

The complaint

Mr A complains that Marshmallow Insurance Limited (Marshmallow) unfairly accused him of fraud and cancelled his car insurance policy.

What happened

Mr A took out a car insurance policy in January 2023. In September 2023 Marshmallow contacted him and asked for some additional information, including a copy of his no claims discount (NCD) entitlement. Marshmallow checked this document with Mr A's previous insurer – but they said the information didn't match. Marshmallow cancelled the policy in October 2023 and said they considered Mr A had modified the NCD document in order to falsely gain insurance cover. They also charged a cancellation fee.

Mr A complained to Marshmallow – he said he'd provided accurate information and his previous insurer had said Marshmallow hadn't asked them for any information. Marshmallow responded to the complaint in November 2023 but said they hadn't done anything wrong. They maintained they'd followed their standard procedures and acted in accordance with the terms and conditions of the policy.

Mr A was unhappy with Marshmallow's response, so he brought the complaint to this Service. While an Investigator was looking at what had happened, Marshmallow went back to Mr A's previous insurer and were able to confirm his NCD entitlement. In light of this, Marshmallow agreed that Mr A's complaint should be upheld; they offered to change the policy's cancellation reason to 'customer cancellation'. They also offered to waive the cancellation fee and give Mr A £150 compensation.

Mr A didn't think Marshmallow's proposed resolution was fair, and he asked this Service to continue looking at everything. An Investigator looked at what had happened and recommended the complaint be upheld. He thought Marshmallow had acted unfairly by cancelling Mr A's policy. And he thought there had been significant effort on Mr A's part to try and sort things out. He recommended Marshmallow pay £575 compensation and refund any fees, with interest.

I issued a provisional decision of this complaint on November 2024. I've set out my provisional findings below:

The details of this complaint are well known to both parties, so I won't repeat them in full again here. But the starting point is Marshmallow have now confirmed they were wrong to say Mr A had provided false information about his NCD. They've acknowledged this and offered to change the cancellation reason to 'customer cancellation'. They also offered to waive the cancellation fee and give Mr A £150 compensation.

This means I don't need to make a finding on whether Marshmallow have acted unfairly, because they have already confirmed they made a mistake. Instead, I need to consider what the impact of the mistake was and what steps they've taken to address this.

What was the impact?

I agree Marshmallow should update the cancellation record to show Mr A cancelled the policy himself. This will avoid any issues with Mr A having to declare he had a policy cancelled. I can also see Mr A wasn't charged an additional premium when he renewed another car's policy with an alternative insurer. He's confirmed there was no increase in premium due to Marshmallow's error – so there is no loss for me to consider.

But Mr A's representative has made a number of submissions around the losses Mr A says he has incurred. I've considered each of these carefully when deciding how I think this complaint should be resolved.

Storage costs

Mr A said he put his car into storage when the policy was cancelled by Marshmallow because he was unable to leave his car on the road while uninsured. Mr A says this is because he'd never had a policy cancelled before, so he didn't know what to do in this situation. I've been provided a copy of the storage invoice and I can see Mr A's car was stored for 70 days at a total cost of £2,940.

I've thought about Mr A's actions and the inconvenience experienced due to Marshmallow's error. I recognise he wouldn't have been able to leave his car parked on the road at home. And I'm satisfied Mr A was expecting Marshmallow to clear the issue up when he complained, which is why he stored the car instead of paying for another policy.

Overall, having considered Mr A's testimony, I'm satisfied his decision to store his car was a direct and foreseeable result of Marshmallow's error. And I'm satisfied Marshmallow could have avoided this by making proper enquiries with his previous insurer sooner.

Mr A took his car out of storage around a month after Marshmallow provided their final response to his complaint. Mr A says he then transferred the ownership of the vehicle to his son, who in turn insured the vehicle. I find this to be reasonable and a fair attempt to mitigate further losses being incurred once Mr A realised Marshmallow weren't going to uphold his complaint and reinstate his policy. So, it follows that I think Marshmallow are responsible for the storage costs Mr A is claiming for and they should reimburse these costs upon receipt of proof Mr A has paid them.

Time on cover and no claims discount

Mr A has requested a pro-rata refund for the lost time on cover. But I'm going to direct Marshmallow to refund any premiums he paid as part of the policy; so there's no need for me to make a direction for a specific period of time to be refunded.

I appreciate Mr A has also asked for Marshmallow to provide the additional year's NCD he would have built up had the policy not been cancelled. He's asked Marshmallow to confirm he now has 13 year's NCD going forwards. However, this isn't something I'm able to direct Marshmallow to do.

