started delivery driving after he took out his policy with Marshmallow. And he said he was sure he called Marshmallow at some point after this and asked if he could have one policy with them to cover his car, including when he was using it for deliveries. He also told me that his car was repaired by a garage arranged by a solicitor representing him and his wife on their claims against the third party insurer. And that he had a problem following the repairs, which he had to pay a garage to resolve.

I issued a provisional decision on 2 July 2024 in which I set out what I'd provisionally decided and why as follows:

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

I should say at the start of this section that, as I explained to Mr I when I spoke with him, I am not able to consider any concerns or problems he has or has had with the solicitor representing him and his wife around their claims, including their claim for the repairs to their car and any expenses relating to these. These are a matters he must take up with the solicitor and ultimately – if he wishes to do so – the Legal Ombudsman. This is because Marshmallow did not deal with Mr I's claim for his car. And – even if it should have done - it is not clear from the evidence I have seen that the additional expenses Mr I wants to claim for are expenses he would have avoided if it had done so.

Turning now to Marshmallow's decision to turn down Mr I's claim. Under the terms of Mr I's policy with Marshmallow it stated the following regarding changes in his circumstances: You must tell us immediately if any of your information is incorrect or if anything changes. If we have wrong information this may lead to an increased premium and/or claims not being paid in full, or your insurance may not be valid and claims will not be paid. If in doubt about any information please contact us as soon as possible.

We need to know about any changes to information for all drivers covered by your policy, including (but not limited to) the following:

- *Accidents (fault or non-fault) whether or not resulting in a claim.*
- *Thefts (of or from the insured vehicle)*
- *Driving disqualifications.*
- *Unspent criminal convictions, fixed penalty notices or pending prosecutions for any motoring or criminal offence.*
- *Change of your address.*
- *Any health matters impacting your ability to drive.*
- *Make and model of the insured vehicle.*
- *Full and or part time occupation (if both apply these must be disclosed).*
- *Use of the insured vehicle.*
- *Modifications to the insured vehicle (both cosmetic and/or performance enhancing).*
- *Drivers of the insured vehicle.*
- *Annual mileage.*
- *Type of licence and date test passed.*
- *Any Insolvencies.*

If any of your details change, your insurance will not be valid until we have agreed to the changes and have issued a new policy schedule and either a cover note or certificate of motor insurance.

This means Mr I did need to let Marshmallow know when he started using his vehicle for deliveries, as it was a change in the use of the insured vehicle and to his occupations. It also means that until he did on a strict application of the policy terms his insurance cover was not valid until Marshmallow had agreed to this change in his circumstances.

Mr I has said he called Marshmallow to ask if it would provide cover for his delivery driving and it told him it would not. And I am persuaded by his testimony that he did this. Mr I cannot recall exactly what he said. But, on the balance of probabilities, I am satisfied that it should have alerted Marshmallow to the fact that he was going to start using his car for deliveries. So, rather than just telling Mr I it couldn't provide a policy that covered this, Marshmallow's adviser should have told him that it needed to cancel his policy. I don't think the adviser did this. I say this because from speaking with Mr I, it is clear he was genuinely concerned about having the right cover. And his policy with Marshmallow continued after his call, which suggests to me the adviser didn't take the right course of action. In fact, in its

communications with Mr I Marshmallow was very confused about whether it would be willing to cover him with delivery driving as a secondary occupation. And, as I've said, originally it suggested it wouldn't cover Mr I because this was his primary occupation. I think this supports my view that when Mr I called Marshmallow for cover for delivery driving its adviser gave the wrong response.

Even if I didn't accept Mr I called Marshmallow and told them he was using his car for deliveries, I do not think a strict application of the policy terms would produce a fair and reasonable outcome to his complaint. This is because, while I appreciate Marshmallow thinks Mr I starting a secondary occupation as a delivery driver without telling it meant it was no longer obliged to insure his car, I do not agree. This is because I do not consider him starting a secondary occupation as a delivery driver was a fundamental change in the risk Marshmallow was insuring. I say this because it was only a secondary occupation and Mr I had separate insurance when using the insured vehicle for it. And our established position is that it is not appropriate for an insurer to amend the policy terms, remove cover or cancel a policy when the change in the customers circumstances isn't fundamental to the main risk insured. In effect, this means if Mr I had told Marshmallow when he started using his car for deliveries, I'd have expected it to carry on insuring him until his policy came up for renewal. This all means that I think Marshmallow's decision to turn down Mr I's claim and cancel his policy was wrong and it treated him unfairly. I think this and Marshmallow's confusing communication around the issue was all a very upsetting experience for Mr I and clearly caused him a great deal of distress and inconvenience. And I think this warrants a fairly significant compensation payment of £400.

I also think Marshmallow should remove the policy cancellation from its records and any external databases it placed it on. It should also compensate Mr I for the extra premium he has paid as a result of having to declare he has had a policy cancelled since this happened. Obviously, time has moved on, and Mr I will have had several policies since his policy with Marshmallow was cancelled. So, it is going to be difficult for him to work out the impact this had on his premiums. Therefore, as a fair and reasonable outcome, I think it would be appropriate for Marshmallow to pay him a further £250 in compensation for this, as I think this is a fair reflection of the likely additional cost to him in premiums in the period concerned.

My provisional decision

For the reasons set out above, I've provisionally decided to uphold Mr I's complaint about Marshmallow Insurance Limited and make it do the following:

- Pay Mr I £400 in compensation for distress and inconvenience.*
- Pay Mr I £250 in compensation to cover the financial loss he has experienced due to paying higher premiums because he had to declare having had a policy cancelled.*
- Remove the policy cancellation from its records and any external databases it placed it on.*

I gave both parties until 16 July 2024 to provide further comments and evidence in response to my provisional decision. And neither party has provided any further comments and evidence.

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 neither party has provided any further comments or evidence I see no reason to alter my view on the fair and reasonable outcome to Mr I's complaint as set out in my provisional decision.

Putting things right

For the reasons set out in my provisional decision dated 2 July 2024, I've decided to uphold Mr I's complaint and make Marshmallow do the following:

- Pay Mr I £400 in compensation for distress and inconvenience.
- Pay Mr I £250 in compensation to cover the financial loss he has experienced due to paying higher premiums because he had to declare having had a policy cancelled.
- Remove the policy cancellation from its records and any external databases it placed it on.

My final decision

I uphold Mr I's complaint about Marshmallow Insurance Limited and order it to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 28 August 2024.

Robert Short
Ombudsman