

The complaint

Miss P complains that Marshmallow Insurance Limited cancelled her car insurance policy and declined a claim for an accident she was involved in.

What happened

Miss P held a car insurance policy underwritten by Marshmallow which had most recently renewed in July 2023.

In October 2023 Miss P changed her occupation from being a personal assistant to a nanny. Unfortunately, a few days after starting her new role whilst driving her personal car, and transporting a child in connection with her job, Miss P was involved in a road traffic accident with another car.

Shortly after notifying Marshmallow of the claim, it wrote to Miss P to tell her it was cancelling her policy. It said Miss P wasn't covered for using the car to transport a passenger as part of her work and by doing so she'd breached the policy terms giving it the right to cancel. Marshmallow also said it was holding Miss P liable for any costs it incurred from the accident she was involved in, though it said if the claim was non-fault Miss P may still be able to proceed using its panel solicitors.

In its final response, Marshmallow restated why it believed it was entitled to cancel the policy. It also said it had referred the claim to its panel solicitors, but the circumstances of the accident meant it wasn't able to treat the claim as non-fault.

Our investigator recommended the complaint be upheld in part. She said Marshmallow hadn't provided anything to show it wouldn't have insured Miss P had it known she'd changed occupation to a nanny. She also said she thought it had been a one-off that Miss P had driven a child in her own car as part of her job and didn't find the evidence showed this was something Miss P routinely intended to do.

The investigator found Marshmallow hadn't acted fairly by cancelling the policy but agreed with Marshmallow that it wasn't unfair for it to decline the claim for damage to Miss P's car since she was using the car at the time of the accident for purposes her policy didn't cover her for.

The investigator recommended Marshmallow remove the cancellation notice from any internal and external records, provide Miss P a letter confirming it had incorrectly cancelled the policy and pay her £400 compensation for the distress and inconvenience caused.

Marshmallow didn't agree, so the complaint was referred to me. I issued a provisional decision upholding the complaint and I said the following:

"I've begun by reviewing Miss P's policy documents. The policy terms and conditions included an ongoing duty of disclosure requiring Miss P to tell Marshmallow if anything changed from her statement of fact, and the statement of fact included Miss P's occupation.

Marshmallow are required to highlight any terms which are unusual or significant. The regulator provides guidance which says that in determining what exclusions or limitations are significant, a firm should in particular consider terms which may have an adverse effect on the benefit payable under a policy.

I think the ongoing duty of disclosure term was significant given that a change in a policyholder's circumstances could affect whether Marshmallow could continue to provide cover – and hence if it could not, this would have an adverse effect on the benefit payable.

Marshmallow said in its final response Miss P's policy was cancelled and her claim declined because it discovered she was using her car for purposes not covered by the policy. To put that in context, Miss P changed her job to nanny and used her car for purposes in connection with that job, which meant Marshmallow could no longer insure her.

So I've considered if it was highlighted to Miss P she needed to update Marshmallow when she changed jobs. And if it wasn't, what the likely effect would have been if it had been made clearer.

The ongoing duty of disclosure is contained on pages 43 to 46 of the policy terms and conditions booklet. I haven't seen anything to show it's included elsewhere such as on the Insurance Product Information Document ("IPID"). The statement of fact itself only says to check if details are correct and accurate - it doesn't in my view clearly set out an ongoing duty of disclosure – or clearly set out what type of information Miss P needed to update Marshmallow on. So I don't think I've seen enough to say the term was sufficiently highlighted.

In any case, I also don't think the ongoing duty of disclosure term which was contained within the terms and conditions booklet was clear and specific enough for Miss P to have reasonably known a change in occupation was relevant to Marshmallow and would have needed to be disclosed. The term says that the policy holder must tell Marshmallow "if anything changes". It goes on to say:

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

A list of examples follows this, but changes to occupation isn't given as one. Had a change in occupation been of importance to Marshmallow, and something it required a policyholder to inform it of, I think Marshmallow should have specifically set this out as an example of what Miss P needed to tell it about.

I've considered whether it's likely to have had any impact if Marshmallow had sufficiently and clearly highlighted the need to inform it of a change in occupation.

I think if it had been highlighted to Miss P and made clear she needed to inform Marshmallow of her change of occupation it's likely she would have contacted Marshmallow to do this. Marshmallow hasn't provided anything to show it wouldn't have insured Miss P simply because she was a nanny, but it has provided evidence showing it wouldn't have insured her for using her car in connection with that role.

I think it's likely that after being informed of the change in role, Marshmallow would have asked if there was any change in use of the vehicle. Miss P has provided a copy of part of the advert for her nanny job. While this says a nanny car would be provided, it also says it's essential for the nanny to be a driver with their own car. I think this shows Miss P would have needed business use cover for her own car. And I think it's most likely Miss P would have informed Marshmallow a change of use would be required had Marshmallow made it clear

she needed to do this.

