

The complaint

Mr M complains that Marshmallow Insurance Limited (“Marshmallow”) declined a claim and cancelled his car insurance policy.

What happened

Mr M had a motor insurance policy with Marshmallow covering his car. He bought the policy through a comparison website.

In September 2023 Mr M was involved in a collision with a third-party vehicle. He contacted Marshmallow and made a claim.

There were delays getting his car recovered and Marshmallow’s approved repairers told Mr M they weren’t working with it, and then that his claim was on hold.

Marshmallow then told Mr M his car was beyond economic repair and said it would be written off. It made Mr M an offer for it. It asked Mr M to supply it with various documents including the V5C (‘logbook’). Mr M said he thought he’d lost this, but he was able to arrange to send Marshmallow part of an old V5C commonly referred to as the “New keeper slip”.

Marshmallow said he’d misrepresented that he was the owner and keeper of the car. It said it wouldn’t accept policies from people who weren’t the keeper of a car, and it repudiated his claim. It also voided Mr M’s policy ab initio (from the beginning) and refunded him, less £130 for its costs, and recorded its cancellation of his policy on a database used by insurers.

Mr M complained. He’d found the V5C and sent it to Marshmallow.

Marshmallow said it thought it had declined his claim fairly. It said *“When in fact the registered owner, keeper details had not been changed into your name after you purchased your vehicle.”*

As Mr M remained unhappy, he brought his complaint to this service. He complains about the rejection of his claim, the inconvenience he’s suffered without transport and the long time it’s taken for Marshmallow to deal with his claim.

Our investigator looked into Mr M’s complaint and thought it would be upheld. She said Marshmallow should accept the claim in line with the policy terms, pay Mr M the settlement amount plus interest at 8% simple, remove the record of it cancelling the policy, pay an interest element on his finance agreement, reimburse his travel costs and pay him £550 compensation.

Marshmallow didn’t agree with the view. Because it didn’t agree, this complaint has been passed to me to make a decision.

I issued a provisional decision upholding Mr M’s complaint, but making a further award to him relating to the premium he’d paid:

I’ve said above that Mr M was only able to send Marshmallow the ‘New keepers slip’ when

he was asked for proof, because he thought he'd lost the V5C.

In its correspondence with this service, Marshmallow said:

"We only received a copy of Mr M's green new keeper slip which proves that he hadn't changed the registered keeper and ownership in his name after he purchased the vehicle.

When signing up with Marshmallow, our Underwriters require that a customer is the registered keeper and owner of the vehicle they are insuring, in this case Mr M declared that he was. But the proof he provided at the point of claim, didn't prove this. As well as this, Mr M explained that he couldn't apply for a V5C due to him going back to [his job] and it taking a while to arrive and could only provide us with his green new keepers slip."

The 'New keepers slip' in question says explicitly that the person with the slip is the new keeper.

I can see from the file of evidence that Mr M couldn't supply the V5C to Marshmallow. He said he thought he'd lost it. But later he was able to send it as it was located by a family member. He didn't need to ask DVLA to send him a new one.

The V5C registration document was in his name. At the top of the V5C it says Registered keeper next to Mr M's correct name and address. The date of the V5C is the date he bought the car. This is confirmed by the finance agreement Mr M used to acquire the car.

I fail to see what other evidence would be needed to demonstrate that Mr M was the registered keeper of the car, and would become its owner at the end of the finance agreement.

So, I'm satisfied that Mr M was the keeper of the car and was (or would become) its owner. It follows that I don't think Marshmallow acted fairly when it cancelled Mr M's policy and refused to deal with his claim.

It now needs to settle Mr M's claim in line with the policy wording. What this means is that it needs to settle his claim for the damage to the car, which resulted in a write-off, plus storage, recovery and other costs.

I also think it's fair Marshmallow now pays for extra costs Mr M has incurred due to him being without his car, which he'll need to evidence.

From the file, I can see Mr M was paying for his car using a finance agreement. Although his car has been declared beyond economic repair, Mr M has continued to pay for it under the terms of this agreement. Because I don't think Marshmallow acted fairly, I think it also needs to pay the interest element of his finance agreement for the period from the date of the collision to the date this payment is made, plus interest at 8% simple.

I can also see that when Marshmallow voided Mr M's policy, it issued him with a refund but deducted £130 of costs. I've said above that I don't think it was a fair of Marshmallow to void his policy, so it follows that I also don't think it's fair that it made any deductions from his premium refund.

But I also need to consider that Mr M has received a refund of his premium paid but has effectively "used" his policy by making a claim.

It follows that I think Mr M needs to pay the premium he should have paid had the policy been in force at the time of the collision. But I'm not going to ask him to pay the full annual premium because he's not been able to have the use of the policy for a full year due to Marshmallow's unfair actions in cancelling his policy.

I think the fair solution is that he pays a pro-rata premium from the inception date of the policy to the date Marshmallow made its offer to settle his claim. I'd reasonably expect that the pro-rata amount is adjusted from the balance Marshmallow owes Mr M.

For the avoidance of doubt, I don't think it's fair Marshmallow applies any fees to this pro-rata amount, so these need to be removed.

I can see the loss of his car and the decisions take by Marshmallow have caused Mr M significant distress and inconvenience. I've thought about the worries he's had and the impact on his lifestyle, and I think the figure of £550 is appropriate and in line with this service's recommendations.

Responses to my provisional decision

Mr M accepted my provisional decision but Marshmallow didn't. It also pointed out that Mr M's surname on the V5C was incorrect.

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.

I've read Marshmallow's response to my provisional decision carefully, and it continues to refer to the V5C logbook as not proving that Mr M was the keeper. The V5C explicitly says when he acquired the car in question.

Marshmallow has also said Mr M's V5C has an incorrect name on it. It hasn't raised this as an issue before this late stage in Mr M's claims journey.

I have asked Mr M to contact DVLA and he has said it will re-issue the V5C with his correct name stating when he acquired the car. Once he's able to supply that to Marshmallow I require Marshmallow to carry out the actions I've detailed below.

As Mr M accepted my provisional decision and because Marshmallow hasn't provided any further information to change my mind, my final decision and reasoning remains unchanged, albeit delayed until Mr M produces the revised, correct V5C to Marshmallow.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint.

I require Marshmallow Insurance Limited, subject to Mr M supplying it with the corrected V5C, to:

- Deal with Mr M's claim in line with the remaining policy terms as though it'd never cancelled his policy.
- As it said the car was a total loss, 8% simple interest should be added to the settlement offer from the date the original offer was made to the date this payment is made.
- Remove records of it cancelling Mr M's policy from its internal and any external

databases it's updated.

- Reimburse the interest element of Mr M's finance payments, plus interest at 8% simple, from the date the original offer to settle his claim was made to the date this payment is made.
- Reimburse Mr M for travel costs he has incurred during the period he was without his car.
- Pay Mr M £550 compensation for the distress and inconvenience it has caused him.
- Calculate the pro-rata premium it would have charged Mr M from the policy inception to the date it offered to settle his claim, without including any fees, and adjust its payment to Mr M accordingly.

If Marshmallow Insurance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Marshmallow Insurance Limited must pay the amounts within 28 days of the date on which we tell it Mr 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 Mr M to accept or reject my decision before 4 September 2024.

Richard Sowden
Ombudsman