While I appreciate Mr A hasn't built up an additional year's NCD because of Marshmallow's error, the fact remains that Mr A didn't complete a year of insurance

with Marshmallow, so it wouldn't be reasonable for me to direct them to provide a year's NCD entitlement.

Distress and inconvenience

Mr A has said not only was the situation in having his policy cancelled very time-consuming and distressing, when Marshmallow issued their response to his complaint, he was away on holiday with his family at the time. He says the response was so distressing, he cut the holiday short, and he and his family returned home to the UK. He says this prevented him and his family enjoying the time away. I do sympathise with the disruption Mr A experienced as a result of Marshmallow's actions.

And I have no reason to doubt Mr A would have experienced a level of distress and inconvenience trying to sort the situation out. However, I've not been persuaded that he and his family would have needed to cut their holiday short as a result of Marshmallow's response to the complaint. So, while I appreciate the choice Mr A and his family made, I have to conclude that this was ultimately his choice and not one I'm satisfied was caused as a direct result of Marshmallow's actions.

Mr A has referred to an assistance fee totalling £1,194.00 including VAT. I haven't been any evidence of this fee, but in any event, I won't be making an award for this - because I've not seen any evidence that Mr A was required to have professional representation, either in his dealings with Marshmallow or with this Service. I'm satisfied this was a decision Mr A decided to take and it therefore wouldn't be reasonable to expect Marshmallow to pay for this cost.

I appreciate Mr A has said an example should be made of Marshmallow so other insurance providers carry out proper due diligence and provide a fair service in future. But this Service isn't the regulator – and we don't fine or punish a business. Instead, we can award compensation to recognise the impact a business' actions have had on their customer.

Based on what has happened, the Investigator recommended that Marshmallow should pay £575 compensation. I've thought about whether that's enough compensation to reflect the impact on Mr A of the shortcomings in Marshmallow's service. I've weighed up Mr A's testimony, the available evidence, and the duration of the incident. I consider a fair and reasonable sum would be £650. And I'm satisfied this is in line with similar awards this Service would make. I'm therefore minded to direct Marshmallow to pay £650 compensation to reflect the impact their actions had on Mr A.

I've also taken on board Mr A's comments around Marshmallow's impact on his family – he's said household members are affected as they had to declare whether anyone in their household had their insurance cancelled. While I can appreciate this may have been worrying, I'm unable to award compensation to anyone other than the named policyholder, which here is Mr A – it's simply not a power this Service has.

I invited both parties to respond to my provisional decision with any further information or evidence they wanted me to consider. Marshmallow didn't respond to my provisional findings.

Mr A replied and said he remained of the opinion that Marshmallow should be required to add one year's NCD to his record – because had the insurance policy naturally lapsed and not been interrupted by Marshmallow then his total NCD would have been 13 years. Mr A

also asked whether Marshmallow would be required to refund the full premium that was paid at the time of obtaining the policy.

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.

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I do appreciate Mr A's frustrations over losing a year's NCD due to Marshmallow's actions. However, as I explained previously, while Mr A hasn't gained an additional year's NCD, the fact remains that Mr A didn't complete a year of insurance with Marshmallow, so it wouldn't be fair or reasonable for me to direct them to provide him with a year's NCD entitlement.

Mr A also asked for clarification as to the refund of premiums I outlined in my provisional findings. I previously said I was minded to direct Marshmallow to refund all premiums that had been paid when Mr A took out the policy. However, having considered this point further, Mr A was around eight months into the policy before Marshmallow cancelled it.

As such, it wouldn't be fair or reasonable for me to ask Marshmallow to provide a refund of premiums that Mr A had the benefit of for the majority of the policy period. As such, I'll be directing Marshmallow to provide a pro-rata refund, in line with Mr A's original request, as well as adding 8% simple interest to the sum refunded from the date of cancellation.

I note Mr A hasn't raised any further information for me to consider in relation to the other findings I made in my provisional decision. Therefore, I see no reason to depart from what I said previously on these points.

My final decision

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

- Update the policy's cancellation reason on relevant database(s) to 'customer cancellation' and remove any fraud markers they've placed;
- Provide a pro-rata refund of the premium paid when the policy was taken out (the total premium, less any time on cover). Marshmallow should add interest at a rate of 8% simple from the date of cancellation to the date the refund is given;
- Waive the cancellation fee charged, and Marshmallow should not deduct this from the refund due;
- Refund the storage costs incurred, on receipt of Mr A showing these have been paid. Marshmallow should add interest at a rate of 8% simple from the date of payment to the date the refund is given; and
- Pay £650 for the distress and distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 3 January 2025.

Stephen Howard
Ombudsman