Since Marshmallow wouldn't have been able to offer business use cover to Miss P, I find it likely she would have decided to cancel her policy and find suitable cover elsewhere. Had Miss P done that, it would have avoided her driving her own car without the appropriate cover for business usage being in place. So I find Miss P was prejudiced by Marshmallow not highlighting and making it clear enough she needed to inform it of her change in occupation. Due to this, I find it was unfair for Marshmallow to cancel the policy and decline the claim.

I've considered the impact declining the claim and cancelling the policy had on Miss P, and what Marshmallow should do to put things right.

Miss P says she suffered losses as a result of the damage to her car, loss of earnings due to being unable to get back to work from having no car or insurance, costs for the storage and recovery of her car, and costs for getting a hire car. Due to not being able to take out cover elsewhere, Miss P explained she added herself as a named driver on her partner's policy.

Since I can only hold Marshmallow responsible any impact its actions have unreasonably caused, it's necessary I distinguish between the impact caused by Marshmallow cancelling the policy and declining the claim, and the impact caused more generally by the accident itself.

Firstly, Marshmallow should reconsider Miss P's claim in line with the remaining policy terms. It should include within this any costs it would have been liable for had it not declined the claim - including the damage to Miss P's car, and storage and recovery charges.

Marshmallow said in its cancellation letter that Miss P would be held liable for any costs paid towards the third party. Marshmallow should retract this, and in line with the policy terms it should cover any third party costs Miss P is held liable for from the accident.

Miss P holds Marshmallow responsible for loss of earnings. But I don't find Marshmallow should make any contribution here. This is because Miss P said that she had to leave the nanny job due to injuries she suffered from the accident. So I think it was the accident itself which caused loss of earnings rather than Marshmallow's actions. In addition, as the nanny job included a car, I'm not persuaded Miss P's own car being damaged from the accident ought to have prevented her from being able to work.

Miss P also says that she incurred hire car costs. I don't intend to ask Marshmallow to make any contribution towards these. This is because in addition to Miss P having not provided any evidence of these costs, I also understand Miss P's car was a total loss which means she wouldn't have been entitled to a courtesy car under the terms of her policy. So there always would have been a period of time she would be without a car. And she's told us she has been able to use her partner's car since then.

To remedy the cancellation, Marshmallow should update the cancellation on any internal and external databases to show Miss P cancelled the policy and provide Miss P with a letter confirming the policy was cancelled by her.

Marshmallow should also pay Miss P £400 compensation to recognise the significant distress and inconvenience she has been caused from it cancelling her policy and declining her claim."

Miss P responded to say she had nothing further to add.

Marshmallow responded to say it didn't agree. In summary, its response included the following points:

- It said it had complied with its duty to explain clearly to Miss P the information she needed to disclose.
- It said it had complied with its requirements on fair presentation and clarity in policy terms.
- It said Miss P was in breach of the policy terms by carrying a passenger in the course of her employment as this was a business-related activity which was a class of use her policy didn't cover. So it didn't think it had unfairly declined the claim.
- It said it had applied the policy terms and exclusions fairly and transparently and had made coverage limitations clear.

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 considered Marshmallow's response to my provisional decision and the policy documentation it attached, but I've reached the same conclusions as I did in my provisional decision.

I accept the policy terms contain an ongoing duty of disclosure, so I don't dispute the policy terms required Miss P to inform Marshmallow if anything had changed from her statement of fact – which included her occupation. But this was a significant term, and it wasn't enough to just include it in the policy terms; it should also have been highlighted outside the policy terms and Marshmallow didn't do this. And, for the reasons I set out in my provisional decision, if it had, I think it's most likely that Miss P would have contacted Marshmallow to inform it of her change of occupation.

I also don't dispute that Miss P's policy didn't cover her to cover passengers as part of her work – and she was in breach of this at the time of her claim. But, as per my provisional decision, I still think that it's more likely than not, that if Marshmallow had sufficiently highlighted the specific requirement for Miss P to inform it of a change of occupation, it would have resulted in Miss P taking out cover elsewhere which included business usage. So I find it's Marshmallow's failure to make clear Miss P needed to update her occupation as to the reason why she found herself uninsured for the incident

Since I find it likely Miss P would have cancelled her Marshmallow policy and wouldn't have been without the required business use cover had she not been prejudiced in this way by Marshmallow, I remain of the view it was unfair for Marshmallow to cancel her policy and reject her claim.

Putting things right

To put things right, I require Marshmallow to do the following:

- Reconsider Miss P's claim inclusive of the damage to her car and the storage and recovery charges in line with the remaining policy terms.
- Cover any third party costs in line with the policy terms which have arisen from the

accident and which Miss P is held liable for without seeking to recover any such costs from Miss P.

- Update the cancellation on any internal and external databases to show Miss P cancelled the policy.
- Provide a letter to Miss P to confirm the policy was cancelled by her.
- Pay Miss P £400 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint and I require Marshmallow Insurance Limited to carry out the steps I've set out in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 2 December 2024.

Daniel Tinkler
Ombudsman